

Norfolk Duty to Cooperate Member Forum – 14th January 2015

Duty to Cooperate Options Report

Purpose

1. The purpose of this report is to set out options to the Norfolk Duty to Cooperate Member Forum on how best to address the government's requirements for local planning authorities (LPAs) to cooperate on cross-boundary issues through their Local Plans. It presents 5 potential options and recommends that option 3, formal cooperation through a shared non-statutory strategic framework, should be progressed.

The NPPF

2. The NPPF states (paragraph 181) that *“Local planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross-boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position.*
3. It also states (in paragraphs 156 and 162) that Local Plans should include strategic policies, and LPAs should work with other authorities and providers to meet forecast demands and deliver:
 - homes and jobs;
 - retail, leisure and other commercial development;
 - infrastructure for transport, telecommunications, waste management, water supply, wastewater, flood risk and coastal change management;
 - minerals and energy (including heat);
 - health, security, community and cultural infrastructure and other local facilities;
 - climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment, including landscape;
 - nationally significant infrastructure.
4. It is a fundamental principle of the Duty to Cooperate that it should be member led.

The role of the Norfolk Duty to Cooperate Member Forum

5. The Terms of Reference of the Norfolk Duty to Cooperate Member Forum (attached as appendix 1) state that the objectives of the group are:
 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 coordinate if at all possible timelines for the production of plans.

Recent progress

6. At the Duty to Cooperate Member Forum on 23rd January 2014 different examples of approaches to addressing the requirements of the Duty to Cooperate from around the country were presented to members.
7. It was recommended that a coordinated planning approach is required, based on a joint or coordinated set of Strategic Housing Market Assessments (SHMAs) with agreed housing numbers in each Local Plan and that effective strategic planning will require strong links to strategic economic planning.
8. Members agreed that the first step towards this was to produce a Compendium bringing into one place the current strategic elements of the adopted local plans around Norfolk. This Compendium has now been produced.
9. In addition to this, a Duty to Cooperate Schedule covering a variety of issues including the need for an overarching strategic framework, evidence supporting local plans and the coordination timescales for plan making has been produced.
10. Members have agreed that evidence, whether commissioned by individual local authorities or collectively, will look forward 20 years to 2036.

11. Despite the above progress having been made, no specific commitment yet has been made to implementing a means of addressing the Duty to Cooperate requirements. Up to now, there does not appear to have been full recognition of the importance of the process at all levels in the district councils. All LPAs in the area risk facing significant issues in progressing their Local Plans if significant steps are not taken to meet Duty to Cooperate requirements.
12. Effective coverage of strategic issues such as housing, jobs, transport and water is necessary to meet the NPPF requirement to promote sustainable development and to assist economic growth whilst providing for environmental protection. In addition, effective cooperation should lead to significant cost savings.

The Options

13. Options 1 to 5 below set out different potential approaches to addressing the Duty to Cooperate, along with advantages, issues and risks associated with each.
14. Options 1 to 5 are:
 1. Informal cooperation (i.e. continue the current approach)
 2. Structured cooperation through a Memorandum of Understanding
 3. Formal cooperation through a shared non-statutory strategic framework
 4. A statutory Joint Strategic Plan
 5. A statutory single Local Plan.

Option1 - Informal cooperation (i.e. continue current approach)

The current structure would be retained with the Strategic Planning Officers Group progressing the work through the Member Forum, with the forum making recommendations to individual authorities. The process would be documented via minutes of officer meetings and forum/council resolutions. Expected outcomes would not be formalised at the outset and the degree to which each authority cooperated would remain a matter for each council. Individual authorities produce their own Local Plan and may commission joint evidence base with other authorities as necessary and relevant.

Structure	Method	Advantages	Issues / Risks
Norfolk strategic planning member forum	1. Continue use of current Terms of Reference in appendix 1 2. Informal agreement on specific issues as they arise. 3. Shared evidence base and/or /shared approach to evidence collection at different geographical scales dependent on issue	This is the least prescriptive approach which potentially enables individual authorities to maximise control over their plan making processes	Inability to agree on key issues (e.g. housing numbers) risks leading to failure to reach the Local Plan examination stage. In November 2014 alone, there were four examples ¹ of authorities having their plans delayed or significantly amended as a result of failing to address housing need issue.
		Decision making powers are retained at the district level	Approach vulnerable to challenge – each local authority will have to prove its case on housing numbers at each Local Plan examination with no formal coordination
			Whilst short term costs may be low, the costs of producing an evidence base are difficult to predict without a careful analysis of existing strategic evidence having been done. Therefore this approach risks unnecessary work being undertaken by consultants. The financial and reputational costs of any failure to progress Local Plans to examination on Duty to Cooperate issues would be very high.

¹ Cheshire East, South Worcestershire, East Staffordshire and Chiltern

Option 2 – Structured cooperation through a Memorandum of Understanding

Under option 2 the current structure would be retained with the Strategic Planning Officers Group progressing the work through the Member Forum, with the forum making recommendations to individual authorities. The process would be documented via minutes of officer meetings and forum/council resolutions. In addition, each authority would make a formal commitment to a 'Memorandum of Understanding' (MoU). This would be a formal agreement between the authorities to cooperate on strategic issues, setting out the issues the authorities would cooperate on and principles for how the LPAs would work together e.g.

Principle 1 – All authorities will agree to common principles on the implementation of green infrastructure.

Individual authorities would produce their own Local Plan and commission joint evidence with other authorities as necessary and relevant.

Structure	Method	Advantages	Issues / Risks
Norfolk Strategic Planning Member Forum making recommendations to each authority Lead officers in each district	1. Memorandum of Understanding 2. Revised Terms of Reference 3. Shared evidence base and/or /shared approach to evidence collection at different geographical scale dependent on issue	Enables each district to have significant control over their plan making processes	Possibly insufficient commitment to meet local plan duty to cooperate requirements
		Decision making powers are retained at the district level	Depending on the content of the MoU, there may be potential for inability to agree on key issues e.g. housing numbers, which risks leading to failure to reach Local Plan examination stage
		Would support integration and alignment of strategic spatial and investment priorities	Approach somewhat vulnerable to challenge – each local authority will have to prove its case on housing numbers at each Local Plan examination with limited coordination The costs of collecting the evidence base are difficult to predict without a careful analysis of existing strategic evidence having been done. Therefore this approach risks unnecessary work being undertaken by consultants. Whilst short term costs may be low, the financial and reputational

			costs of any failure to progress Local Plans to examination on Duty to Cooperate issues would be very high.
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Example - Memorandum of Understanding between authorities in **Somerset** and **Dorset**:

http://www.southsomerset.gov.uk/media/568924/ssdc_h55.pdf

The South Somerset Local Plan has had its plan making process delayed for over a year, but this relates to the approach to sustainability appraisal rather than the overall housing numbers for the district. Thus it appears that in this case Duty to Cooperate issues have been effectively addressed by this approach.

Option 3 - Formal cooperation through a shared non-statutory strategic framework

The current structure would be retained with the Strategic Planning Officers Group progressing the work through the Member Forum, with the forum making recommendations to individual authorities. A dedicated staff team would greatly assist the implementation of this approach. The process would be documented via minutes of officer meetings and forum/council resolutions. In addition, each authority would make a formal commitment to the preparation and delivery of a non-statutory Joint Strategic Framework which would agree the approach to cross boundary strategic issues, e.g. housing numbers; jobs growth targets; cross boundary infrastructure etc. The LPAs would sign up to a series of objectives on strategic issues which they would then address in their Local Plans. This is similar to the approach taken in Cambridgeshire and Peterborough (see example below the table).

Structure	Method	Advantages	Issues / Risks
Norfolk Strategic Planning Member Forum making recommendations to each authority Probably requires small dedicated officer team to deliver either with seconded or new staff	1. Amended Terms of Reference 2. Non-statutory shared strategic framework on housing numbers 3. Additional non-statutory document covering broad spatial approach to other duty to cooperate issues e.g. water, economic development,	Reasonably comprehensive approach meets NPPF and Duty to Cooperate requirements to plan for issues with cross-boundary impacts and fully meet objectively assessed needs, providing housing targets for each district	Issue of housing numbers still likely to be raised (generally by developers) at each Local Plan examination as new evidence arises, but evidence base can be updated to reflect this
		'Light touch' approach to loss of statutory strategic regional planning which enables promotion of coordinated, sustainable growth	Potential need to undertake sustainability appraisal as part of this process, though recent experience in East Cambs. and Fenland suggests this may not be necessary.

	<p>energy, natural environment (2 and 3 could be combined)</p> <p>4. Shared evidence base and/or /shared approach to evidence collection at different geographical scales dependent on issue.</p>	Makes recommendations for policy approaches in Local Plans - decision making powers retained at the district level	There has not been the same history of cooperation on strategic issues within Norfolk (or in Norfolk and Suffolk) as there has been in Cambs. and Peterborough e.g. Cambridgeshire Horizons
		Work on the framework can assist in identifying when, where and at what scale evidence (as set out in the Schedule of Future Evidence Work Report) is required. Cooperation on evidence will ensure a coordinated approach to other strategic issues in Local Plans and would potentially lead to significant cost savings	Need to explore willingness to fund an officer team. Such costs may be reduced if applied over a wide area or if the LEP contributes to funding
		The creation of a dedicated officer team could provide a 'neutral space' for discussion and mediation between authorities	
		Allows for effective coordination with the Strategic Economic Plan (SEP), incorporating strategic spatial planning in the economic planning for the area	

Example: **Cambridgeshire / Peterborough** have produced the [Cambridgeshire and Peterborough Memorandum of Cooperation - Supporting the Spatial Approach 2011-2031](#). This document addresses the requirements of paragraph 181 of the NPPF. It is a non-statutory document which sets out agreed levels of future housing growth. By demonstrating that emerging district-level strategies contribute to a strategic, area-wide vision, objectives and spatial strategy, it provides additional evidence of how the Duty to Cooperate is being met in the area.

More recently, the authorities have supplemented the memorandum with [Strategic Spatial Priorities: Addressing the duty to cooperate across Cambridgeshire & Peterborough 2014](#) . This document highlights how the local authorities have addressed the Duty to Cooperate across a number of other strategic priorities as required by paragraphs 156 and 162 of the NPPF, providing objectives and policy recommendations for Local Plans on cross-cutting issues such as economic development, design, water and energy.

These documents have recently successfully been used as evidence for the East Cambridgeshire and the Fenland Local Plans. Cambridge and South Cambridgeshire are currently using the evidence to support the joint examinations of their Local Plans.

The support work to help develop this coherent approach to planning across the area is provided by the Cambridgeshire & Peterborough Joint Strategic Planning Unit (JSPU). Its two members of staff, paid for by contributions of £10k per year from the seven districts involved, are employed through the county council and hosted at a district council (South Cambs.). The governance structure used includes:

- A dedicated cross-party members group
- The Public Service Board (Chief Executives)
- Senior Officer Groups – consisting of staff from both local authorities and the LEP
- Working groups and project teams.

Option 4 - Joint Strategic Plan

This would be a comprehensive statutory strategic plan which would form part of the Local Plan for each district. The plan and approach would be similar in nature to the Joint Core Strategy. More formal joint member decision making structures may be necessary if such an approach were taken, although the process used for the Joint Core Strategy required decisions to be made at constituent councils.

Structure	Method	Advantages	Issues / Risks
<p>Most likely binding joint member decision making group (possibly through a combined authority), although could be done through Norfolk Strategic Planning Member Forum making recommendations to each authority</p> <p>Probably requires small dedicated officer team to deliver either with seconded or new staff</p>	<p>Statutory joint strategic plan covering housing numbers, economic development and transport examined once and adopted by all authorities as part of their Local Plan</p> <p>Each LPA would also produce separate Local Plan documents covering development</p>	Provides the greatest certainty and coordination for key strategic issues	Potentially an unsuitable structure given the large geographical area, the differing characteristics of the districts and their current progress with plan making. This emerging approach is currently mainly being taken in conurbations
		Allows for effective coordination with the LEP SEP, incorporating strategic spatial planning in the economic planning for the area	<p>Issue of housing numbers still likely to be raised at each Local Plan examination</p> <p>Issue of whether this of approach meets NPPF requirement that each LPA should set out its planning strategy with other policies in their Local Plan (paragraph 156), unless the production of additional development plan documents is clearly justified (paragraph 153)</p>

	management policies and site allocations		Need to explore willingness to fund an officer team. Costs may be reduced if applied over a wide area or if the LEP contributes to funding. Each LPA would have to fund joint strategic planning document production and separate documents for sites and development management.
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Examples:

The **Greater Manchester** Spatial Framework, envisaged as a statutory joint strategic plan to manage the supply of land to support jobs and new homes, is at an early stage of production. There has recently been an initial consultation on evidence for future growth to identify the priorities the plan should address. It is available at:

http://www.agma.gov.uk/what_we_do/planning_housing_commission/greater-manchester-spatial-framework/index.html

A number of authorities in the **West Midlands** have committed to a similar approach, and are looking to gain additional support. For more information, see http://www.planningportal.gov.uk/general/news/stories/2014/november14/131114/131114_1.

More recently, a spokesman announced that **London** mayor Boris Johnson is keen to create a strategic regional plan covering the capital and the greater South East and is organising a summit next spring to discuss the issue with Home Counties council chiefs.

Option 5 – Joint Local Plan

A Joint Local Plan would not only cover strategic issues, but also site allocations and development management policies for all of the districts in a single, area wide, Local Plan. More formal joint member decision making structures would be likely to be necessary if such an approach were taken.

Structure	Method	Advantages	Issues / Risks
Most likely binding joint member decision making group (possibly through a combined authority), although could be done through Norfolk Strategic Planning Member Forum making recommendations to each authority Probably requires dedicated officer team to deliver either with seconded or new staff	Joint Local Plan covering strategic issues, site allocations and development management examined once and adopted by all authorities	Provides coordination of key strategic issues with implementation through site allocations and detailed development management policies	Unsuitable structure given the large geographical area and differing characteristics of the districts Disproportionate approach - coordination of site allocations across a number of districts through a single Local Plan would be likely to be highly problematic
		Allows for effective coordination with the LEP SEP, incorporating strategic spatial planning in the economic planning for the area	Costs of a dedicated team to cover area wide single Local Plan would be likely to be high, though this would be offset to a certain extent as there would not be the need for each LPA to produce its own Local Plan.
		Economies of scale as all evidence base shared	Could be perceived as an approach which does not comply with government's focus on localism

Examples:

We have not been able to identify any examples of a number of districts producing a single Local Plan. However, there are county wide unitary authorities such as Cornwall and Wiltshire, which are both producing Local Plans consisting of separate strategic and site allocations plans. See:

<http://www.cornwall.gov.uk/environment-and-planning/planning/planning-policy/cornwall-local-plan/?page=17394>

Discussion

15. Options 1 to 4 would enable the timeframes of individual Local Plans to be coordinated and for a shared evidence base and/or /shared approach to evidence collection at different geographical scales dependent on relevant issues to be covered.
16. Options 1 to 3 would be non-statutory approaches, retaining all decision making powers at the district level, with testing of the Duty to Cooperate requirements taking place after the submission of each district's single document Local Plan. Options 4 and 5 would involve the production of area wide statutory plans. Option 4 would be an area wide strategic plan which would form part of the Local Plan for each district. Option 5 would be a single Local Plan for the whole area. Options 4 and 5 would probably necessitate the establishment of a joint member decision making group or a combined authority, although the approach taken for the Joint Core Strategy for Broadland, Norwich and South Norfolk (JCS) requiring all decisions to be made by each district council could potentially be used.
17. Short term costs generally increase from options 1 up to 5, but as risks of failing on the Duty to Cooperate generally decrease accordingly, options 1 and 2 could ultimately prove by far the most expensive. Options 1 and 2 would not involve a detailed analysis of the existing evidence base or the production of a document setting out housing numbers. Therefore they risk potentially unnecessary consultancy work being done which would be better done by an experienced strategic planning unit undertaking analysis of the existing evidence base and identifying areas in which new evidence is required. Whilst there would be staff costs associated with option 3, long term cost savings could result from analysis of the existing evidence base before identifying any additional evidence work required. Any cost savings from evidence gathering for option 4 are likely to be offset by the additional spending required in taking a formal strategic plan through examination to adopt it as part of each district's Local Plan. Option 5 could bring some economies of scale, though the costs of a dedicated team to produce an area wide single Local Plan would be likely to be high.
18. Options 2 to 5 could involve a commitment by each local authority, subject to local space and environmental constraints, to agree to maximise the potential to meet their own housing needs within their own boundaries.
19. All options could apply at different geographical scales and could also involve Suffolk authorities subject to all parties agreeing this. This would enable coordination of planning with the economic role of the LEP through its Strategic Economic Plan (SEP). Options 3 - 5 in particular would allow for strategic spatial planning, currently not part of the SEP, to be incorporated in the approach to development taken by the LEP, helping to address barriers to economic growth.

Conclusion

20. The evidence above and the experience of other authorities suggest that we need to take a more formal approach so option 1 is not favoured. Options 4 and 5 are considered too unwieldy and uncertain. Therefore, realistically, the choice is between options 2 and 3, or some hybrid between them. Of these two options, option 3 is favoured because:

- there are recent examples of this approach successfully addressing NPPF requirements in Fenland and East Cambridgeshire
- it demonstrates shared commitment and partnership which can be used to access funding, so is likely to secure positive outcomes and appropriate infrastructure
- it has the potential to enable strategic planning to be tied with economic planning in the SEP
- It has significant potential to save money for each district when preparing its Local Plan.

Recommendation

It is recommended that the forum agrees to:

1. Endorse the principle of option 3, formal cooperation through a shared non-statutory strategic framework.
2. Recommend that each constituent authority agrees formally to take forward option 3 at its earliest convenience, subject to later agreement of:
 - A) Amended terms of reference for the member Duty to Cooperate Group;
 - B) Appropriate officer and member working arrangements; and
 - C) Budget and timetableto support preparation of the shared non-statutory framework.
3. Instruct officers to prepare detailed reports on matters 2 A-C for consideration at the next member Duty to Cooperate meeting.

Appendix 1

Norfolk Duty to Cooperate – Member Forum **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.