

## Principle 7: Ensure you identify strategic issues and address any cross-boundary impacts. This will help you demonstrate how you have met the duty to cooperate

### Guide Questions

- What strategic issues have you identified that have cross boundary impacts?
- Has your sustainability scoping report or later assessments identified new cross-boundary impacts?
- What do you need other authorities to do to enable your local plan to be delivered and what do you need to do to support their plans?
- Can you demonstrate that you have satisfied the duty to cooperate?

- 7.1 It is essential to liaise with neighbouring authorities and other relevant agencies on cross-boundary strategic issues, crucial to the delivery of yours or their strategy. This can include where you are unable to meet the needs generated from within your area, or where you are being asked to help meet someone else's identified need.
- 7.2 There are two related elements to meeting this 'Duty to Cooperate' and cross-boundary impacts, these are the:
- legal requirement under section 33A of the 2004 Act, and
  - National Planning Policy Framework (NPPF) soundness assessment of how effective the cooperation has been – which is critical where the delivery of the plan depends on cooperation.
- 7.3 The Examiner will consider the first aspect, the legal requirement, as soon as the examination has commenced. If this has been met then the examination will continue. The Examiner will need to be satisfied that, within reason, all the various bodies have been given an adequate opportunity to influence the plan and not just been consulted on it. Practically, it is possible to pass the legal test but still fail the soundness test. Demonstrating how the duty to cooperate has been met is therefore essential to a successful outcome for a local plan examination.
- 7.4 Prepare a Duty to Cooperate statement setting out how you've addressed the legal component. It should not be simply a statement of the consultation procedures adopted rather it should focus on the outcomes rather than the mechanisms. There should have been serious discussions between the

parties aimed at achieving an effective plan. Usually there will already have been cooperation and discussions over cross- boundary matters so don't forget about how these have influenced your strategy and policies. Any statement should also set out how cooperation will continue in the future.

- 7.5 Addressing the soundness issue may be aided by any cooperation with neighbouring authorities being formalised and supported by a memorandum of understanding or similar agreement. Such statements should set out, for example, how decisions on strategic issues are made now and will be made in the future. These statements are not policy documents, instead they should focus on the decision-making process between the organisations, and on the outcomes to be achieved, so that they can be monitored. Any such statement or memorandum should have formal Council level sign-off and demonstrate corporate buy-in. In some cases there will be formal joint working arrangements in place (section 33A(6) of the 2004 Act).
- 7.6 Cooperation needs to result in a positively prepared plan with an effective outcome. There are a number of instances where an authority is relying on an adjoining authority to take some of its projected growth – often some of its housing growth. Authorities will need to consider the alignment of their respective plans and policies, and to share or jointly commission evidence.
- 7.7 Where there is no joint plan and cooperation is needed to deliver the plan, the respective plans should, if at all possible, be examined at broadly the same time. Where plans are not following broadly the same time frame Inspectors will look for formal Member level commitments between the authorities to seek effective cooperation (cooperation resulting in deliverable plans).
- 7.8 When cooperation is needed to deliver the plan but the cooperation is not demonstrably effective, you need to show what you have done to address each strategic issues, who with, and the outcome that has been agreed. If there is no agreement you must also demonstrate and record how you have tried to overcome this and what this means for the plan.
- 7.9 You may need to consider the need to:
- change the strategy in the plan so that delivery can be achieved without cooperation
  - negotiate effective cooperation with a different partner
  - acknowledge that effective cooperation is not possible (at least at the present time) and hence the plan will only be partly deliverable, making clear arrangements to produce a later plan to resolve the delivery problem
- 7.10 A last resort might be to abandon the plan and rely solely on the policies in the NPPF combined with local evidence – this is a genuine option – but there are clearly considerable risks with this approach.
- 7.11 Unresolved positions between authorities on cross-boundary issues could lead to all the plans involved being found unsound. The situation where an authority has sought to uphold the duty in preparing a positive plan but has

been frustrated by another body will not be easy to resolve. Generally such an authority should if possible not be penalised. Much will depend on the circumstances of each case, including factors such as the extent of the unmet need, possible short or long term solutions, and the consequences of the locality not having a plan-led development strategy.

## Further Information

[PAS Guidance on Strategic Planning and the Duty to Co-operate](#)



## Frequently Asked Questions

**Q: What constitutes a strategic issue? Also, what are some of the headline issues to consider?**

A: Strategic issues are relevant to the particular authorities concerned, and not a general list. You need to demonstrate why a sub-regional approach is important. Outcomes will be tested; it's not merely demonstrating that meetings have been attended. In terms of housing, you should consider how your figure matches needs in the area in terms of improving overall supply and increasing 5 year housing supply. You must convince an Inspector and participants that the figure is the best and justified approach. Where it is possible it is helpful to try to align plan timetables but where this is not possible you may be able to align some aspects of the evidence base.

**Q: Is there any advice on how best to engage with infrastructure agencies?**

A: There is no guidance on when/ how to engage. Where a Council can demonstrate it is driving joint working it will be considered to be proactive. The Highways Agency has produced a protocol for engagement – 'Supporting development and facilitating growth – working with the Highways Agency for planning for development: <http://www.highways.gov.uk/publications/planning-protocols-for-planning-and-development/>. If you are having problems engaging, contact DCLG or PAS directly.

**Q: In some areas, for minerals sites, sand and gravel extraction, there are no deposits left. In these areas, how far can authorities address the issue?**

A: The new approach is production-led, very different from the Regional Strategy approach which was based on needs assessment. See paragraphs 145-146 of NPPF. The key question will be: "is the council's approach reasonable and how does it relate to the views that have emerged from the working groups, including developers?" So evidence of co-operation and joint working will be important.

**Q: What should you bear in mind when recording meetings held that will help demonstrate the duty to cooperate? Is there a prescribed format that the Planning Inspectorate will want to see?**

A: The key is not to simply log meetings, but to focus on issues and outcomes. PAS is developing templates and supporting material to support this process: PAS Duty to Cooperate statement template

List your strategic cross boundary issues with the following information:

- **Who you have engaged with on those issues and how you have worked with other LAs on their strategic issues.** Include this in your monitoring report;
- **How and when you engaged.** E-mails and letters may be appropriate sometimes, particularly for clarifying issues discussed remotely. If there are major strategic issues you will need to meet, probably several times. List the name of the group and details of joint working arrangements ie officer and or member working groups, constitutions, protocols etc;
- **Record what the outcome of the engagement was / is to date.** What form of response will your cooperation produce? Will there be joint plans or policies? Joint evidence? A memorandum of understanding? Interim policies? Answer the 'so what?' question before you move on.

**Q: Accepting that a Strategic Housing Market Assessment should be carried out for the whole housing market area, if a local authority within the housing market area has an adopted core strategy that takes account of 'A and B' does that leave the remaining authorities to pick up 'C' - the remaining housing need - alone?**

A: If all adopted core strategies do not satisfy the position in the Housing Market Assessment then all the plans will need to be updated to reflect the new position. The remaining demand will not all be dumped on the last authority to adopt.

**Q: How can we deal with the duty to cooperate and the potential to deliver sites through agreement? In other words, if there is a sub-regional need, can we get agreement to meet the need in one or two locations, rather than everyone having to meet their own need?**

A: Do the joint study, then produce a formal commitment and written agreement (if at all possible). The Practice Guidance clarifies that, for meeting objectively assessed needs across a joint plan area, you can provide a single figure for that sub-regional need. Whilst this does not refer to gypsy and traveller sites, the principle seems clear. What will not be acceptable is each authority in the sub-region assuming another will provide the appropriate site, leaving the last one to adopt to take on the provision!