



Intelligent Plans
and examinations

Advisory Note for Harborough District Council

The Duty to Co-operate and the Statement of Common Ground between Leicester City Council, the seven Leicestershire Local Planning Authorities and Leicestershire County Council relating to Housing and Employment Land Needs

**An Advisory Note prepared for Harborough District Council by:
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Executive Summary

- This Advisory Note has been prepared for the Officers and Councillors of Harborough District Council (the Council) and provides an independent assessment of the current situation regarding:
 - the Duty to Co-operate (and related national policy and guidance);
 - a draft Statement of Common Ground between the Leicester & Leicestershire Authorities dated June 2022 (the L&L SoCG); and
 - the emerging Review of the current adopted Harborough Local Plan 2011-2031.
- It sets out at Section 2 the relevant statutory requirements and national policy guidance concerning the Duty to Co-operate, including the clear expectation that it will include work with other authorities in the Housing Market Area on how housing need will be met by the authorities concerned. It emphasises that, at the present time, the Council continues to be subject to the legal requirement to comply with the Duty to Co-operate.
- The Advisory Note describes the Government's current proposed planning reforms relating to the replacement of the Duty to Co-operate with an Alignment Policy and the intended transitional arrangements for the preparation of new Local Plans from 2025 onwards. Under this new system, it notes that there will be a possible delay to the Council being able to commence work on a new Local Plan until probably 2026, or possibly even 2027, under the proposed reforms for the preparation of Local Plans.
- Section 3 of the Note provides a brief overview of the L&L SoCG, and its related technical evidence. It demonstrates that the Council has undertaken significant Duty to Co-operate work on the key strategic matters of meeting housing and employment needs within the Housing Market Area (HMA) since 2017.
- Section 4 of the Note sets out our assessment of the potential risks to the Council, and particularly to the preparation of the new Local Plan, that would follow a decision not to sign the L&L SoCG. It then sets out the potential benefits that would arise from a decision to sign the L&L SoCG.
- Section 5 sets out the principal **Conclusions**, arising from the assessment set out above, which are:
 - The L&L SoCG represents a clear outcome of the Council's Duty to Co-operate work with the authorities in the L&L HMA on the key strategic cross-boundary matters of meeting housing and employment needs.

- The L&L SoCG, if signed by the Council, provides much greater certainty for the preparation of the Council's new Local Plan and its future examination.
- It will support the Council in seeking to submit the new Local Plan for examination by 30 June 2025 and, therefore, will allow the Plan to be examined under the present planning legislation and guidance. This should mean that the Council will have a new Local Plan in place by the end of 2026.
- If the L&L SoCG is not signed by the Council, a statement supporting that decision will need to set out the reasons why the Council is not in agreement with the contents of that SoCG and will need to demonstrate the exceptional circumstances that justify Harborough as being a district which is not able to accept the outcomes of the SoCG.
- It is likely that the Council will need to commission new or updated evidence to support its position, if it chooses not to sign the L&L SoCG, and then undertake a new round of Duty to Co-operate work to seek agreement with other authorities in the HMA. It is unlikely that such agreement will be forthcoming, and the Council's position at a future Local Plan examination may be weakened.
- The Government's proposed planning reforms, whilst including a commitment to replace the Duty to Co-operate with an Alignment Policy, are not yet agreed by Parliament, and on the basis of the current available information will lead to a delay in preparing the new Local Plan until 2026 or possibly even 2027.
- A significant delay in preparing the new Local Plan will increase the risk of speculative planning applications for residential development, and particularly if the Council's five-year supply of housing land is reduced in the intervening period.
- The overarching advice is that the benefits of signing the L&L SoCG at this time very significantly outweigh the potential risks that would arise from a decision not to sign the L&L SoCG.

1. Introduction

- 1.1 This Advisory Note has been prepared for the Officers and Councillors of Harborough District Council (the Council) and provides an independent assessment of the current situation (at August/September 2023) regarding:
- the statutory Duty to Co-operate (and related national policy and guidance);
 - a draft Statement of Common Ground between the Leicester & Leicestershire Authorities dated June 2022 (the L&L SoCG); and
 - the emerging Review of the current adopted Harborough Local Plan 2011-2031 (adopted April 2019).
- 1.2 This Note has been prepared by Derek Stebbing, a consultant employed by Intelligent Plans and Examinations (IPE) Ltd. He is a chartered town planner, with over 45 years of experience in planning. He has worked in both the public and private sectors, including as a Planning Inspector for the Planning Inspectorate. He has substantial experience of examining both local plans and neighbourhood plans. He was also appointed to serve on a Government working group (the Local Plan Expert Group - LPEG) considering measures to improve the local plan system, and has undertaken peer reviews on behalf of the Planning Advisory Service. He therefore has the appropriate qualifications and experience to undertake this commission.
- 1.3 It is emphasised that he is independent of the District Council and does not have an interest in any of the matters discussed in this Note.
- 1.4 He will be attending a Briefing for Councillors to be held on Thursday, 7 September at 6.30 pm and will be able to answer any questions that Officers or Councillors may have on this Note.

2. The Duty to Co-operate

Statutory Requirements and National Policy Guidance

- 2.1 The Duty to Co-operate (DtC/the Duty) is covered by the following legislative requirements, together with the related national policy and guidance:
- i. **The Localism Act 2011** - introduced the DtC.
 - ii. **Section 33A of the Planning and Compulsory Purchase Act 2004¹** - establishes the DtC in Planning law.

¹ <https://www.legislation.gov.uk/ukpga/2004/5/section/33A/2011-11-15>

iii. National Planning Policy Framework (NPPF) (July 2021),
including:

- Paragraph 11(b) sets out the requirement to meet the objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas via Statements of Common Ground (SoCGs).
- Paragraphs 24-27 of the NPPF set out the requirements of '*Maintaining Effective Cooperation*'.

iv. Planning Practice Guidance (PPG), including:

- there is a legal duty on local planning authorities (LPAs)² to engage constructively, actively and on an ongoing basis to maximise the effectiveness of local plan preparation in the context of strategic cross boundary matters.³
- the PPG⁴ provides guidance on how effective cooperation in relation to plan making should be undertaken. A SoCG is anticipated which should represent a written record of the progress made by a strategic policy making authority on strategic cross boundary matters. For local planning authorities it is part of the evidence required to demonstrate compliance with the Duty.
- the PPG makes clear that a local plan examination will first assess whether a LPA has complied with the DtC and other legal requirements. The Inspector will use all available evidence in this regard, including SoCGs and any Authority Monitoring Report (AMR). Failures in relation to DtC cannot be rectified post-submission. The level of co-operation is expected to be proportionate to the tasks and should not unduly delay any plan review.
- the PPG indicates that Local Enterprise Partnerships (LEPS) and Local Nature Partnerships (LNPs) are not subject to the requirements of the Duty, but regard must be had to their activities where relevant to plan making.⁵

² See also Regulation 4 [The Town and Country Planning \(Local Planning\) \(England\) Regulations 2012 \(legislation.gov.uk\)](#)

³ See PPG Reference ID: 61-029-20190315.

⁴ PPG [Plan Making](#)

⁵ PPG Reference ID: 61-030-20190315.

v. The Planning Inspectorate’s Procedure Guide for Local Plan Examinations⁶:

- emphasises that ‘*particular attention should be given to the duty to co-operate*’ and that a statement of compliance should be prepared with applicable SoCGs.
- the Inspectorate’s internal guidance affirms that it is the purpose of the examination to determine whether or not the local planning authority complied with the DtC in preparing the plan and that there is no requirement to determine whether any other body met the duty.

2.2 The PPG emphasises the following points which are of relevance to the District Council’s current considerations:

“Strategic policy-making authorities are required to cooperate with each other, and other bodies, when preparing, or supporting the preparation of policies which address strategic matters. This includes those policies contained in local plans (including minerals and waste plans), spatial development strategies, and marine plans.”

*“The National Planning Policy Framework sets out that these authorities should produce, maintain, and update one or more statement(s) of common ground, throughout the plan-making process.”*⁷

SoCGs are a key output of the DtC process, and the PPG states that:

*“A statement of common ground is a written record of the progress made by strategic policy-making authorities during the process of planning for strategic cross-boundary matters. It documents where effective co-operation is and is not happening throughout the plan-making process, and is a way of demonstrating at examination that plans are deliverable over the plan period, and based on effective joint working across local authority boundaries. In the case of local planning authorities, it also forms part of the evidence required to demonstrate that they have complied with the duty to cooperate.”*⁸

“A statement of common ground is expected to contain the following:

- a) short written description and map showing the location and administrative areas covered by the statement, and a brief justification for these area(s);*
- b) the key strategic matters being addressed by the statement, for*

⁶ <https://www.gov.uk/government/publications/examining-local-plans-procedural-practice/procedure-guide-for-local-plan-examinations#introduction>

⁷ PPG Reference ID: 61-009-20190315.

⁸ PPG Reference ID: 61-010-20190315.

example meeting the housing need for the area, air quality etc.;

- c) the plan-making authorities responsible for joint working detailed in the statement, and list of any additional signatories (including cross-referencing the matters to which each is a signatory);*
- d) governance arrangements for the cooperation process, including how the statement will be maintained and kept up to date;*
- e) if applicable, the housing requirements in any adopted and (if known) emerging strategic policies relevant to housing within the area covered by the statement;*
- f) distribution of needs in the area as agreed through the plan-making process, or the process for agreeing the distribution of need (including unmet need) across the area;...”⁹*

2.3 The DtC is the first matter that the Planning Inspectorate (PINS) will look at before considering whether a local plan is ‘sound’.¹⁰ PINS will need to see sufficient evidence to demonstrate that the DtC has been undertaken appropriately for the plan being examined. Whilst there is no fixed format for how this evidence should be presented, nor what it should comprise, the most effective method of presenting the necessary evidence is through a DtC Compliance Statement, which will comprise one of the supporting documents at the submission of the plan for examination. This should:

- set out the issues that have been addressed jointly, with a very clear expectation that this will include how housing need will be met across the relevant Housing Market Area (HMA);
- highlight the practical policy outcomes that have resulted from the joint work, including SoCGs and other jointly prepared policy statements for example on cross-boundary infrastructure requirements; and
- be succinct, using weblinks to the evidence where possible.

If it is found that the DtC has not been undertaken satisfactorily, it is usually the case that a recommendation will be made to the LPA to withdraw the plan, as DtC work cannot be addressed retrospectively. This has occurred on 14 occasions since the introduction of the DtC, for example at Wealden District Council, Sevenoaks District Council and St. Albans City & District Council (twice).

⁹ PPG Reference ID: 61-011-20190315.

¹⁰ NPPF, paragraph 35, sets out the requirements of a ‘sound’ plan, which are that it is Positively prepared; Justified; Effective; and is Consistent with national policy.

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Proposed Planning Reforms

- 2.4 Reforms to the planning system are underway¹¹ and include the removal of the statutory DtC requirement in plan making. Details of alternative arrangements are currently unclear albeit reference is made to the need for Councils to ensure alignment in their strategic policies, which is particularly relevant to those areas subject to the urban uplift for housing, which include Leicester City:

*"The Bill will remove the Duty to Co-operate, although it will remain in place until those provisions come into effect. To secure appropriate engagement between authorities where strategic planning considerations cut across boundaries, we propose to introduce an "alignment policy" as part of a future revised Framework. Further consultation on what should constitute the alignment policy will be undertaken."*¹² (Note: this consultation is yet to emerge and its timing is presently unknown).

The current position is set out very clearly in the following letter, dated 20 June 2023, from the Minister of State for Housing and Planning to the Chair of the Levelling Up, Housing & Communities Select Committee.

[See next page]

¹¹ <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy> et al.

¹² Ibid (Chapter 4 Paragraph 15).



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20 June 2023

Dear Clive,

Thank you for your letter of 12 June 2023, seeking clarification of the Government's position with regard to the proposed "Alignment Policy".

We will be carrying out a consultation on the Alignment Policy as part of future changes to the National Planning Policy Framework (NPPF). That consultation is still being developed and Ministers have not taken final decisions on the content.

The Duty to Co-operate will continue to apply to plans brought forward under the current system. Local Plans brought forward under the new system will not be subject to the Duty to Cooperate but will be covered by the alignment policy.

We will make any further announcements in the usual way in due course.

Thank you again for your letter.

Yours sincerely,

RACHEL MACLEAN MP
Minister of State for Housing and Planning

- 2.5 The Government has indicated that there will be a deadline of **30 June 2025** for plan makers to submit their local plans, neighbourhood plans, minerals and waste plans, and spatial development strategies for independent examination under the existing legal framework. All independent examinations of local plans, minerals and waste plans and spatial development strategies will need to be concluded, with plans adopted by **31 December 2026**, in order to be examined under existing legislation.
- 2.6 There will be a requirement for local authorities to start work on new plans within five years following the adoption of their previous plan, and to adopt the new plan within 30 months. Where local authorities fail to meet the 30 June 2025 submission deadline for 'old-style' plans (as referenced above) they will need to prepare plans under the new plan-making system. Plans that become five years old or more during the first 30 months of the new system will continue to be considered 'up-to-date' for decision-making purposes for a period of 30 months from the date the new system starts. The transition arrangements for LPAs to commence work on new plans are likely to be phased with authorities with the oldest

plans in place at 30 June 2025 being advised to commence work on a new plan initially, followed by further tranches of LPAs over the subsequent two years. This is to avoid potential 'congestion' of ongoing local plan examinations for PINS. In that scenario, with the current Harborough Local Plan 2011-2031 having been adopted in April 2019, this is likely to mean that Harborough District Council would be part of one of the later tranches probably during 2026, and possibly not until 2027.

- 2.7 On the basis of the Council's intention to submit the new Local Plan for examination by 30 June 2025, it is absolutely clear that the Council continues to be subject to the legal requirement to comply with the DtC as part of its preparation of the new Local Plan.

3. Leicester and Leicestershire Statement of Common Ground relating to Housing and Employment Land Needs (June 2022)

- 3.1 As part of the work undertaken to prepare this Advisory Note, we have reviewed the Leicester and Leicestershire SoCG. The SoCG is the outcome of work undertaken since the agreement of a Joint Statement of Cooperation in November 2017 between the eight Leicestershire LPAs and the two Highways authorities (Leicester City Council and Leicestershire County Council) relating to the Objectively Assessed Need for Housing (OAHN). The Joint Statement states that "*it is intended to provide evidence of effective co-operation on planning for issues with cross-boundary impacts.*"
- 3.2 Three Joint Position Statements were agreed in November 2017, March 2018 and September 2020, addressing OAHN for the period 2011-2036, Housing and Employment Land Supply 2011-2031 and Leicester's Housing and Employment Land Needs respectively, which serve to demonstrate the Council's DtC work and involvement on joint strategic planning issues over the past six years.
- 3.3 The L&L SoCG is underpinned by a substantial body of technical evidence, which is up to date, and which is contained at Appendices B-G to the forthcoming report to the Council's Cabinet on 4 September 2023. Key documents are the Leicestershire and Leicestershire Housing and Economic Needs Assessment (HENA) (Appendix B) and the Housing and Employment Distribution Papers (Appendices D and E) all dated June 2022.
- 3.4 The principal impact upon Harborough District Council of the proposed L&L SoCG housing distribution for the period 2020-2036 is an increase of 123 dwellings per annum above the assessed Local Housing Need for the district of 534 dwellings (i.e. to 657 dwellings) over that period. The 123 dwellings constitutes that part of the unmet need for the Leicester City Council area proposed to be re-distributed to Harborough, amounting to 10.5% of that unmet need. The employment land needs for Harborough

are assessed to be 46.1 hectares over the period 2021-2036, and does not include any unmet need from other authorities.

- 3.5 For the matters which are the subject of this SoCG, it is, in our assessment, a clear and comprehensive statement reflecting the outcome of some significant DtC work between the Leicestershire authorities on the key strategic planning topics of housing and employment needs. Importantly, it is based upon up to date and robust evidence in the form of the HENA and an accompanying Sustainability Appraisal (which is at Appendices F and G to the above-mentioned report to the Council's Cabinet).
- 3.6 It is our understanding that, at the present time, seven of the L&L authorities have signed the SoCG, and that Harborough District Council and Hinckley & Bosworth Borough Council have not yet signed the document. Of the seven completed signatories to the SoCG, Charnwood Borough Council's '*Charnwood Local Plan 2021-2037*' is presently now being examined by PINS with the L&L SoCG and its supporting evidence forming part of the Council's suite of examination documents. In a letter to the Borough Council dated 18 November 2022, the Inspectors undertaking the Examination commented that "*the factors that have informed the proposed distribution of the unmet need set out in the Housing Distribution Paper appear to be a logical and reasonable starting point for the apportionment of Leicester City's unmet housing need between the HMA authorities.*"
- 3.7 The next section of this Note sets out our assessment of the potential risks to the Council that would arise from a decision not to sign the SoCG. This is followed by an assessment of the benefits likely to be secured by signing the SoCG.

4. Potential Risks and Benefits to the Council

- 4.1 A decision by the Council not to sign the L&L SoCG will generate a series of potential risks for the Council's ongoing preparation and future submission and examination of its new Local Plan. These risks are assessed on the basis that the Council would still intend to prepare its new Local Plan for the period up to 2036 and beyond on the basis of a timetable which seeks to enable the submission of the Plan for examination by 30 June 2025 (c.f. paragraphs 2.5 and 2.6 above).

Potential Risks

- 4.2 A decision not to sign the L&L SoCG will lead to the following issues:
- The decision would need to be supported by a statement setting out why that decision has been taken. Having clearly worked collaboratively under the DtC since 2017 on the strategic cross-boundary issues of meeting Housing and Employment Needs, it

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would seem that the Council's decision will need to be based on factors concerning the most recent evidence on these matters, which comprises the HENA and its accompanying Housing and Employment Distribution Papers (at Appendices B, D and E to the report to the Council's Cabinet on 4 September 2023).

- A decision to challenge or disagree with parts of that supporting evidence would then generate a need to prepare updated or new evidence that underpins the Council's new position, and which would then replace or partly replace the HENA within the Council's own evidence base. The difficulty here is that Harborough is one part of the wider Leicester & Leicestershire HMA, and the updated or new evidence relating to Harborough would then need to be the subject of renewed DtC work in order to seek agreement with the other L&L authorities. In our assessment, that agreement is most unlikely to be secured. It is probably the case that further external consultancy work will be required, which would need to be sourced as a matter of urgency. This has both budgetary and timetable consequences for the Council. In terms of timetable, the production of new or updated evidence and the necessary DtC work will add in the region of 6-9 months to the current Local Plan programme. (This element alone is likely to mean that the Council will not be able to meet its planned submission of the new Local Plan for examination by 30 June 2025).
- The afore-mentioned statement will likely need to set out the exceptional circumstances that exist in Harborough to justify departing from the outcomes of the current HENA evidence. In our assessment, this can only be based on the proposed uplift to Harborough's housing requirement arising from the apportionment of an additional 123 dwellings per annum to meet Leicester City Council's unmet housing need and how that creates such exceptional circumstances in Harborough. (The 'base' housing requirement of 534 dwellings per annum is established by the Standard Method for calculating housing need, and a strategy of seeking to justify a housing requirement below that figure would require very clear and substantial evidence of the exceptional circumstances that exist in Harborough in order for a local plan to be 'sound').
- Although the Council can presently demonstrate a five-year supply of housing land (5YHLS), that position may be eroded relatively quickly should there be a delay in the preparation of the new Local Plan. This may result in speculative planning applications for residential development, leading to further pressures for the Council in seeking to defend its position at any subsequent planning appeals.

4.3 Each of the above issues constitutes a potential risk to the progress of the new Local Plan in accordance with the Council's published

timetable for its preparation. However, there is also a wider risk that potentially affects the emerging new Local Plan as a whole. That concerns a changing position of 'certainty' moving towards 'less certainty'. Unless the Council can demonstrate robust and cogent reasons for now seeking to depart from the L&L SoCG and its outcomes, and with agreement that presently extends over most of Leicestershire, the Council's new Local Plan, and in particular its housing strategy, will be exposed to far more intensive scrutiny (and potentially significant challenges from the development industry) at a forthcoming Local Plan examination. The risk of an Inspector finding that key element of the Local Plan to be 'unsound' is undoubtedly increased.

Potential Benefits

4.4 A decision in the coming weeks to sign the L&L SoCG will have some significant benefits for the Council. These can be summarised as below:

- It will support the Council in seeking to submit the new Local Plan for examination by 30 June 2025 and, therefore, will allow the Plan to be examined under the present planning legislation and guidance. This should mean that the Council will have a new Local Plan in place by the end of 2026. Conversely, if the Council now awaits the implementation of the Government's proposed planning reforms, it is possible that the Council will not be able to commence work on a new Local Plan until 2026 or even possibly 2027. Furthermore, at the present time, none of the proposed planning reforms are yet finally agreed by Parliament, and some, e.g. details of the new Alignment Policy which will replace the DtC, have yet to be the subject of consultation (c.f. paragraph 2.4 above). The outcome of the next General Election, which could be held during 2024, may also affect the Government's current programme.
- The L&L SoCG provides a position of certainty on the key strategic matters of meeting Housing and Employment Needs in Harborough and will enable Officers to prepare a Draft Local Plan and the accompanying consultation material without the need to commission any new or updated evidence on those matters.
- Any risk that the Council cannot demonstrate that it has complied with the DtC is removed, in so far as it relates to the matters covered by the SoCG. Indeed, the SoCG demonstrates a strong track record of the Council's work in that area since 2017.
- The threat of speculative planning applications, whilst not being totally removed, will be reduced as the Council will be able to demonstrate that it is preparing a new Local Plan to meet the district's future housing and employment needs up to 2036 and beyond.

5. Conclusions and Advice

5.1 This Note is based upon an independent review of the Council's current position with regard to the DtC and the draft L&L SoCG, and the implications for the Council's emerging new Local Plan. This section sets out our conclusions and advice to the Council.

Conclusions

5.2 The key conclusions are as follows:

- a) The L&L SoCG represents a clear outcome of the Council's DtC work with the authorities in the L&L HMA on the key strategic cross-boundary matters of meeting housing and employment needs.
- b) The SoCG, if signed by the Council, provides much greater certainty for the preparation of the Council's new Local Plan and its future examination.
- c) It will support the Council in seeking to submit the new Local Plan for examination by 30 June 2025 and, therefore, will allow the Plan to be examined under the present planning legislation and guidance. This should mean that the Council will have a new Local Plan in place by the end of 2026.
- d) If the SoCG is not signed by the Council, a statement supporting that decision will need to set out the reasons why the Council is not in agreement with the contents of that SoCG and will need to demonstrate the exceptional circumstances that justify Harborough as being a district which is not able to accept the outcomes of the SoCG.
- e) It is likely that the Council will need to commission new or updated evidence to support its position, if it chooses not to sign the SoCG, and then undertake a new round of DtC work to seek agreement with other authorities in the HMA. It is unlikely that such agreement will be forthcoming, and the Council's position at a future Local Plan examination may be weakened.
- f) The Government's proposed planning reforms, whilst including a commitment to replace the DtC with an Alignment Policy, are not yet agreed by Parliament, and on the basis of the current available information will lead to a delay in preparing the new Local Plan until 2026 or possibly even 2027.
- g) A significant delay in preparing the new Local Plan will increase the risk of speculative planning applications for residential development, and particularly if the Council's 5YHLS is reduced in the intervening period.

Advice

- 5.3 Our advice to the Council, based on the assessments contained in this Advisory Note, is that the benefits of signing the L&L SoCG at this time very significantly outweigh the potential risks that would arise from a decision not to sign the SoCG. It will provide the Council with much greater certainty in the short-term for the ongoing preparation of its new Local Plan. A decision not to sign the SoCG will likely make the Council's position increasingly fragile, with regard to its new Local Plan and the threat of speculative planning applications.

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