

Canterbury District Local Plan Review Public Examination

Topic Paper 5: Duty to Co-operate Statement



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DUTY TO COOPERATE

1.0 Introduction

- 1.1 This Paper sets out the engagement and cooperation with neighbouring planning authorities, other public bodies and relevant organisations in the development of the draft Local Plan. It also seeks to explain some of the key issues at the heart of the Council’s engagement with other bodies.
- 1.2 The Council can demonstrate a long record of such cooperation, since long before the formal duty came into being, dating back to previous Kent Structure Plans and the South East Plan and continuing through to the present. This paper focuses on the cooperation and engagement that has taken place since the preparation of the draft South East Plan.
- 1.3 What this shows is that there has been constructive cooperation between the various bodies in East Kent since that time, and that the Council has fulfilled the duty in the preparation of the draft Local Plan, and in fact has been carrying out the intentions of the duty since long before it came into effect.
- 1.4 Details of the co-operation between the Council and other bodies are documented in the Annual Monitoring Reports over the last few years, and the Consultation Statements prepared at each stage of the Plan process.

2.0 Government guidance

2.1 The legal requirement for cooperation is established in the Localism Act 2011, which places a duty on local planning authorities, county councils in England and other public bodies to engage “constructively, actively and on an ongoing basis” to maximise the effectiveness of Local Plan preparation in the context of strategic cross boundary matters.

2.2 The National Planning Policy Framework and the national Planning Practice Guidance set out the ‘duty to co-operate’ in more detail.

2.2 The NPPF states that local planning authorities should work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly co-ordinated and clearly reflected in individual Local Plans (para 179).

2.3 Paragraphs 178 to 181 of the National Planning Policy Framework give guidance on “planning strategically across local boundaries”, and highlights the importance of joint working to meet development requirements that cannot be wholly met within a single local planning area, through either joint planning policies or informal strategies such as infrastructure and investment plans. Paragraph 178 indicates joint working on areas of common interest to should “be diligently undertaken for the mutual benefit of neighbouring authorities”. Paragraph 181 states that “cooperation should be a continuous process of engagement from initial thinking through to implementation”.

2.4 The duty to co-operate also covers a number of public bodies in addition to local councils, and this is outlined in Section 4 of the Local Planning Regulations 2012. These bodies are also required to co-operate with Councils on issues of common concern to develop sound local plans. This list of bodies covered may change over time.

2.7 The national Planning Practice Guidance (para 9-002) states that “the Local Plan examination will test whether a local planning authority has complied with the duty to cooperate”. Para 9-001 of the Guidance stresses that the duty to cooperate is “not a duty to agree”. However, it says that 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.

3.0 Co-operation to date

3.1 Over the past decade the City Council has worked with other local authorities in East Kent, including Kent County Council, and other partners in order to develop a long term vision for the area as well as the mechanisms for delivering that vision. The approach taken has taken into account the nature of the national and regional planning system and continues to evolve. A summary of the relationships and overall approach in the area is set out below.

3.2 Responding to the development of the South East Plan, the City Council worked with Kent County Council and the district councils in East Kent and other partners to produce the East Kent Sub-Regional Study, published in 2004. Further joint work was

then undertaken to produce the East Kent and Ashford Sub-Regional Strategy that was included in the South East Plan, as adopted in May 2009. Discussions continued with regional agencies and GOSE up to the time of the Examination.

- 3.3 The work for the South East Plan work (undertaken between 2004 and 2008) recognised the complementary nature of the economic strengths of different parts of East Kent, which remains a key factor today.
- 3.4 The Council has also sought to develop good relationships with the South East Local Enterprise Partnership (LEP), established in 2011. This incorporates Essex, Kent and East Sussex and therefore all areas adjoining Canterbury district are similarly included. The Council regularly attends the quarterly South East LEP Board meetings. Co-operation between the Council and the LEP has led to the support of the LEP for the Council's bid for an exemption from "office-to-residential" permitted development rights, and also to a provisional grant of about £6m towards a new Sturry Crossing, a key element of infrastructure that would serve the development proposals in the Draft Local Plan.
- 3.5 The City Council is also an active participant in the Kent Planning Officers Group, which meets quarterly to share best practice, and develop shared policy approaches to key issues across Kent. Recent examples include the development of common approaches to viability testing and other planning matters. This work is being formalised through the East Kent Regeneration Board.

- 3.6 The City Council is also an active participant in the Kent Planning Policy Forum (meeting quarterly), a sub-group of the Kent Planning Officers' Group, which seeks to develop collaboration and share best practice in LDF and Local Plan work across Kent. One of the key areas of joint-working in the early years of the KPPF was the development of common approaches to matters such as Urban Capacity Studies. More recent examples include developing a shared approach to the preparation of evidence on future development requirements; and shared evidence on housing requirements, GTAA studies and other matters of cross-boundary mutual interest. A Planning Policy Forum sub-group has recently been established to consider joint working on objectively assessed need for housing across Kent.
- 3.7 The City Council was involved in the formation of the **East Kent Local Strategic Partnership (EKLSP)**, founded in spring 2008 and then covering the local authority areas of Canterbury, Dover, Shepway and Thanet, seeking to continue the collaborative working undertaken for the South East Plan. The partnership published its **Sustainable Community Strategy** – “Lighting the Way to Success” – in 2009 (a strategy for the East Kent area), and this was supported by a shared evidence base prepared by the Councils in conjunction with Experian Business Strategies.
- 3.8 This was followed, in response to the Homes and Community Agency's proposed 'single conversation' mechanism for allocating housing and regeneration funding, with the EKLSP partners working together to develop the **East Kent Local Investment Programme**. The document, that set a series of investment priorities for East Kent, was adopted by the City Council in spring 2011, and was supported by all the East Kent authorities.

- 3.9 This has fed into the work of the East Kent Regeneration Board.
- 3.10 The City Council is a member of the **East Kent Regeneration Board** (formed in December 2010, meeting on a monthly basis), along with Kent County Council, Ashford Borough Council, Dover District Council, Shepway District Council and Thanet District Council. The Board has developed a set of shared objectives for the area and infrastructure delivery mechanisms, and is a key decision-making body for infrastructure and regeneration schemes. The Board adopted an **East Kent Growth Plan** (the successor to the LIP) in 2013, which sets out joint priorities for growth in East Kent. The Board is also being used to feed in to the South East Local Enterprise Partnership Strategic Economic Plan.
- 3.11 The Board meets regularly and has an officer group and a group containing Council Leaders and Chief Executives from across East Kent. The East Kent Councils have now formalised this arrangement through a Memorandum of Understanding, addressing a range of matters that would be issues for cooperation. This ensures political involvement and cooperation on regeneration matters including planning at a senior level, and reflects the practice of the authorities since before the duty to cooperate came into effect.
- 3.12 Similarly discussions have been held with non-public sector service providers; for example, South East Water and National Grid. In particular, this has been undertaken to ensure shared information about service and infrastructure

requirements, and how the various plans and programmes fit together to assist in the delivery of future development.

- 3.13 The Council has engaged with these bodies over a long period of time, starting with the Futures Study in 2006, when there was a stakeholder conference to discuss Futures research and future options for the district, underpinned by research by Experian Business Strategies and the Future Foundation.
- 3.14 The Futures Study was undertaken to inform the Council’s Corporate Plan, the LDF/Local Plan and the Sustainable Community Strategy (at that time), and a wide range of local stakeholders and other key organisations were invited to take part in the development of a Futures strategy. This represented the “initial thinking” in the development of the draft Local Plan (para 181, NPPF), and was undertaken prior to the duty to cooperate.
- 3.15 This was followed up with a series of meetings and workshops to develop different aspects of the Strategy and to consider the non-planning interventions needed, as well as the development of planning policy.
- 3.16 The work undertaken for the Development Requirements Study (DRS)(2011-12) was shared with neighbouring Councils and local stakeholders at an early stage and also with other relevant bodies through a workshop where the evidence was presented. The DRS included the scenarios developed from the Futures Study, which had previously been shared with neighbouring authorities and others.

3.17 This included neighbouring Councils and Kent County Councils, local residents groups, Parish Councils, local businesses, local environment groups, and representatives of the housing and voluntary sectors. Their views were sought (in particular) regarding the appropriate level of housing and employment land in the district and where development should be located. When presented with the various development scenarios (those presented to the public through the Ipsos MORI research), 62% of the stakeholders present supported the delivery of 760 dwellings per annum or more. There were a variety of views regarding locations of development.

4.0 Record of cooperation

4.1 The Annual Monitoring Reports since 2004 set out some of the meetings which have taken place between the City Council and other public bodies over that time period, and this relates to the bodies and activities set out above, and others.

4.2 The Statements of Consultation prepared at each stage of consultation also detail the range of organisations and meetings that have taken place to ensure cooperation as the preparation of the draft Local Plan progresses.

4.3 These set out a summary of the position in relation to the duty to cooperate, and the efforts made by the Council to ensure that key partners and relevant public bodies have been engaged in the Local Plan process, especially at key stages.

5.0 Key issues for cooperation

Housing requirements and Plan provision

5.1 Future housing requirements for East Kent represent a major aspect of the need for cooperation between neighbouring authorities.

5.2 The table below sets out the various proposals for housing provision across East Kent. This demonstrates that there is a surplus of housing supply if the various local planning authorities continue with their current housing proposals, and these are all adopted in due course. Although the Council have taken different approaches to housing strategy, these are complementary, and reflect the Council’s respective planning strategies for their areas. The housing numbers in the table below have developed as a result of cooperation and consultation over a period of some years since the adoption of the South East Plan, and represent the current thinking of the various Councils. Discussions and consideration of overall housing numbers for the sub-region have been considered through various joint forums, such as work for the East Kent Regeneration Board, but stretching back to the joint-working undertaken for the East Kent & Ashford Sub-Regional Strategy work for the South East Plan (2005 onwards).

East Kent LPAs	SHMA/"How many homes"/ Development Requirements Studies	Adopted/draft Local Plan	Annual difference between Plan provision and requirement
Ashford	726 – SHMA	1100 (Core Strategy to 2021)	+374
Canterbury	831 – HMM (subject to	780 (Publication Draft Local Plan, based on DRS)	-51

	<i>change)</i>		
Dover	430 – HMM	700 (adopted Core Strategy)	+270
Shepway	546 – HMM	350/400* (adopted Core Strategy)	-146
Swale	740 – DRS	540 (Preferred Option Draft Local Plan)	-200
Thanet	632 - HMM	Issues and Options report has a range from 186 (ZNM) to 590* per year	-42 (based on 590 per year)
Total	(3905)	(4110)(assuming *)	+205

- 5.3 It is largely the intention of the East Kent Councils to each meet their own housing requirements. The main outstanding issue relates to housing requirements for Swale Borough Council. A report for Swale Borough Council by Nathaniel Lichfield & Partners indicated that Swale’s housing requirement should be 740 units per year. Swale’s draft Plan indicates that, primarily as a result of market conditions and related delivery issues, Swale BC only intends to plan for 540 units per year.
- 5.4 Swale BC has requested that Canterbury City Council consider whether it could accommodate some of Swale’s housing requirement. This request has also been sent to other neighbouring authorities (Ashford, Maidstone & Medway), on the basis that Swale SBC do not believe that the higher level of housing can be delivered, because of environmental and infrastructure constraints.
- 5.5 There have been two meetings between Swale Borough Council and Canterbury City Council to discuss these matters, but the two Councils were not able to reach an agreed position regarding any re-distribution of housing requirements.
- 5.6 Canterbury City Council’s position is that it cannot assist in meeting Swale’s unmet housing requirement, for the following reasons:

- The Sustainability Appraisal of the DRS scenarios indicates that Scenario E (780dpa) represents the best balance between social, economic and environmental criteria.
- The Development Requirements Study (which was shared with the neighbouring authorities at an early stage) concluded that levels of development above 780dpa would be unlikely to be deliverable, given market capacity and demand.
- The Habitat Regulations Assessment report of the draft Local Plan (based on 780dpa) identifies a potential risk that the implementation of proposed new developments in the draft Local Plan could result in significant effects on European sites from some development sites. Any increase in housing numbers in that part of the district would be likely to increase that risk.
- The City Council has reviewed the sites submitted as part of the SHLAA process and it is considered that there are none that could serve the needs of Swale. All the SHLAA sites in Canterbury have been subject to a Sustainability Appraisal and the vast majority of sites that have been assessed favourably have either been proposed for allocation or are sites which can come forward under the existing Local Plan framework.

5.7 The City Council's view is that not all housing distribution options have been explored in Swale, and the identified environmental, infrastructure and deliverability

constraints should be reviewed. The Council's own work for Canterbury district indicates that additional housing would not be in line with the Sustainability Appraisal for Canterbury, and that there are not suitable sites available in the District to serve Swale's housing need. None of the other three Councils have indicated at this time that they are able to assist in meeting the shortfall of housing in Swale district.

Employment Land

- 5.5 The East Kent authorities have long cooperated in relation to economic matters (see above), and discussion between the authorities regarding the appropriate level of employment land to address the varying economic needs of different areas has been ongoing since the joint work on the South East Plan and the East Kent & Ashford Sub-Regional Strategy, either through the Kent Planning Policy Forum or various East Kent forums. The idea of East Kent as a functioning economic area was developed in some detail through the South East Plan process.
- 5.6 The East Kent authorities have each identified a significant level of employment land in adopted and draft Local Plans, more than is identified as a requirement through Employment Land Reviews. A similar approach has been taken across the East Kent districts, and there is broad agreement about the level of employment land being provided.
- 5.7 This is partly to recognise that employment land generally takes longer to bring forward; partly to recognise to accommodate other uses that might if difficult to find

a site; and to reflect possible losses of existing premises, either as a result of planning permission being granted or “permitted development” from office to residential uses. This provides flexibility in the employment land supply to meet different business needs in the district without affecting such provision elsewhere in East Kent.

Retail Development

- 5.8 Flowing from discussions about future retail provision and the publication of the draft, Dover District Council have raised concerns about the level of new retail development being proposed for Wincheap in Canterbury. The draft Plan (in Policy TCL7) identifies the area for 50,000sqm of new retail floorspace, to be developed as a single complementary centre for Canterbury City Centre.
- 5.9 Dover District Council wish to be assured that the need for the additional 50,000sqm comparison floorspace at the Wincheap Industrial Estate does not have an impact on nearby towns, in particular, Dover and Deal. Dover District Council also consider that further work is also required to assess the role/impact of 50,000 sqm of additional floorspace on Dover and Deal as currently these settlements are not specifically considered in the DTZ Study.
- 5.10 The City Council and Dover District Council have discussed these issues, and it is the City Council’s position that Policy TCL7 needs to be considered in conjunction with Policy TCL6, relating to town centre uses. This is acknowledged by Dover District

Council, but it believes this relationship should be made more explicit in the draft Plan.

- 5.11 The City Council is of the view on the substantive point that the proposals for Wincheap are unlikely to have a significant impact on Dover or Deal centres, since Policy TCL6 provides the framework for considering the impact of retail development on Canterbury City centre and other town centres.

Infrastructure

- 5.12 The Council is preparing its Infrastructure Delivery Plan (IDP) in parallel with the draft Local Plan. In assessing the need for different forms of infrastructure, the Council has worked with the relevant authorities and bodies to ensure that the infrastructure listed in the draft IDP fairly reflects the need for new supporting infrastructure. This is an ongoing element of the Local Plan work, and the Council is carrying out a technical consultation with key partners on the draft IDP.
- 5.13 Considerable work was undertaken in relation to the South East Plan, some of which is still relevant to the preparation of current Plans. Since that time, the Council has contacted the bodies involved in the provision of different elements of physical infrastructure, and continues to seek their advice on the infrastructure requirements generated by the development proposals set out in the Local Plan.
- 5.14 This includes Kent County Council, the Highways Agency, Stagecoach, South East Water, Southern Water, the Universities, Natural England, Network Rail and others,

and the outcomes of those discussions are reflected not only in the draft Local Plan, but also in the draft Transport Strategy and the draft IDP submitted to the Examination alongside the draft Plan. Details of the various meetings and discussions over the last few years are set out in the Consultation Statements at each stage of the Plan preparation process, beginning well before the duty to cooperate came into effect.

Habitat Regulations matters

5.15 Another key matter for cooperation for the East Kent authorities is meeting the requirements of the Habitat Regulations, and in particular responding to the concerns of Natural England about the potential impacts of development on sensitive international wildlife sites. The East Kent coastal areas, in particular, and some inland sites, are designated as Sites of Special Scientific Interest, National Nature Reserves, Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar Sites. They are designated for a range of interests, but the primary interest of concern to the East Kent authorities is the presence of wild bird species.

5.16 The various Local Planning Authorities have engaged with Natural England and other relevant bodies from an early stage and this work continues, responding to advice provided by Natural England. This has been undertaken primarily through direct contacts between the LPAs and Natural England, but also through other means, including direct discussions between the East Kent Authorities and other relevant bodies, and the East Kent Green Infrastructure planning group. The City Council has

also been involved with the North Kent Environment Group, which is looking at potential impacts from development on the international wildlife sites at the Swale and North Kent Marshes. Discussions were also undertaken with Natural England and the Kent Wildlife Trust regarding the Herne Bay Town Centre Area Action Plan and that work remains relevant, since it identified the need for similar measures to those described below, albeit at a smaller scale.

- 5.17 An example of this ongoing engagement is the Thanet Coast stakeholder meeting that took place in January 2014. As well as the local planning authorities and Natural England, the other bodies involved in the workshop were Kent County Council, the Kent Wildlife Trust, the RSPB, the National Trust, Sandwich Bay Bird Observatory Trust, and the British Trust for Ornithology. At the workshop, a number of key issues were discussed, including levels of development in the area, the latest research in habitat/wildlife trends and a range of potential mitigation measures to be considered.
- 5.18 In summary, Natural England's position is that, without proper mitigation, the level of development proposed in East Kent will have a likely significant effect on international wildlife interests, primarily resulting from recreational pressures deriving from the new housing. There are also other more localised issues that need to be addressed (for example, in Canterbury, in one part of the district, there is an air quality issue affecting one of the international wildlife sites).

5.19 The East Kent authorities have been meeting regularly to discuss the emerging issues and ways forward over the last 2-3 years as work has progressed on Core Strategies and Local Plans.

5.20 The East Kent authorities have responded to these issues by developing policy frameworks to ensure that proper mitigation can be achieved. The mitigation measures include the following, and are based on an understanding of “zones of influence”, which identify the proximity of development areas to sensitive international wildlife interests. These measures can be applied in different ways in different areas, as appropriate:

- (1) Wardening of sensitive international wildlife sites, and increased education, to be funded by the development in perpetuity;
- (2) Ongoing monitoring and surveys of sensitive sites in the district to be funded via the wardening programme;
- (3) Consideration of other measures as required (for example, access management);
and
- (4) The provision of open space on new development sites.

5.21 The East Kent authorities are also working together on the provision of mitigation measures. For example, the City Council is proposing to use development contributions from development in the northern part of the district to extend the existing Thanet Coast Project wardening scheme (which is managed by Thanet District Council) to relevant areas in Canterbury district, and we are working with

Thanet District Council on this scheme. Work is also planned on developing a strategic access management and mitigation plan for the East Kent Coast and an East Kent Green Infrastructure Strategy.

- 5.22 At present, the various LPAs are at different stage of the development plan process, and preparing Green Infrastructure Strategies. However, as the various Plans and Strategies are put in place, it is intended that this would provide a coherent and integrated approach to the mitigation of impacts on international wildlife sites and a co-ordinated approach to the provision of green infrastructure.

Gypsies & Travellers

- 5.23 The Council has worked with its neighbours in East Kent on the preparation of two Gypsy & Traveller Accommodation Assessments (GTAAAs)(in 2007 and 2014), and the east Kent authorities co-operated with the other Kent authorities in submissions to the South East Plan Examination into the provision of Gypsy and Traveller sites.
- 5.24 The latest study indicates there is a need for Gypsy sites in different parts of East Kent, and all the Kent authorities are working together to try to ensure that all cross-boundary issues are addressed in the GTAA work.
- 5.25 The East Kent authorities have considered whether there is potential to proceed with a joint Development Plan Document (DPD) on site provision across East Kent. Due to differing timescales, however, it is unlikely that such an approach will be possible, although joint-working and discussions about individual DPDs will continue.

The Council remains open to more formalised joint-working, if the opportunity presents itself in due course.

Relationship to Marine Plans

5.26 Government guidance (para 9-001) indicates that there is a legal duty on local planning authorities 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.

5.27 The Council has engaged with the Marine Management Organisation in respect of the relationship with emerging Marine Plans. Although there are currently no Marine Plans which directly affect Canterbury district, the Council has sought to ensure that the draft Local Plan addresses the broad objectives of the UK Marine Policy Statement where relevant to the coastal areas of the district. The Marine Management Organisation has raised no objections to the provisions of the draft Local Plan.

6.0 Conclusions

6.1 The Council believes it can demonstrate a long record of effective cooperation, since long before the formal duty came into being, dating back to previous Kent Structure Plans and the South East Plan and continuing through to the present. What this shows is that there has been constructive cooperation between the various bodies in East Kent since that time.

- 6.2 The Council believes that its engagement with key partners, and especially those listed in the “duty to cooperate”, has been constructive and collaborative over a period of time, from the first thinking on the draft Plan, in line with the NPPF. In fact, it has been ongoing since the South East Plan process, long before the duty to cooperate came into effect.
- 6.3 In terms of housing, employment land, provision of key infrastructure and the implementation of wider strategies, there has been mutual benefit to various parties. There only remain a small number of outstanding issues, all of which the Council is seeking to resolve with the relevant partners.
- 6.4 The engagement with other organisations has been long-standing and continuous, and has derived a number of benefits for the parties concerned. We have demonstrated our commitment to cooperation, working towards agreement on a range of potentially difficult issues.
- 6.5 We would therefore ask the Inspector to recognise the significant level of joint-working and cooperation that has taken place over many years, through the South East Plan process and up to the current time.