

## **DUTY TO CO-OPERATE ENGAGEMENT PLAN**

**Head of Service/Contact:** Ruth Ormella, Head of Planning

**Urgent Decision?(yes/no)** No

### **Annexes/Appendices (attached):**

**Other available papers (not attached):** The Localism Act 2011  
The National Planning Policy Framework July 2018  
Kingston & North East Surrey Strategic Housing Market Assessment September 2016

### **Report summary**

**Meeting the duty to co-operate is a key requirement of national planning policy. In the absence of a strategic planning tier, the government is placing increasing emphasis upon local authorities working together to address the major planning issues that impact upon their areas. In particular, they consider this a key mechanism that will help local planning authorities meet their housing needs in full; through a process of voluntary redistribution.**

**The Borough Council is already in the process of forming strategic relationships. This report sets out a framework for further developing those relationships so that the Borough Council can submit a sound Local Plan for examination.**

### **Recommendation (s)**

**That the Committee considers the proposed engagement plan and subject to any suggested additions and amendments agrees to its implementation.**

## **1 Implications for the Council's Key Priorities, Service Plans and Sustainable Community Strategy**

- 1.1 The delivery and implementation of the Epsom & Ewell Local Plan contributes towards all of the Council's Key Priorities. The new Epsom & Ewell Local Plan is critical because it will set out how sustainable growth, particularly in relation to new housing, will be delivered during the plan period.

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### 2 Background

- 2.1 The Localism Act 2011, under Section 110, introduced the requirement that local planning authorities must co-operate with all relevant parties, particularly neighbouring local planning authorities, in planning for sustainable development. The requirement is specific to the preparation of local plans; especially in relation to strategic matters that have cross-administrative boundary impacts.
- 2.2 The duty to co-operate was introduced by the previous coalition government to fill the strategic-planning vacuum left in the aftermath of the revocation of the regional planning tier. The intention was that local planning authorities could apply the duty as a loose framework around which they could work to “willingly” co-operate and make decisions on strategic issues. The duty has failed to function as intended. The guidance prepared to support it is vague and although it is intended to form the basis of strategic decision making, it lacks any requirement that the parties involved arrive at any form of agreed position. After seven years, strategic planning is a rarely encountered phenomenon.
- 2.3 Since its introduction the anticipation, from government and the Planning Inspectorate, has been that the duty be used as a key part of the local plan making process. On a basic level it had been assumed that local planning authorities would willingly enter into “memorandums of understanding” or “statements of common ground” on important cross-boundary issues. The above mentioned statements would; along with a catalogue of meetings, minutes and notes; serve to demonstrate a strategic narrative that could be placed before an Inspector to evidence that the duty had been discharged.
- 2.4 Over time this understanding has evolved. The experience from recent local plan examinations is that Inspectors expect local planning authorities to utilise the duty as a mechanism to collectively meet the housing need, of their housing market area, in full. This was the case with the Castlepoint<sup>1</sup> examination, where the Inspector criticised (in his interim report) the authority and all its neighbours due to their failure to prepare a coherent collective strategy for meeting their housing need in full.

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<sup>1</sup> Castlepoint is a local authority in South Essex. Their new local plan was the subject of an examination in public during 2017. Following the publication of the Inspector’s interim report, their local plan submission was withdrawn.

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- 2.5 In order to address the strategic planning deficit the revised National Planning Policy Framework (the NPPF) places an enhanced emphasis upon local planning authorities working together to deliver sustainable growth. The expectation is that local planning authorities will willingly coalesce into strategic groupings under which they can prepare strategic policies relating to growth – specifically in relation to meeting housing and infrastructure needs. In the absence of any requirement that partners must reach agreement, it is assumed that the scale of housing need (both met and unmet) will serve as sufficient encouragement for local planning authorities to “work together co-operatively”.

### 3 Proposals

- 3.1 When considered alongside other national planning policy requirements; most notably those relating to the preparation of a housing strategy<sup>2</sup> and on-the-ground housing delivery<sup>3</sup>; it is clear that meaningful engagement with our neighbours will be of critical importance to our new Local Plan being found sound<sup>4</sup>. Evidence to date suggests that it will not be possible for our new Local Plan to identify sufficient sources of available, deliverable and developable sources of housing land supply to meet our objectively assessed housing need in full. Consequently, our housing strategy will in part be dependent upon additional sources of housing land supply being made available, to meet our needs, beyond our administrative boundary. Engaging with our neighbours, even if we cannot reach agreement with them, will be a necessary part of the evidence base supporting our emerging housing strategy.
- 3.2 We already have established relationships with some of our neighbours. We have successfully worked with some of them<sup>5</sup> in the preparation and production of our Strategic Housing Market Assessment (SHMA). We have already begun active engagement with these partners and even mooted the possibility of a combined housing strategy. Together we have met with representatives from the Greater London Authority in an attempt to make them understand the unique challenges that we face. The latter meeting took place during February 2018.
- 3.3 Although our work to date demonstrates a level of co-operation it is believed that it will not be enough to meet the tests of soundness, or the expectations of the examining Inspector. At the least we will be required to have agreed statements of common ground prepared and maintained between ourselves and our neighbours. Whilst these will demonstrate on-going joint working, it is unlikely that they will, by themselves, lead to agreements on the re-distribution of housing across our sub-region.

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<sup>2</sup> NPPF Paragraphs 20, 24 -27, 60 and 65.

<sup>3</sup> NPPF Paragraphs 73 – 76.

<sup>4</sup> Local plans are tested for their “soundness”. The four tests of soundness are set out under NPPF Paragraph 35. Meeting the duty to co-operate is considered to fall under all four tests; to a greater or lesser extent.

<sup>5</sup> For the purposes of our SHMA, our housing market area partners are the Royal Borough of Kingston; Elmbridge and Mole Valley.

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- 3.4 We propose to arrange regular meetings with our neighbours during Autumn 2018. The first meetings will be with those partners that we have already formed a relationship with, namely, the Royal Borough of Kingston; Elmbridge; and Mole Valley. In parallel, we will seek to meet with other relevant neighbours. We envisage that these could include the London Borough of Sutton; Reigate & Banstead; and Guildford.
- 3.5 It is anticipated that the initial meetings will identify and confirm the strategic issues that connect us to these neighbouring authorities. We believe that these issues include – housing land supply; the Green Belt; education infrastructure; the race horse training industry; and strategic transport infrastructure. This will provide a baseline position from which we can prepare statements of common ground. Once these have been prepared in draft form they will come before this Committee for consideration. It is projected that this could happen by early Summer 2019.
- 3.6 Securing agreed statements of common ground with our neighbours will be a positive step forward in demonstrating that we have met the duty to co-operate. However, none of our neighbours are currently preparing local plans that seek to accommodate a greater amount of growth than that identified for them through the Standard Method<sup>6</sup>. Some of neighbours have stated that they do not have sufficient capacity to meet either their own needs or those of any of their neighbours.
- 3.7 In order to address this matter we are seeking the Committee's agreement that, when necessary, we will undertake a strategy of actively identifying opportunities to meet our unmet housing need on sites beyond our administrative boundary. **This approach may require the Borough Council to make formal objections to local plans being prepared by our neighbours.** It may also require us to identify sites beyond our boundary to specifically meet our unmet housing need. These proposed measures are extraordinary and may not be well received by our neighbours. However, within the context of national planning policy and the government's approach to housing growth such actions may prove necessary if we are to meet the requirements set out in national planning policy in order to secure a sound Local Plan.
- 3.8 The following table provides an overview of the progress being made by our neighbours in preparing their local plans.

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<sup>6</sup> The Standard Method is the approach that national planning policy requires local plans use to determine the minimum number of homes needed within their area over the plan period. This is set out under NPPF Paragraph 60.

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Local Planning Authority	Standard Method OAHN	Most Recent Stage	Next Stage of Local Plan Process	Submission to Secretary of State for Examination
Epsom & Ewell Borough Council	579 new homes p/a	Issues & Options Consultation 2017	Draft Local Plan Pre-submission consultation Autumn 2019	End of 2019/ early 2020
Elmbridge	612	Strategic Options Consultation 2016/17	Published timetable now out of date	Published timetable now out of date
Mole Valley	441	Issues & Options Consultation 2017	Draft Local Plan Pre-submission consultation Spring 2019	End of 2019
Reigate & Banstead	644	Core Strategy Adopted 2014		
Royal Borough of Kingston	1527	Awaiting outcome of London Plan	Published timetable now out of date	Published timetable now out of date
London Borough of Sutton	1774	Adopted new Local Plan 2018		
Guildford	789	Main Modifications consultation following examination		

## 4 Financial and Manpower Implications

- 4.1 The preparation and implementation of our new Local Plan imposes significant demands on staff in the Planning Policy Team and the wider Planning Department. The preparation of a duty to co-operate engagement plan sets out a process that can be synchronised with the Local Plan Programme in order to provide performance indicators for monitoring progress. These can be utilised to identify whether additional resources will be required.
- 4.2 Securing a positive response to our objectively assessed housing need, by sustainably optimising future housing growth, provides the Borough Council with an opportunity to significantly increase receipts from the Community Infrastructure Levy and Council Tax. These can be redeployed to help fund infrastructure improvements and services to our residents.

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4.3 ***Chief Finance Officer's comments: None for the purposes of this report.***

### **5 Legal Implications (including implications for matters relating to equality)**

5.1 The Localism Act 2011 requires the Borough Council to engage with relevant partners when addressing the strategic elements of our Local Plan. Meeting the duty to co-operate is a key requirement within the tests of soundness.

5.2 ***Monitoring Officer's comments: comments have been included within the content of the report.***

### **6 Sustainability Policy and Community Safety Implications**

6.1 None for the purposes of this report.

### **7 Partnerships**

7.1 The government has envisaged that the duty to co-operate provides an alternative partnership framework to replace the now historic regional planning structures. However, the duty to co-operate is not fully supported by any statutory governance structures. It is a framework predicated on a willingness between partners to positively work together to meet shared objectives. The government (through the DCLG and MHCLG) has frequently stated it is not a duty to reach agreement. Consequently, the partnerships built through this process can prove fragile and potentially divisive.

7.2 This report sets out the justification for forming partnerships with our neighbours on strategic planning matters through the duty to co-operate.

### **8 Risk Assessment**

8.1 Meeting the duty to co-operate is a key requirement in securing a sound local plan. We will need to demonstrate a clear narrative of how our engagement with our neighbours has shaped the development of our Local Plan. We will also require agreed statements of common ground between relevant neighbouring authorities and ourselves. The supporting narrative will need to identify where we have diverged from our neighbours and the reasons why we may not have been able to reach agreement. The strengthening of the Duty, as a strategic planning mechanism, means that we can no longer justify unmet housing through a statement that outlines our best endeavours. Rather it is evolving into a strategic process that secures new housing growth and associated infrastructure.

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- 8.2 Should the Borough Council decide to pursue a housing strategy that is dependent upon the delivery of sources of housing land supply beyond our administrative boundary (to meet unmet need), then it will need to take appropriate action to promote such an approach. There is a risk that this could undermine relationships with some of our neighbouring authorities. It should be noted that parties that may be promoting sites in our Borough could also be the parties who are seeking to promote sites in adjoining Boroughs that may not have been prioritised. Where these opportunities arise there are strong rationale for working together.
- 8.3 However, the risk of not having a sound Local Plan is not acceptable and it is from this position that the proposed approach is recommended..

### **9 Conclusion and Recommendations**

- 9.1 That the Committee considers the proposed engagement plan and subject to any suggested additions and amendments agrees to its implementation.

**Ward(s) affected:** (All Wards);