

6. DISTRICT PLAN: DUTY TO COOPERATE FRAMEWORK

REPORT OF: HEAD OF ECONOMIC DEVELOPMENT AND PLANNING SERVICES
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Wards Affected: All
Key Decision: Yes
Report to: Scrutiny Committee for Planning and Economic Development
Date of meeting 4th June 2014

Purpose of Report

1. This report recommends that a Duty to Cooperate Framework is prepared to support the legal requirement to cooperate in the production of the revised District Plan.
2. The report also outlines the work the Council is carrying out to meet the legal duty to cooperate.

Summary

3. This report recommends that a Duty to Cooperate Framework be prepared to support the production of the revised District Plan. Its purpose is to guide collaborative working with neighbouring and nearby local authorities and public bodies on cross-boundary strategic issues. A draft Duty to Cooperate Framework is attached for Members' comment.

Recommendations

4. **The Committee is recommended to:**
 - (i) **endorse the preparation of a Duty to Cooperate Framework;**
 - (ii) **note the work that Members and officers are undertaking in cooperating with neighbouring and nearby local authorities.**
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Background

5. The Localism Act 2011 introduced a requirement for local authorities and certain specified public bodies to cooperate with one another (the 'duty to cooperate') in the preparation of local development plans such as the Mid Sussex District Plan. The duty to cooperate requires local authorities and other public bodies to engage constructively, actively and on an ongoing basis in order to maximise the effectiveness of their development plans in so far as they relate to strategic matters.
6. Whilst the Localism Act sets out a legal test for cooperation, the Government's National Planning Policy Framework (March 2012) introduced a policy test. Paragraph 178 of the Framework states that public bodies have a duty to cooperate on planning issues that cross administrative boundaries, particularly those which relate to certain specified strategic priorities. These include, amongst other things, the homes and jobs needed in the area and the provision of infrastructure, retail, leisure and other commercial development.
7. The Council submitted its District Plan to the Secretary of State for Communities and Local Government in July 2013 for independent examination. The Planning Inspector appointed to undertake the examination arranged an Exploratory Meeting in

September in order to gain a greater understanding of the processes and procedures that had been followed regarding the duty to cooperate. An Examination Hearing Session was then held on 12 November.

8. Following the Hearing, the Inspector wrote to the Council on 2 December and, in doing so, concluded that the duty to cooperate had not been met. The Inspector concluded that, as there was insufficient evidence to demonstrate that the Plan had been positively prepared, there was a risk that he would have found it not to have been 'sound'. The Inspector therefore advised the Council to withdraw the Plan, undertake a more rigorous assessment of cross-boundary issues and ensure that it met the requirements of the duty to cooperate before resubmitting the Plan as soon as possible.

Duty to Cooperate Framework

9. In his letter, the Inspector noted that the Council had not established a robust framework within which cooperation with local authorities and public bodies could be monitored in terms of frequency of engagement, issues to be addressed, anticipated outcomes and bodies to be involved. He advised that the Council needed to demonstrate cooperation, coordination and continuous engagement. He suggested that one way in which this could be achieved was through a more transparent process that could be appropriately managed and monitored.
10. Whilst there is no legal requirement to take such a structured approach to meeting the duty to cooperate, officers consider that it would be advisable to do so to reduce the likelihood of an objection or challenge that the Council had failed to heed the advice of the Inspector.
11. A draft Duty to Cooperate Framework has therefore been prepared and is attached for comment at **Appendix A**. The aim of the framework is to establish a robust and transparent process to guide cooperation with the relevant local authorities and organisations. It also enables cooperation to be monitored, the outcomes achieved recorded and the frequency of engagement with the relevant authorities/public bodies set out. In particular, a Framework enables the Council to demonstrate that engagement has been constructive, active, ongoing, collaborative, diligent and of mutual benefit, as required by legislation and national policy. The Framework will be kept under continuous review.
12. Officers are arranging a programme of meetings with all neighbouring and nearby local authorities in order to discuss cross-boundary strategic issues with both officers and Members. As a result of these meetings, a Memorandum of Understanding will be signed between this Council and each authority outlining the action taken and outcomes agreed.

Policy Context

13. The District Plan has been developed to reflect the area's Sustainable Communities Strategy. The 'Mid Sussex Sustainable Communities Strategy' has a vision of:

"A thriving and attractive District, a desirable place to live, work and visit. Our aim is to maintain, and where possible, improve the social, economic and environmental wellbeing of our District and the quality of life for all, now and in the future."

14. The vision is underpinned by four priority themes that promote the development of sustainable communities:

*“Protecting and enhancing the environment
Promoting economic vitality
Ensuring cohesive and safe communities
Supporting healthy lifestyles”.*

Other Options Considered

15. The Council will need to address the duty to cooperate if it wishes to adopt a new District Plan. It has the option to delay or not to produce a District Plan. However, this would perpetuate the situation whereby it cannot demonstrate a rolling five-year supply of housing land and must deal with planning applications for housing on a case by case basis with no up to date housing policies in place.

Financial Implications

16. There are no direct financial implications of the recommendations in this report.

Risk Management Implications

17. Strategic Risk 2 for this year is “Failure to approve a District Plan which meets community needs and aspirations and protects Mid Sussex from inappropriate development” and which, “in the case of the District Plan, meets the tests of soundness at examination”. To mitigate this risk, the consideration of this report by Members will be useful evidence for the public examination to demonstrate that the Council has fully considered the requirements of National Planning Policy Framework paragraph 182.

Equality and Customer Service Implications

18. An Equalities Impact Assessment will be prepared alongside the revised District Plan.

Other Material Implications

19. The preparation of a Duty to Cooperate Framework is likely to reduce the risk of the District Plan being subject to successful legal challenge.

Background Papers