

Independent Examination of the Fylde Local Plan

Hearing Statement submitted on behalf of
The Strategic Land Group (Representor
No:59)

Matter 1: Compliance with statutory
procedures and legal matters

March 2017

1.1 This statement has been prepared on behalf of The Strategic Land Group Ltd (SLG). It considers the issues and questions posed in relation to Matter 1 (compliance with statutory procedures and legal matters), and responds to those of relevance to SLG. Particular emphasis is placed upon the duty to cooperate (DtC) as this reflects SLG's main area of concern.

The Duty to Cooperate (DtC)

1.2 The DtC is a requirement of the Planning and Compulsory Purchase Act¹ (as amended by the Localism Act 2011). In terms of national policy, paragraph 179 of the National Planning Policy Framework (NPPF) states that '*joint working should enable local planning authorities to meet development requirements which cannot wholly be met within their own areas*'. The direct implication or the outcome of the DtC is therefore that development needs are met. Evidence of effective co-operation is expected to be provided, in accordance with Paragraph 181. The emphasis is on diligence and effective collaboration.

1.3 In addition to the DtC as prescribed in law and national planning policy, national Planning Practice Guidance (PPG) provides guidance on compliance with the duty and what constitutes effective co-operation. In particular it states:

- *Cooperation between local planning authorities, county councils and other public bodies **should produce effective policies on strategic cross boundary matters. Inspectors testing compliance with the duty at examination will assess the outcomes of cooperation and not just whether local planning authorities have approached others.***² [emphasis added]
- *The actions will depend on local needs which will differ, so there is no definitive list of actions that constitute effective cooperation under the duty. **Cooperation should produce effective policies on cross boundary strategic matters. This is what local planning authorities and other public bodies should focus on when they are considering how to meet the duty. Local planning authorities should bear in mind that effective cooperation is likely to require sustained joint working with concrete actions and outcomes.***³ [emphasis added]

1.4 The outcome of this process should be effective and deliverable policies on strategic cross boundary matters.

1.5 It is therefore clear that the legal requirement imposed by the DtC is expected to ensure tangible results and outcomes in relation to strategic matters (considered further in relation to Q1 below). This is reiterated in the PPG which states that testing the DtC will be based on the '***outcomes of cooperation and not just whether local planning authorities have approached others***'⁴ [emphasis added].

1.6 Such outcomes are the true test as to how effectively the DtC has been carried out and clearly will underpin the effectiveness of any plan. Therefore, whilst the DtC is a legal duty, it has implications on the extent to which the plan is positively prepared and

¹ Sections 20(5)c and 33A

² PPG Ref ID: 9-010

³ PPG Ref ID: 9-011

⁴ Paragraph: 010 Reference ID: 9-010-20140306

policies will be effective in terms of delivering sustainable development. It goes to the heart of the soundness of the plan.

Issue 1 – Has the Council met the statutory duty to cooperate as set out under Sections 20(5)c and 33A of the Planning and Compulsory Purchase Act 2004?

1. What are the relevant strategic matters in relation to this duty?

- 1.7 In plan making, paragraph 156 of the NPPF sets out various strategic priorities that local authorities need to include in their local plans:
- the provision of housing and jobs;
 - infrastructure (encompassing a wide range of types); and
 - climate change and conservation and enhancement of the natural and historic environment).
- 1.8 Such matters are emphasised, at paragraph 178, as the types of pertinent planning issues to be addressed under the Duty to Cooperate (DtC); they are, of course, pertinent to the Fylde Local Plan (FLP) and are set out in the Council's Statement of Compliance (August 2016).
- 1.9 Through the Statement of Compliance Duty to Cooperate⁵ (SOCDtC), Fylde Borough Council appears to have recognised and acknowledged that housing and employment provision are key factors in fulfilling the DtC. However, Fylde's activities in respect of this have not reflected their importance and have not effectively flowed into the FLP. The FLP does not set out the key challenges and issues the authority faces (other than to summarise the SOCDtC in terms of the strategic issues considered), and which the FLP must address. It would therefore be unclear to someone reading the FLP what the issues are and how the FLP seeks to address them.
- 1.10 The DtC imposes a rigorous test; one of action and effective outcomes. The true test of whether the DtC has been met is therefore in how such matters are dealt with through the plan-making process and how such matters are responded to effectively in respective local plan policies in order to ensure needs are met. SLG contend that the FLP fails to properly address strategic cross-boundary housing issues and has failed to discharge the DtC.

2. Has the Council maximised the effectiveness of plan-making activities by engaging constructively, actively and on an on-going basis with the prescribed bodies, in the preparation of the Plan in the context of these relevant strategic matters? In particular:

- (a) **What has been the nature of any cooperation and have any mechanisms or formal agreements been established? Is the Memorandum of**

⁵ Document ref. SD007, Table A

Understanding by authorities within the Fylde Coast Housing Market Area (HMA) up to date and effective in this regard?

- 1.11 SLG contends that the nature of the cooperation is no longer up to date or has it been effective in assisting in plan making.
- 1.12 It is accepted that the Memorandum of Understanding (MoU) predates the request made by Wyre Borough Council (WBC) in May 2016 for Fylde to accommodate part of its housing requirement. However the MoU makes a commitment that partner authorities will work together to reach a consensus on housing provision across the Fylde Coast sub-region and while housing evidence has been jointly prepared (although now over two years old), this key aim of the MoU has clearly not been achieved.
- 1.13 In short, the actions do not reflect the original commitments and good intentions made in the MoU and the current FLP is the manifestation of this lack of dialogue and consensus.
- 1.14 These key concerns are aligned to the fact that Wyre Council does not consider that the DtC has been complied with, in its representations to the Publication Draft⁶, stating that *'Fylde has not positively engaged with Wyre on this issue'*. They do not consider the MoU objectives have been achieved and point to a lack of communication since May 2016. It is ineffective, and has failed to secure ongoing collaboration and communication required by the DtC.

(b) Has the Council tried to resolve any issues through cooperation and what have been the outcomes?

See response to Q3a.

(c) Is there robust evidence to support the cooperation activities that have taken place?

No comment

3. In light of Wyre Borough Council's statement that they will be unable to meet their own objectively assessed housing need (OAN):

(a) What has been the nature of any cooperation in this regard?

- 1.15 The SOCDtC summarises the cooperation with Wyre (and the other Fylde Coast Authorities and prescribed bodies) and we cite the frustrations of Wyre BC above.
- 1.16 The scale and extent of potential unmet housing needs arising in Wyre can be derived from an understanding of constraint and availability of supply. Wyre BC has identified that its supply of deliverable land is constrained by:
- highway capacity (around the A585 and A6 corridors)

⁶ Document ref. SD013d, page 1663

- Green Belt (which covers 750 hectares around its main urban areas where growth would likely be directed)
- flood risk (with a large extent within Flood Zones 2 and 3 and some entire settlements within high risk flood areas)

1.17 It also has a number of environmental constraints, including the Forest of Bowland AONB, five Sites of Special Scientific Interest and two Special Protection Areas. These present significant constraints which limit its ability to accommodate housing growth. Indeed, the provision of new housing to meet the needs of the population and support economic growth is *'the biggest challenge for the Local Plan'*, according to the Wyre Local Plan Issues and Options 2015⁷. In considering the scale and extent of shortfall, the following matters are pertinent:

- (i) **Objectively Assessed Needs:** To underpin its emerging Local Plan Wyre BC has recently resolved that its OAN will be 479 dwellings per annum, a total requirement of 9,580 over the plan period. This is a significant increase from the annual requirement proposed in its previous Core Strategy Preferred Options paper (August 2015) which identified 4,520 dwellings over the plan period (226 dpa).
- (ii) **Land Supply Capacity:** The Council's Housing Land Monitoring Report 2015 gives us an indication of total 'unconstrained' supply. Once potential housing sites in high risk flood zones are discounted, total unconstrained supply amounts to 8,130 dwellings; 15% less than the OAN figure of 9,580 and a significant shortfall. Furthermore, 26% of that supply is identified dependent on delivery from a single site (Land north of Fairfield Road (PFY_24), placing considerable reliance on its delivery.
- (iii) **5 Year Deliverable Supply:** The chronic position on housing land availability is also reflected in Wyre BC's five year housing land supply. The Council's latest statement on housing land supply (2016) confirms that at 31 March 2016 it had a substantial backlog (of almost 3 years' worth of dwellings) having fallen short of the OAN figure across the last five years. It claims to be able to identify sites to accommodate 3.8 years supply over the five year period 2016 – 2021 (applying a 5% buffer). This figure would drop to 3.5 years with a 20% buffer.

1.18 A picture of the scale and extent of unmet housing needs in Wyre can easily be established and evidenced. Wyre BC anticipates that it is likely it will not be able to accommodate around 2,000 dwellings from its total requirement. If Fylde BC were to accommodate Wyre's unmet housing need in full, this would result in an additional housing requirement of between 95 and 142 dwellings per annum. Fylde has made no provision for this clearly stated need and has not provided robust evidence as to why it has not.

1.19 The formal request from Wyre that Fylde was made during May 2016 although it should be noted that the possibility that Wyre may not be able to meet its own housing needs

⁷ Wyre Local Plan Issues and Options, paragraph 3.10

was initially raised at a DtC meeting with neighbouring authorities on 8th May 2015⁸. Despite this, the Publication Version of the FLP published in August 2016 did not make provision for the stated housing need of Wyre to be accommodated. Neither did the Submission Version FLP⁹, published in December 2016.

- 1.20 The submission FLP states that *'Fylde Council is committed to continuing to work with Wyre and its other neighbours, once the evidence base relating to Wyre's constraints is complete, in order to address the above mentioned issues'*¹⁰. No information is provided as to what that is envisaged to entail, indeed the outcome recorded in Table A of the SOCDtC is that *'a request has been received'* from Wyre. Despite having at least 20 months informal notice and 10 months' formal notice of Wyre's need, Fylde has effectively ignored the request.
- 1.21 Under the DtC it is reasonable to conclude that there should be continuing and frequent engagement, which is recorded and made publicly available. Councils *'need to demonstrate that no stone has been left unturned in the pursuit of cooperation'*¹¹. This is plainly not the case in the FLP.
- 1.22 Other local authorities have fallen foul of the DtC duty. For example the Castle Point Local Plan was criticised by the examining Inspector (see Appendix 1)¹² for failing to address precisely this issue, with the inspector commenting that despite ongoing workshops and ongoing contact with neighbouring authorities *'neither these nor other ongoing contact with neighbouring authorities established how the question of unmet need for housing was to be dealt with.'* [emphasis added]
- 1.23 Wyre's contention on the absence of positive engagement is perhaps the most damning indictment of Fylde's failure to properly discharge its legal duty in this respect. It is, therefore not only a question of lack of evidence but also a fundamental failure.
- 1.24 This lack of tangible evidence of progress (and absence of more recent updates and lack of contact with Wyre Council) raises serious questions about the effectiveness of the DtC process and its ultimate outcome.
- 1.25 Paragraph 181 of the Framework states that co-operation should be *'a continuous process of engagement from initial thinking to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and future levels of development'*. This is clearly not the position that has been reached in relation to the FLP as presently drafted. The Council has effectively done the opposite, leading to an uncertain future on a strategic priority issue; that of housing need.
- 1.26 This is contrary to the principles of the plan-led system envisaged in law and the NPPF which is clear that it expects the outcome of the Duty to Cooperate is that housing needs are met.

⁸ Wyre BC letter to Fylde BC dated 23rd August 2016

⁹ Document ref. SD001

¹⁰ Document ref. SD001, paragraph 1.28

¹¹ Inspector's letter on the St Alban's Strategic Local Plan Duty to Cooperate, 28th November 2016, paragraph 33

¹² paragraph 32

(b) Has cooperation led to an agreed mechanism for the delivery of unmet housing needs within the HMA?

- 1.27 As set out in the response to Q3a, the ineffectiveness of cooperation in relation to Wyre's request means that there is no mechanism for the delivery of unmet housing needs in the HMA in place. As it stands, part of Wyre's requirement will therefore remain unmet.
- 1.28 This is not an acceptable approach and is a fundamental flaw in the FLP which runs wholly contrary to the requirements of the NPPF¹³ to boost significantly the supply of housing and for the plan to meet the full, objectively assessed needs for market and affordable housing in the housing market area. This is considered further in relation to Q3d below.

(c) In what way has this influenced the Plan?

- 1.29 The plan is silent on how to address Wyre's request and does not take the opportunity to make a positive contribution to meeting the needs of the HMA. This is considered further below in relation to Q3e.
- 1.30 Not only does this flaw go to the legal compliance of the Plan, but it raises implications for the housing requirement and the proposed spatial distribution in Fylde. In short, the FLP is not being positively prepared, is not justified, is not in accordance with national planning policy and is wholly inconsistent with the principles of sustainable development.

(d) Is there an obligation for Fylde Council to ensure that the objectively assessed need for the HMA as a whole is met?

- 1.31 National planning policy and guidance aims to ensure that the needs arising in a particular housing market area (HMA) are met in that HMA¹⁴. One of the authorities in the Fylde Coast HMA (Blackpool) has recently adopted its Local Plan (in January 2016); its ability to plan to accommodate any further growth is therefore limited. Furthermore, the administrative boundaries of Blackpool are tightly constrained and it has been unable to accommodate all of its own growth within its boundary, with a substantial area (14ha) of employment land requirement to be met within Fylde. The Blackpool Core Strategy (BCS) Inspector's Report required a main modification (paragraph 9) to the BCS to ensure that joint working continued with regards to housing and meeting the **full** needs of the HMA.
- 1.32 At the time of the request, Fylde is the only authority within the HMA which is at a sufficiently early stage of the plan-making process to effectively plan to accommodate this need. The possibility of any of Wyre's unmet need being met by authority areas other than Fylde is limited. If positive action is not taken to accommodate it in Fylde through the FLP there is a significant risk that it will not be met. Instead of engaging with the request, Fylde Borough Council has chosen to effectively ignore it advancing the case that the need to ensure a Local Plan is adopted before 2017 is a greater

¹³ Paragraph 47

¹⁴ NPPF, Paragraph 47

priority than meeting unmet housing needs across the wider housing market area. No evidence has been advanced by Fylde to demonstrate that it cannot accommodate Wyre's unmet housing need.

- 1.33 This is not an acceptable outcome, and is counter to national planning policy and guidance the Government's priorities in respect of the delivery of housing. This is precisely the type of strategic issue which the DtC is intended to address. Any outcome other than exploring every option to assist with accommodating this need is flawed and would run counter to this approach. In light of Wyre's request the FLP is unsound.
- 1.34 It is noted that the Inspector for the Mid-Sussex District Plan 2014 – 2031 recently dealt with a similar issue (see Appendix 2). In that scenario an adjacent authority (Crawley) in the same HMA had a stated inability to meet its housing need within its boundaries, with a residual unmet need of 185 dpa. The Inspector recognised that Crawley was immediately adjacent to Mid-Sussex and within the same HMA. The Mid-Sussex plan made inadequate provision for this need to be met (meeting only a proportion, c. 20%). This aspect of the plan was found to be unsound. The Inspector therefore increased the housing requirement by 150 dwellings, therefore accommodating virtually all of the unmet need.
- 1.35 This conclusion reflects the emphasis on effective collaborative working in order to address strategic matters such as housing provision. Whilst the DtC is not a duty to agree it imposes a rigorous requirement on authorities which necessitates difficult issues to be addressed. It is simply not acceptable that housing needs go unmet, as would be the case if Fylde continue to fail to make provision for Wyre's need.

(e) Should the Plan include a commitment to help meet any unmet housing needs or to review the Plan?

- 1.36 It is SLG's contention that the FLP should be accommodating Wyre's unmet housing needs in full and this should be achieved by increasing the level of supply in the FLP through identifying suitable housing sites for allocation. There are sites in Fylde capable of accommodating a substantial amount of housing that would assist in accommodating the need.

Issue 2 – Has the Plan been positively prepared in accordance with other legal and procedural requirements?

4. Has the Plan been prepared in accordance with the Local Development Scheme, including in terms of timing and content?

No comment

5. Has consultation been carried out in accordance with the Statement of Community Involvement and the relevant Regulations?

No comment

6. Is the plan period of 2011 to 2032 justified? Is the plan period set out with sufficient clarity in the Plan?

No comment

7. Does the sustainability appraisal (SA) adequately assess the environmental, social and economic effects of the Plan? In particular:

(a) Has the SA followed the correct processes in terms of consultation and content?

No comment

(b) Does the SA adequately consider the likely significant effects of reasonable alternatives where these exist, including in respect of the scale of housing and employment provision and the balance between them?

1.37 The SA Report¹⁵ fails to have regard to the housing requirement range as set out in the FCSHMA (and associated updates). Given that the FLP housing requirement is the lowest figure in the range suggested in the FCSHMA (370 dwellings per annum), it is somewhat surprising that alternative requirements have not been assessed as part of the consideration of reasonable alternatives.

1.38 The failure to do so is contrary to the SEA Regulations and to the PPG¹⁶.

(c) Have any unreasonable alternatives been noted and if so have reasons been given as to why these have not been selected?

No comment

(d) Does the SA adequately assess the likely significant effects of policies and proposals?

No comment

(e) Is it clear how the SA has influenced the Plan? Is there anything in the SA which indicates that changes should be made to the Plan?

No comment

8. Has the requirement for appropriate assessment under the Habitats Regulation Assessment (HRA) been met? Is it clear how the HRA screening report has influenced the Plan?

No comment

9. Has the Plan been prepared in accordance with the relevant legislation and regulations?

1.39 SLG has significant concerns in terms of the failure to properly comply with the DtC, as prescribed in primary legislation¹⁷, as set out in relation to Issue 1. The DtC is a legal

¹⁵ Document ref. SD004a

¹⁶ Paragraph: 017 Reference ID: 11-017-20140306

¹⁷ The Planning & Compulsory Purchase Act 2004

duty, and a key aspect of the tests of soundness. Inadequate or ineffective cooperation therefore represents a fundamental flaw in the FLP, and one which renders the FLP unsound.

- 1.40 Whilst the desire to secure up-to-date Local Plan coverage is supported in principle, the DtC is an independent legal requirement which is either fulfilled or not. In the case of the FLP it is clear that it has not been fulfilled.

10. Are there are any significant departures from national policy in the Plan? If so, have these been justified?

- 1.41 The significant flaws outlined above in relation to the DtC represent a failure to comply with the legal tests for Local Plans but also fail to comply with the NPPF in this regard.
- 1.42 In addition, the FLP is contrary to the NPPF in terms of its failure to ‘plan positively’, and take steps to ‘significantly boost housing supply’, as it is not considered to make adequate provision to meet the OAN identified through the FCSHMA. This is covered in more detail in SLG’s response to Matters 2 and 3.

Appendix 1: Inspector's Letter on Castle Point New Local Plan

Appendix 2: Inspector's Letter on Mid-Sussex Local Plan