

Local Plan Review - Duty to Co-operate

Final Decision-Maker	Strategic Planning and Infrastructure Committee
Lead Head of Service/Lead Director	Rob Jarman, Head of Planning and Development
Lead Officer and Report Author	Gavin Ball, Principal Planning Policy Officer
Classification	Public
Wards affected	All

Executive Summary

This report sets out the standard process whereby the Council will fulfil its requirement to complete statements of common ground in order to satisfy the Duty to Co-operate incumbent in the preparation of the Local Plan Review.

This report makes the following recommendations to Strategic Planning and Infrastructure Committee

1. That the proposed set of cross-boundary issues and engagement activities to be undertaken to ensure the Council complies with Duty to Co-operate in the preparation of the Maidstone Borough Council Local Plan Review be noted.

Timetable

Meeting	Date
Strategic Planning and Infrastructure Committee	25 June 2019

Local Plan Review - Duty to Co-operate

1. INTRODUCTION AND BACKGROUND

- 1.1 Maidstone Borough Council is the Local Planning Authority for Maidstone Borough, and has the responsibility for preparing, maintaining, and reviewing the Local Plan for the area. The Council is in the early stages of undertaking a Local Plan Review of the current Plan (adopted in 2017), to be completed and adopted by 2022.
- 1.2 Local Plan-making authorities are required by the Duty to Co-operate to seek agreement with each other when preparing or supporting policies which address strategic issues. The Local Plan Review will include a combination of strategic and detailed planning policies, and as such the Duty to Co-operate will need to be satisfied with regard to the strategic issues.
- 1.3 The National Planning Policy Framework (NPPF) sets out that plan-making authorities should produce, maintain, one or more statement(s) of common ground detailing the agreement that has been reached on strategic cross-boundary issues throughout the plan-making process.

What is a statement of common ground?

- 1.4 A statement of common ground is a written record of the progress made by strategic policy-making authorities during the process of planning for strategic cross-boundary issues. It documents where effective co-operation is and is not happening throughout the plan-making process, and is a way of demonstrating that plans are deliverable over the plan period, and based on effective joint working across local authority boundaries. For Local Planning Authorities, it also forms part of the evidence required to demonstrate that they have complied with the Duty to Co-operate.
- 1.5 A Statement of Common Ground is expected to contain the following:
 - a. A short written description and map showing the location and administrative areas covered by the statement, and a brief justification for these area(s);
 - b. the key strategic issues being addressed by the statement, for example meeting the housing need for the area, air quality etc.;
 - c. the plan-making authorities responsible for joint working detailed in the statement, and list of any additional signatories (including cross-referencing the issues to which each is a signatory);
 - d. governance arrangements for the cooperation process, including how the statement will be maintained and kept up to date;

- e. if applicable, the housing requirements in any adopted and (if known) emerging strategic policies relevant to housing within the area covered by the statement;
- f. distribution of needs in the area as agreed through the plan-making process, or the process for agreeing the distribution of need (including unmet need) across the area;
- g. a record of where agreements have (or have not) been reached on key strategic issues, including the process for reaching agreements on these; and
- h. any additional strategic issues to be addressed by the statement which have not already been addressed, including a brief description how the statement relates to any other statement of common ground covering all or part of the same area.

What are the strategic issues on which cooperation is required?

1.6 Section 33A(4) of the Planning and Compulsory Purchase Act 2004 identifies each of the following as a “strategic matter”—

(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 is a county matter, or has or would have a significant impact on a county matter.

1.7 20 of the National Planning Policy Framework sets out a framework of themes that a Local Plan’s strategic policies should make provision for. The Council has considered these “themes” and proposed a set of *strategic issues* which the Plan will seek to address. It is these issues we intend to consult on with cross-boundary authorities as the basis of Maidstone’s Statement of Common Ground. This will include neighboring authorities as well as KCC and statutory authorities including¹ (but not limited to) the Natural England, Historic England, and the Environment Agency.

Strategic Theme (NPPF Paragraph 20)	Strategic Issue for Maidstone borough
Set out an overall strategy for the scale, pattern and quality of development and make sufficient provision for ...	
...Housing (including affordable housing), employment, retail, leisure and other commercial development	Meeting the borough’s local housing need and helping to meet needs across the relevant Housing Market Area/s
	Ensuring a sufficient supply of affordable housing
	Ensuring sufficient land and floorspace is provided to support economic growth in the

¹ See Reg. 4 of The Town and Country Planning (Local Planning) (England) Regulations 2012 and Reg. 169 of the The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013

Strategic Theme (NPPF Paragraph 20)	Strategic Issue for Maidstone borough
	borough and to contribute to the needs of the wider economic market area 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.
...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	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 Ensuring that the borough's biodiversity and wildlife habitats are suitably protected and managed Ensuring that the borough's historic assets are conserved and managed Contributing to an overall improvement in air quality, in particular in the Maidstone Air Quality Management Area. Managing the risk of flooding from all sources. Addressing climate change
...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)	Ensuring sufficient transport infrastructure is provided to serve the new development that is planned. Ensuring sufficient utilities infrastructure is provided to serve the new development that is planned.
...Community facilities (such as health, education and cultural infrastructure);	Ensuring that sufficient provision is made for health and education to serve the new development that is planned. Ensuring a sufficiency of parks and open spaces Ensuring that sufficient provision is made for community infrastructure

Process of Consultation on Strategic Issues

- 1.8 The issues above are set out in the Local Plan Review: Themes, Issues and Initial Choices document, an early consultation version of the Maidstone Borough Local Plan Review. This consultation will be utilised as the opportunity to raise with cross-boundary authorities the potential scope of cross-boundary issues which will be addressed in the Local Plan Review. A draft Statement of Common Ground, including the proposed set of signatories for each issue is included as Appendix A of this Report.
- 1.9 Not all of the issues identified above will require cross boundary agreement. Where that is the case, it is proposed that the statement of common ground will simply note this fact. The full list of issues is included in the draft Statement of Common Ground so that neighbouring authorities can agree that they are, or are not issues for which cross-boundary agreement ought

to be sought. The Council will expect to receive consultation responses from all cross-boundary authorities indicating whether the issues identified are correct, and whether they would expect to agree the approach to managing them.

- 1.10 Following the consultation, the Statement of Common Ground will be updated to include any changes requested by neighbouring authorities in response to the consultation, and a set of meetings will be set up to scope the issues and likely areas of agreement and disagreement for each issues.
- 1.11 The frequency and content of meetings will depend on the issues identified. Some may be one-offs (where we agree), and some may be needed to review further evidence, whereupon we have meetings to agree the issue and outcome and agree/agree to disagree. Representatives will normally include officers of at least Principal Planning Officer level, with other planning officers where relevant.
- 1.12 The Council will produce a summary of the issues addressed and outcomes for each meeting in the Duty to Cooperate document. Such a summary will be taken by officers present in the meeting. This will comprise the key issues and outcomes from the meetings, and will be appended to the Duty to Co-operate document as a set of Appendices.
- 1.13 The next stage of the Local Plan Review is scheduled to be in February 2019, with consultation on a Preferred Approach version of the Maidstone Borough Local Plan Review document. It is intended for this to include potential spatial distribution(s) of development, and will be the first opportunity for cross-boundary authorities to agree or disagree with the way that the Plan responds to cross-boundary strategic issues.
- 1.14 It is expected that cross-boundary working will have informed the content of this version of the Plan. The Preferred Option version of the Plan will be accompanied by an updated Statement of Common Ground detailing the cross-authority communication and work undertaken to address cross-boundary strategic issues.
- 1.15 The Council will be required to judge what amendments to the Plan could be made following the responses received on the Plan's Preferred Approach Plan, and draft Statement of Common Ground. Any changes will be set out in the Proposed Submission version of the Plan in (Scheduled for September 2020).
- 1.16 The Council will expect to receive consultation responses from all neighbouring authorities indicating where our approaches are agreed with, as well as where there is the potential for disagreement. Where agreement can be secured, this will be recorded in the Statement of Common Ground.
- 1.17 There is expected to be a significant level of co-operation between Maidstone Borough Council and Kent County Council (as set out in Appendix A). One of the outcomes of the new ways of working with KCC is that a new Maidstone Strategic Infrastructure Board will be created, consisting largely of Members and Senior Officers from KCC and MBC. The terms of reference are presently being finalised and the inaugural meeting is scheduled to

occur in Sept 2019. This will be an accepted forum for duty to cooperate discussions between the two authorities.

What if there are areas of disagreement?

- 1.18 If a cross-boundary authority signals that they disagree with the approach proposed to manage a cross-boundary issue during the Preferred Approaches consultation, the Council will work with them to see whether the issue can be rectified, and a solution agreed on, prior to the Examination in Public. This may involve a set of structured meetings, and potentially further evidence gathering. This process may even require a change to the Local Plan Review document.
- 1.19 It is possible that after undertaking discussion that it may not be possible to secure agreement between the Council and a relevant body. In this event the Statement of Common Ground will note this, and it is likely that this will become one of the issues for discussion during the Examination in Public of the Local Plan Review.

How will MBC feed into other Authorities Statements of Common Ground?

- 1.20 Officers will hold meetings with cross-boundary authorities as they identify issues and content for agreement in their Local Plans.
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2. AVAILABLE OPTIONS

- 2.1 Strategic Planning and Infrastructure Committee are asked to note the content of this report.
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3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 3.1 The proposed draft Statement of Common Ground is included at Appendix A.

4. RISK

- 4.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework.
- 4.2 The planning inspector appointed to examine the local plan will check whether an LPA has complied with the duty to co-operate and will recommend that the local plan is not adopted if the duty has not been complied with, in which case the examination will not proceed any further.
- 4.3 If agreement is secured on all issues we are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

- 4.4 It is recommended that consideration is shown in this report at paragraph 1.15-1.16 and identifies some risks assessed rated as “**RED**” in relation to agreement not being secured on all issues. However, we are satisfied that the further responses to those risks shown at 1.15-1.16 are sufficient to bring their impact and likelihood within acceptable levels. We will continue to monitor these risks as per the Policy.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 N/A

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The draft Statement of Common Ground will be sent to each strategic cross-boundary authority identified within it, seeking agreement of the issues contained within the document, as well as offering a meeting to discuss how each relevant issue can be addressed through the Plan.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Accepting the recommendations will materially improve the Council’s ability to achieve the objectives of the Strategic Plan. We set out the reasons other choices will be less effective in section 2	Head of Planning & Development
Risk Management	The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council’s Risk Management Framework. We are satisfied that the risks associated are within the Council’s risk appetite and will be managed as per the Policy.	Head of Planning & Development
Financial	The activities required to comply with the Duty to Co-operate can be carried out within already approved budgetary headings and so need no new funding for	Section 151 Officer & Finance Team

	implementation.	
Staffing	We will deliver the recommendations with our current staffing.	Head of Planning & Development
Legal	<p>The report is for noting. Section 33A of the Planning and Compulsory Purchase Act 2004 introduced a duty upon local planning authorities and county councils to cooperate in the preparation of development plan documents, insofar as they relate to a strategic matter.</p> <p>LPA's will be expected to demonstrate evidence of having effectively co-operated to plan for issues with cross-boundary impacts when their local plans are submitted for examination (paragraph 27, Chapter 3 Plan-making, NPPF). The statement of common ground is the means by which strategic policy-making authorities can demonstrate that a plan is based on effective cooperation and that they have sought to produce a strategy based on agreements with other authorities.</p> <p>The planning inspector appointed to examine the local plan will check whether an LPA has complied with the duty to co-operate and will recommend that the local plan is not adopted if the duty has not been complied with, in which case the examination will not proceed any further.</p> <p>Acting on the recommendations is within the</p>	Russell Fitzpatrick (MKLS)

	Council's powers as a Local Plan making authority	
Privacy and Data Protection	Accepting the recommendations will increase the volume of data held by the Council, the information provided will be public information on behalf of cross-boundary organisations.	Russell Fitzpatrick (MKLS)
Equalities	No impact identified.	Equalities and Corporate Policy Officer

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Draft Statement of Common Ground

9. BACKGROUND PAPERS

The issues set out in this report are also within the Committee Report for the Maidstone Borough Local Plan Review – Issues & Options consultation (Regulation 18a).