Demonstrating the Duty

We’ve has a number of councils whose plans have been found not to have satisfied the Duty to Cooperate. Their Inspectors have set out their reasoning for coming to their decisions in letters to the councils. Below are the key learning points for all councils from those letters

GENERAL

* DtC not just officers responsibility – member / SMT must be involved to do strategic planning and decision making
* For a Local Plan to be found sound it must be positively prepared and effective ie based on effective joint working on cross-boundary strategic priorities and where appropriate and sustainable, on a strategy which seeks to meet unmet requirements from neighbouring authorities.
* There is no duty on local planning authorities to agree to accommodate the needs of a neighbouring authority but if that is the conclusion that has been reached, it must be based on clear and robust evidence and on a proper consideration of all the issues.

PROCESS

* Clearly identify your strategic issues and how they have been addressed
* Establish a robust framework which can be progressed and monitored eg in terms of frequency of meeting/contact, issues addressed, outcomes and bodies involved
* Seek to cooperate from the earliest stages of the plan preparation
* Show how you have addressed any DTC issues raised with you from neighbouring LPAs – how you have considered it / resolved
* Be proactive – if you don’t get a response or not a positive response to emails, requests for engagement – follow up
* If the neighbouring LAs says no – follow up
* Involve members from the start – to get their ownership and to enable them to engage with partners on the issues
* Don’t rely on longstanding established joint working arrangements to address the Duty – they are a starting point but need to be fit for purpose

CONSTRUCTIVE

* Show how you have made a concerted effort to address the issues around your strategic priorities
* Records of meetings must show how your have improved the likelihood of effective co-operation or progressed the matter in any significant way
* Don’t preclude any discussions of issues that will challenge the councils existing (predetermined) strategy
* work cannot be undertaken following submission of a local plan to make it legally compliant

ACTIVE

* Show you have been sufficiently active in trying to garner co-operation
* Record actions taken related to progress you the your strategic issues

ON GOING

* Show co-operation started with the ‘initial thinking’ (NPPF paragraph 181) and provide evidence

COLLABORATIVE

* Put in place appropriate mechanisms to engender co-operation eg joint committees established specifically to address strategic planning issues; proposed joint planning policies; and Memoranda of Understanding - which have been signed!
* Have clearly defined objectives regarding what the Council was seeking to achieve through co-operation

DILLIGENT

* Show an in-depth analysis of the strategic issues facing the local planning authorities in the wider area has been undertaken
* Prepare a robust assessment of how those issues should be addressed

MUTUAL BENEFIT

* If you can’t achieve a high level of mutual benefit then the show that at least it has been sought eg jointly commissioned documents proposed