

# THE DUTY TO COOPERATE: does it work for distributing housing need and can it be done better?

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# Today's agenda

- A brief history of the duty
- Has it worked?
- Recent changes – will they help?
- Can it be done better?

# DtC: a brief history

# Conservative 2010 Manifesto

## **Put communities in charge of planning**

The planning system is vital for a strong economy, for an attractive and sustainable environment, and for a successful democracy. A Conservative government will introduce a new 'open source' planning system. This will mean that people in each neighbourhood will be able to specify what kind of development they want to see in their area. These neighbourhood plans will be consolidated into a local plan.

We will abolish the entire bureaucratic and undemocratic tier of regional planning, including the Regional Spatial Strategies and building targets.

# Open Source Planning

We will create a new system of collaborative planning by:

- giving local people the power to engage in genuine local planning through collaborative democracy – designing a local plan from the “bottom up”, starting with the aspirations of neighbourhoods;
- encouraging upper-tier authorities (e.g. county councils and unitary authorities), which are responsible for infrastructure such as waste, roads etc., to compile infrastructure plans; and
- giving all local planning authorities and other public authorities a Duty to Co-operate so that there is a sensible conversation between all those involved in shaping neighbourhoods and the landscape.

# 2011 Conference Speech

*Eric Pickles Pickles (MP for Brentwood and Ongar & Shadow Communities and Local Government Secretary)*

The planning system also has its role to play in building more homes and boosting local growth.

But it doesn't have to be at the expense of the countryside or local democracy.

Last week, Labour pledged to keep regional planning and regional quangos.

They're still wedded to regional government and Whitehall knows best.

Labour's Regional Spatial Strategies planned to bulldoze the Green Belt.

Well, we will protect it.

In the Localism Bill, **we are abolishing Labour's top-down targets and putting local people in charge.**

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# 2011 Conference Speech (cont)

My friends,

**You can feel that power is shifting – back to you, back to your communities, back in the right direction.**

From the forces of officialdom to families.

From Whitehall to councils.

**From quangos to neighbourhoods.**

The opportunity is yours.

Together, we will shake off the shackles of Labour and Britain will be great again.

# DtC: the political reality

- Conservation Party Conference euphoria
- Abolition of RSS
- The government's "Oh s\*\*t" moment & DtC U-turn
- Same U-turn with neighbourhood planning
- The duty & political naivety
- At the time and for many years afterwards, neither party had an appetite to bring back any form of regional planning
- Recent changes to NPPF have seen a recognition that strategic planning is needed, but it falls short of regional planning

DtC: has it worked?

# Government Policy on DtC

Since its introduction it's been a slow burn:

- Most LPAs found it very difficult and there were lots of reasons to not meet OAN
- Early DCLG days (Pickles, Lewis, Clark etc) didn't really depart from 2010 manifesto position:  
*"unmet [housing] demand ... is unlikely to outweigh harm to the Green Belt ..."* 25 April 2013
- *Not until later (Sajid Javid, Gavin Barwell etc) do we start to see the issue being tackled more realistically: Housing White Paper and subsequent NPPF/PPG changes*

I will look at the current position and cover the key changes that have been introduced, but first look at what the duty actually is.

# A duty to do what?

- What do you have to do?
- It's more than a chat: St Albans
- But is it a Duty to Agree?
- You must now prepare a Statement of Common Ground setting out (intra alia) how you and your neighbours will cooperate on delivering the strategic matters (para 20 NPPF) that you must plan for
- Strong pressure to produce a strategic plan

# Statutory framework

Planning and Compulsory Purchase Act 2004 section 20:

1. The local planning authority must submit every DPD to the Secretary of State for **independent examination** ...
5. The purpose of an independent examination is to determine in respect of the DPD:
  - a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents; (**legal test**)
  - b) whether it is sound; and (**soundness test** \*)
  - c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation. (**duty to cooperate** \*)

PCPA section 19(2) provides (**so far as relevant**):

2. In preparing a DPD or any other LDD the LPA **must have regard to**:
  - a. **National policies** (NPPF) and **advice contained in guidance** (PPG) issued by the Secretary of State;

\* terms which are further defined in NPPF

# What is the task for housing?

The question of housing numbers gives rise to two principal issues at local plan examination:

1. Has the LPA correctly objectively assessed its need, in accordance with the requirements of national planning policy? (OAN)
2. Has the LPA correctly identified a 5 year supply of housing? (FYHLS)

To both of these one might add: have the LPA's actions or omissions amounted to an error of law?

Key pieces of evidence:

- Strategic Housing Market Assessment: SHMA
  - is the starting point for OAN, not the end of the exercise
- Strategic Housing Land Availability Assessment: SHLAA
  - is the key area that LPAs are tested on – deliverability of FYHLS
  - NPPF para 47 (requirements such as deliverable and developable)

# Soundness test

text that has changed since NPPF 2012

- **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area's objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;
- **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;
- **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and
- **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework.

# Duty to Cooperate

- LPAs should assess their development needs working with the other local authorities on **strategic matters that cross administrative boundaries**
- Not such a great substitute for Regional Spatial Strategies, but ...
  - You must get the geography right – St Albans
  - You must cooperate meaningfully and purposefully – not just have a chat
  - It's not just about housing, but that's the biggest issue
  - Statements of Common Ground – you should have been doing these, but now you have to
- It's getting very close to a duty to agree!

# Recent changes: NPPF 2018

# Key NPPF changes

- Duty for strategic policy-making authorities to "prepare and maintain" statements of common ground, to be submitted and agreed with neighbours as part of the development plan.
- These should document "cross-boundary matters being addressed and progress in cooperating to address these".
- Such statements should "be made publicly available throughout the plan-making process to provide transparency".  
(para 27)

# Key PPG changes

- The guidance introduces flexibility over plan-making areas (para 9)
- Failure to co-operate with neighbours on strategic issues will be "thoroughly tested" at examination (para 14)
- Strategic policy-making authorities should explore all available options for addressing strategic matters within their own planning area, unless they can demonstrate to do so would contradict policies set out in the National Planning Policy Framework (para 14) – but GB policy has changed
- Councils will not be forced to take neighbouring unmet need if there are adverse impacts (para 14)

# SM world: what will remain?

The standard methodology will give you a number, but you still have to:

- Identify the Housing Market Area (or such other strategic geography) that you will operate and cooperate within
- Deal with unmet requirements
- Have a delivery strategy

# Identifying the geography

- Vital that you get this right – can be defined using different sources of information:
  - House prices and rates of change in house prices
  - Household migration and search patterns
  - Contextual data (eg travel to work area boundaries, retail and school catchment areas)
- DCLG produced Geography of Housing Market Areas in November 2010 – a bit old, but a good place to start
- Getting the geography right is the basis for your Duty to Cooperate and your Statement of Common Ground
- Work with others within the HMA to jointly commission evidence – links to Duty to Cooperate/ Statements of Common Ground and is more cost effective
- Great opportunity to use skill set of wider group of planners
- If not jointly commissioning (which would be daft!) you must ensure that methodology etc align with work undertaken in other parts of the HMA

# Dealing with unmet requirements

- Your unmet requirements:
  - **Sedgefield** method of calculating land supply involves adding any shortfall of housing in the local plan from previous years over the next five years of the plan period
  - **Liverpool** method spreads the shortfall over the whole remaining plan period

Developers prefer Sedgefield, and to be fair it does seem the more logical method to address a shortfall, however if that is not possible you can convince an Inspector that the Liverpool method is right for your circumstances, but you must evidence it as necessary and not merely desirable

- Your neighbours' unmet requirements:
  - Duty to cooperate
  - You have to be realistic
  - Look carefully at all policies

# Delivery strategy

This must:

- Identifies the mix of housing and the range of tenures that is likely to be needed in the HMA over the plan period
- Positively seek opportunities to meet the OAN of an area unless it causes significant harm against NPPF policies or is contrary to NPPF policies that restrict development – but GB policy has changed
- Identify and update annually a FYHLS of DELIVERABLE sites + a 5% or 20% buffer (depending on whether you are on the delivery naughty step) to ensure choice and competition in the market for land
- Identify a supply of “specific sites” or “broad locations for growth” for years 6-10 and 11-15 (where possible) which are DEVELOPABLE
- Produce a Housing Trajectory and set out a Housing Implementation Strategy for market and affordable housing that will maintain FYHLS
- Set out housing density approach that reflects local circumstances

Can it be done better?

# How can LPAs deliver housing?

Government has been getting tougher:

- The tilted balance in para 49/14
- Intervention on plan making
- Intervention on decision making: speed and quality tests
- Housing delivery test

POS has looked at four areas from a housing delivery perspective:

- An evolutionary approach to improving local plans
- We need to talk about the Green Belt
- Delivering Affordable Housing in a more effective way
- Compulsory purchase: three essential improvements

Today I will look at the first.

# Improving local plans

- Joint strategic plans: informal or statutory
- The SEA and Issues and Options should be applied in a more targeted way
- Review DPD & SPD rules and processes
- We recommend a two stage process:
  1. STRATEGY stage:  
the focus of Duty to Cooperate, SEA & Issues and Options  
PINS applies the Soundness Test & signs plan off
  2. DETAILED POLICY stage:  
a lighter touch – more akin to SPD  
PINS only involved to deal with objections

# Plan making: stage 1

POS believe that these challenges can be addressed by adjusting the system so that it operates in a more logical way:

- Local Plans should be prepared in 2 stages: the strategy followed by the detailed policies
- The strategy stage is where the Duty to Cooperate needs to be focused
- SEA & Issues and Options should only be applied to stage 1
- The Planning Inspectorate applies the Soundness Test to stage 1 and signs it off

# Plan making: stage 2

- This leaves the drafting of the detailed policies that will deliver the strategy as a simpler process as it will be done in the context of a clear, agreed and sound strategy
- The Planning Inspectorate's role at stage 2 would be to hear objections to the detailed policies (if there are any)
- The carrying out of the Soundness Test at stage 1 and limiting future involvement of the Planning Inspectorate to considering objections to detailed policies, re-establishes a clear process for the plan to gain weight in decision making as it progresses through the system to final adoption

# Plan making: the benefits

- It is considered that this restructuring and refocusing of the existing plan-making system could save time in the process overall because it ensures that resources by all parties are put into the process only where they are needed and it is done in a logical sequence thereby avoiding wasted effort
- Despite NPPF advice that a plan should receive increased weight as it progresses through the system, the soundness test towards the end of the current process undermines this
- It is also felt that this approach could create a better environment for Neighbourhood Plans to flourish as the clarity it gives to the strategic vision enables parish councils and neighbourhood forums to be clear about what they need to plan for
- We also think it has the potential to shave about a year off the plan preparation process

# Some other suggested changes

- Reword the NPPF definition of deliverable – too narrow
- Sort out a clear OAN methodology – hopefully soon!
- NPPF should be clearer on duty to meet OAN:
  - Presumption that it is met within LPA boundary, or
  - If not, met within your HMA partners' boundary, or
  - If not, set out clear justification why not (a soundness test)
- Give LPA the tools to be pro-active and deal with land banking: unilateral PIPs and CPO – see POS Manifestos
- Take FYHLS delivery out of the Plan into AMR – report in AMR with reserve sites release to maintain FYHLS:
  - Plan would identify sufficient sites to meet OAN: specific allocations, general locations (ie longer term) and policy approaches (ie windfall etc)
  - The sites would have an expected delivery timeline: now (FYHLS) next (5-10) and later (10+)
  - The “Reserved Sites Allowance” AMR process would bring sites from “next” into “now” to maintain FYHLS

# Thank you

The main POS Manifesto referred to today is:  
Local plans: an evolutionary approach to improvement

That and other Manifestos are available from  
[www.planningofficers.org.uk/pos-manifesto](http://www.planningofficers.org.uk/pos-manifesto)