

**CASTLE POINT BOROUGH COUNCIL**  
**Examination of New Local Plan 2016**

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Dear Mr Rogers

**CASTLE POINT NEW LOCAL PLAN 2016 – DUTY TO COOPERATE**

1. As you know I held a hearing to discuss the matter of the duty to cooperate (DtC) on 12 December 2016. The purpose of this letter is to report my findings and to set out the next steps for the examination.
2. In reaching my conclusions I have taken into account your response to my initial letter (IE/003) and to my supplementary questions (IE/007); the specific written comments of the DtC authorities (IE/008 – 012) as well as their original representations; the statement of common ground (IE/014); contributions made verbally at the hearing and other documents submitted (IE/015, 016 & 017).
3. Regrettably I have concluded that in the preparation of the New Local Plan the **duty has not been complied with**. My reasons for this are set out below.

**The Duty to Cooperate**

4. The DtC was introduced by the Localism Act of 2011 which has amended the Planning and Compulsory Purchase Act 2004 by inserting Section 33A. Whilst that section contains the actual legislative provisions a useful summary of the duty is in the Planning Practice Guidance (PPG) which states that:

*It places a legal duty on local planning authorities .... to engage constructively, actively and on an on-going basis to maximise the effectiveness of Local ... Plan preparation in the context of strategic cross boundary matters (ID 9-001-20140306).*

5. I am required by Section 20(5)(c) of the 2004 Act to determine whether the Council has complied with any duty imposed on it by Section 33A in relation to the preparation of the New Local Plan. Furthermore, Section 20(7)(b)(ii) establishes that I should consider whether, in all the circumstances, it would be reasonable to conclude that the Council has complied with the duty.
6. The National Planning Policy Framework (NPPF) refers to planning strategically across local boundaries and deals specifically with strategic priorities, cooperation, joint working and demonstrating evidence at paragraphs 156, 178, 179 and 181.
7. Section 33A(7) provides that regard must be had to any guidance given by the Secretary of State about how the duty is to be complied with. The PPG was produced in 2014. It is extensive and provides an indication of the way that the

duty is expected to work in practice but does not, in itself, set further tests that have to be met. The terminology used is nonetheless helpful in gaining a clearer picture of what should be done. However, the key point is whether, in relation to strategic matters, the effectiveness of the preparation of the New Local Plan has been maximised by constructive, active and on-going engagement.

8. The DtC is distinct from soundness. The NPPF (paragraph 182) makes clear that to be sound a local plan should be positively prepared; justified; effective and consistent with national policy. Whilst there may be some apparent overlap because cooperation should produce effective policies on cross-boundary matters I shall solely concern myself at this stage with whether the duty has been complied with.

9. The Council has submitted what it considers to be a sound plan and wishes this to be tested through the examination process. It also seeks to avoid delay in plan-making given the importance of local plans in delivering sustainable development that reflects the vision and aspirations of the community. This is perfectly understandable. Furthermore, I am aware of the effort, time and resources that have gone into producing the New Local Plan. However, ensuring that it has been prepared in accordance with the DtC is an essential pre-requisite and cannot be avoided despite the desirability of having an adopted plan.

### **Preparation of New Local Plan and Cooperation**

10. Preparation of the New Local Plan began in 2011. It has been through various stages including an Issues Consultation in 2012 and the publication of the draft New Local Plan in 2014. Following the resolution of Ordinary Council on 23 March 2016 the New Local Plan was published for submission. Consultation under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 then took place and it was submitted for examination in August 2016. The PPG confirms that cooperation should take place throughout plan preparation (ID 9-012-20140306).

11. There is a long history of local authorities working together on strategic planning matters across south Essex. This has involved the neighbouring Councils of Thurrock, Basildon, Rochford and Southend-on-Sea as well as Essex County Council. For example, prior to its demise in 2014 the South Essex Planning and Transport Board met on a quarterly basis and its work culminated in the publication of a Thames Gateway South Essex Planning and Transport Strategy in 2013.

12. The Board was replaced by the South Essex Strategic Planning Members Group. Its inaugural meeting was in March 2016. In the period between the end of the Board and the start of the Group, Basildon claims that there was a "vacuum" of meaningful strategic planning engagement. During that time leaders of the authorities nevertheless met through the South Essex Growth Partnership. This forum was established for a different purpose but it did consider DtC matters. The Partnership also agreed to support a work programme including delivering housing and employment growth by allocating land. In addition, a workshop with key partners was held in February 2014 and there was a joint meeting led by the Planning Advisory Service in October 2014.

13. Taken as a whole throughout the preparation period from 2011 to August 2016 it appears that cooperation was structured and frequent. Whilst there may

have been some loss of focus on strategic planning matters between 2014 and the early part of 2016, activity did not come to a complete stop. There is no chronological record of what took place when but the picture painted by all those involved is one of active and more or less on-going engagement. The main outputs have been the documents set out in the Statement of Common Ground signed by Basildon, Castle Point, Essex, Rochford, Southend and Thurrock. The PPG refers to the importance of evidence gathering to define the scope of the local plan, assess policy impacts and assemble the necessary material to support policy choices (ID 9-011-20140306). However the information provided is weaker in showing how cooperation actually influenced the New Local Plan.

### **Preliminary Observations**

14. In this section I shall comment on a number of matters that were covered at the hearing but which are not central to my findings.

15. Work to identify cross-boundary planning issues has been on-going across south Essex for a number of years. There is now an agreed list of 10 topics and the progress made in respect of each of them is set out in the Statement of Common Ground. This includes assessments and strategies of various kinds.

16. Paragraph 156 of the NPPF indicates that local planning authorities should set out the strategic priorities for the area in the local plan. The New Local Plan does not do this expressly although it does contain reference to a strategic approach, a vision and objectives. Nevertheless it is evident that across south Essex there is a clear understanding and agreement about what the strategic matters are for the purposes of applying the duty. In Section 33A(4) these are defined as the sustainable development or use of land that has or would have a significant impact on at least two planning areas. Defining these matters is the first step towards meeting the duty and the agreed list, which has been developed since mid-2014, provides a firm foundation to that end.

17. There is criticism from Thurrock that there have been no individual meetings or formal correspondence between them and Castle Point regarding matters raised in representations to the 2014 draft or the pre-submission stage in 2016. The Council accepts that one-to-one discussions have not taken place with particular authorities but considers that this would not have been effective or transparent. Rather it has sought to engage with its neighbours simultaneously and on a common basis.

18. The PPG observes that the actions taken will depend on local needs which will differ and so there is no definitive list of what will constitute effective cooperation under the duty (ID 9-011-20140306). Furthermore, deciding who to cooperate with will depend on the strategic matter being planned for and the most appropriate functional geography which may, for example, comprise housing market areas (ID 9-015-20140306). It follows that there is no essential requirement for there to have been direct engagement with single neighbouring authorities outside the collective forums. That said, the PPG urges a pragmatic approach so that to secure effective outcomes engagement might take place between different authorities for different issues.

19. The Council is able to proceed with the submission of its plan whereas others in south Essex are not. Basildon is most advanced as it is finalising a plan for publication whilst Thurrock does not expect to make a submission until

2020. One of the core planning principles set out in the NPPF is that the system should be genuinely plan-led. In view of this it is not reasonable to expect plans from neighbouring authorities to be precisely aligned. Indeed, the PPG at paragraph 017 anticipates a situation where plans are not being taken forward in the same time frame. If, in this scenario, local planning authorities wish to agree a joint planning strategy it advises that formal agreements should be entered into. This has not occurred in south Essex but the fact that Castle Point is the 'front runner' should not penalise the Council. By the same token going first does not absolve it from the requirements of Section 33A.

20. Paragraph (6) of Section 33A stipulates that the engagement required includes considering whether to agree under Section 28 to prepare joint local development documents. There is further advice about this in the PPG (ID 9-016-20140306). Whilst none of the other DtC authorities have suggested joint plan making or invited the Council to participate this does not alter the expectation that the option has to be considered.

21. The Council's letter of 14 October 2016 (IE/003) stated that it had not formally considered making such an approach to any adjoining authorities. At the hearing the Council gave various reasons why this was considered to be unnecessary. These relate to the need to make quick progress with the plan and the good existing working arrangements between Castle Point and the other authorities which might be disrupted. Furthermore, paragraph 153 of the NPPF expects each local planning authority to produce a local plan for its area. This is all well and good but there is no Council resolution to indicate that a joint plan was considered at an early stage as part of the plan preparation process.

22. Deciding how to engage constructively in order to maximise effectiveness is a matter of judgement for the Council and it should be given a substantial margin of discretion in this respect. At the meeting of the Thames Gateway South Essex strategic planning officers in June 2014 it was agreed that it was unlikely that a joint plan would arise (IE/017). The report to the Growth Partnership in March 2015 attended by the Leader of the Council and the Chief Executive also referred, amongst other things, to consideration of joint plans (IE/016). A specific reference to this possibility would have clearly shown that the requirement has been met. However, given the involvement of senior officers and an elected Member, it is difficult to imagine that the Council was unaware that plan-making could proceed in this way. It is reasonable to assume that this was rejected as a way forward. Whilst I have some misgivings the threshold of "considering" is low and the duty is not failed in this respect.

23. Agreement in principle was reached on a draft Memorandum of Understanding in November 2016 (IE/015). This sets out a protocol for cooperation and is due to be ratified in 2017. The document indicates that cooperation between authorities about growth and development across south Essex will continue to take place. Some of the key outputs are a joint evidence base to identify development needs and a joint strategic planning framework to guide development and delivery principles. The Statement of Common Ground also refers to a consideration of agreed levels of development for housing in each local planning authority area. A 'tiered' governance structure has been put in place and is operating.

24. I have previously commented that these measures appear to be broadly in line with cooperation principles. However, together with any other steps taken

since the submission of the New Local Plan for examination, they clearly have had no bearing on its preparation. Although formal agreements are endorsed in the PPG as a way to demonstrate effective cooperation any future events are not relevant in determining the matter before me.

### **Has The Duty Been Complied With?**

25. In deciding whether it would be reasonable to conclude that the duty has been complied with I shall consider three strategic matters. In so doing, I shall give particular attention to whether DtC engagement maximised plan preparation effectiveness, what have been its outcomes and whether effective and deliverable strategic planning policies have been produced. The PPG refers specifically to maximising the effectiveness of policies for strategic matters in local plans (ID 9-002-20150306). In assessing whether the duty has been met it is also pertinent to have regard to the relevant planning context.

### ***Housing***

26. The New Local Plan is based on an objectively assessed need for housing of 400 dwellings per annum. Paragraph 13.22 recognises that the target for new homes does not equate with this but it reflects the capacity of the Borough to accommodate growth. A subsequent updated Strategic Housing Market Assessment (SHMA) in May 2016 gives a range for objectively assessed need of between 326-410 dwellings per annum. Be that as it may the draft New Local Plan proceeded on the basis of providing 200 dwellings per annum but this was reduced to 100 dwellings after the failure of the Task and Finish Group to reach agreement on the release of Green Belt land for housing in November 2015.

27. The Council maintains that from 2008 engagement has been effective in providing a clear and robust joint evidence base regarding population and housing matters. In turn this has led to a range of policies which are based on the NPPF and PPG and which reflect the needs of the community in Castle Point. In particular, it draws attention to the great importance attached to Green Belts in the NPPF and the further advice in the PPG that Green Belts may restrain the ability of an authority to meet its full housing needs. As far as the Council is concerned no amount of further conversations would have altered the difficulties in meeting its objectively assessed needs within its boundaries.

28. There is no doubt that the Council has made clear for some time that the ability to deliver new housing would be restricted due, in its view, to the physical constraints of the Borough. This can be traced back to the Housing Capacity Topic Paper of 2013 (CP/14/007) and also featured in the consultation on the draft New Local Plan. The Council maintains that the eventual decision to reduce the housing target to 100 dwellings per annum in March 2016 confirmed previous indications. However, there were no formal meetings with other authorities to discuss the actual level of housing proposed in the New Local Plan.

29. The questions of whether the strategy for housing is the most appropriate one and therefore justified and whether it is consistent with national policy, including paragraph 14 of the NPPF, are soundness ones. However, paragraph 179 of the NPPF provides that:

*Joint working should enable local planning authorities to work together to meet development requirements which cannot wholly be met within their own areas –*

*for instance, because of a lack of physical capacity or because to do so would cause significant harm to the principles and policies of this Framework.*

30. This is precisely the situation in Castle Point. Indeed, the officer report of July 2014 which set out the full document representations on the draft New Local Plan (CP/05/008) includes the following as an action point:

*Given that the Council has not been able to identify a sufficient supply of housing to meet its objectively assessed needs, it is also necessary to engage with neighbouring authorities under the auspices of the Duty to Cooperate in order to determine how the objectively assessed need for housing, and other strategic matters, will be addressed within the housing market area.*

31. However, notwithstanding the lengthy and detailed engagement across south Essex there is no formal mechanism in place to distribute unmet housing need. In order to comply with the duty there is no requirement for this to be done by any particular means. Indeed, the outcome of joint working in this respect could take a variety of forms and it is not for me to say what they should be. Nevertheless, the position is that there is simply nothing in the New Local Plan to indicate how the unmet need for housing will be tackled. This is because the authorities have not yet deliberated about the matter in any meaningful way. Therefore the question of how the objectively assessed need will be addressed, as raised by officers in 2014, has not been adequately grappled with.

32. The Council is now anxious to ensure that the delivery of its objectively assessed needs is addressed with neighbouring authorities and intends to play a full and active part through the various DtC mechanisms that are now operating. There is no reason to doubt this but a failure to demonstrate compliance cannot be corrected after submission (PPG ID 9-018-20140306). The resolution at Ordinary Council to approve the New Local Plan includes a clause that to fulfil the duty to cooperate further work should be undertaken as necessary. Between then and the date of submission a workshop was held in May 2016 to explain the Council's position and the SHMA was published. But neither these nor other on-going contact with neighbouring authorities established how the question of unmet need for housing was to be dealt with.

33. Indeed, the impression gained is that the Council believed that continuing activities under the DtC would enable the issue of outstanding housing need to be 'fixed'. However, that is looking at things the wrong way round. Rather engagement under DtC should seek to bring about the outcome set out in paragraph 179 of the NPPF. There is no duty to agree (PPG ID 9-003-20140306). However, whilst it might be firmly in view now, there is no clear evidence that consideration of this admittedly difficult issue was attempted as part of the preparation of the New Local Plan. Within that process it has been treated as an 'afterthought'.

34. There is also no evidence that the decision to reduce the housing target by 50% from the draft to the New Local Plan took any account of the consequent implications for provision elsewhere. The NPPF expects that the full objectively assessed needs for market and affordable housing in the housing market area should be met, as far as is consistent with the policies in it. Whilst the Council is entitled to set its own housing target joint working should be undertaken for the mutual benefit of neighbouring authorities. Given that the 5 south Essex

authorities comprise a single housing market area it is difficult to see how this was achieved by a late decision to significantly reduce housing numbers.

35. Indeed, all the indications are that in this respect the Council decided to 'plough its own furrow'. Failing to address the wider impact of its 'last minute' decision to lower the housing target by a considerable amount is the very opposite of cooperation in plan preparation. It did not pay sufficient attention to its obligations under the duty. This is exacerbated by the knowledge that its neighbours are affected by similar constraints and may also find it difficult to meet their own objectively assessed needs. Whilst this has not been finalised it should have been obvious to the Council that similar challenges will exist elsewhere. These have not been properly considered.

36. Therefore the Council fell well short of making every effort to secure the necessary cooperation on the strategic cross-boundary matter of housing before submitting the New Local Plan for examination. The engagement undertaken as part of its preparation was fundamentally flawed.

### ***Gypsies and travellers***

37. The New Local Plan contains a criteria based policy (TS1) to apply when proposals for gypsy and traveller accommodation come forward. However, the issue of unmet need for traveller sites in south Essex was flagged up by Basildon in 2012 and 2014 as part of the earlier consultation process. This is not acknowledged by the Plan itself.

38. Nevertheless, the Consultation Statement (CP/05/013) of August 2016 refers to the likely difficulties in both Basildon and Thurrock in meeting their significant needs for such accommodation. However, the view expressed by the Council is that site identification in Castle Point would be a disproportionate response in a Borough with significant environmental constraints. Prior to that in 2014 the Council considered (CP/05/006) that given the limited local requirement, seeking to identify traveller sites would be an excessive action and would delay progress.

39. The current position is that the Gypsy and Traveller Accommodation Assessment of 2014 is based on the previous definitions in the Planning Policy for Traveller Sites (PPTS). These were revised in August 2015. As a result new site survey work is underway and the current level of need for sites is not quantifiable. Furthermore, since 2014 permission has been granted for 5 pitches in the Borough thereby addressing the need identified in the 2014 Assessment.

40. Gypsy sites in Basildon have come to national attention. Paragraph 12 of the PPTS was introduced in 2015 and confirms that where an authority has had a large-scale unauthorised site there is no assumption that traveller needs should be met in full. Basildon advised at the hearing that it has been seeking assistance from others in providing 136 pitches. In the light of the revised assessment this figure may reduce but it is so large that, even then, a need for pitches elsewhere is almost bound to remain.

41. There is nevertheless a slight state of flux which might hamper coherent joint working if plan preparation were commencing now. However, that is not the case. Looking back to 2011 it is evident that the need for traveller sites has been consistently raised by neighbouring authorities but that the Council has not

made every effort to cooperate by, for example, undertaking a site search or a call for sites. At the hearing it was acknowledged that the approach at Castle Point had not been as rigorous or thorough as at Basildon. Of course, offering assistance with sites will not be easy and local planning authorities are not obliged to accept the unmet needs of others if they have robust evidence that it would be inconsistent with policies in the NPPF such as those on Green Belt. The Council may well contend that such circumstances obtain in Castle Point but the indications are that this has not been seriously contemplated.

42. Whilst the Borough may not hold all or any of the answers to the shortage of pitches in Basildon it should attempt to play its part. Ultimately it might be that providing more traveller sites in Castle Point is not the best planned solution but there is a duty on the Council to try. In preparing the New Local Plan it simply has not done enough in this respect and there has been a DtC failing.

### ***Transport***

43. Thurrock maintains that the DtC has not been met in respect of the proposed provision of the North Thames Link Road. It has been a long held ambition of the Council to seek to improve access between Canvey Island and the remainder of south Essex. This aim has been given impetus recently in the Budget of March 2016 and the South East Growth Deal submission in July 2016. Essex County Council has also embarked on a feasibility study.

44. A meeting between officers took place in 2015 but there is little evidence of proper engagement regarding the detailed implications of such a project. The position is that Thurrock has continually objected to such a link which would run between Northwick Road and Manor Way. However, Policy T2 2) of the New Local Plan indicates that the Council will work with partners to secure the investment necessary to deliver a new or improved access to Canvey Island. Paragraph 11.17 refers to evaluating all options. Whilst the Policies Map shows transport improvement areas the New Local Plan does not commit itself to any route and it is evident that no firm decisions have been taken in that respect.

45. It may have been preferable for closer liaison with Thurrock to take place in order that its reservations might be better understood. Local authorities should work with others regarding transport infrastructure. However, whatever the perceived merits of an additional link to Canvey Island, the New Local Plan refers to it only in general terms and does not specify how it should be achieved. Scope for further engagement therefore remains and the DtC has not been failed in this respect.

### **Conclusions and Next Steps**

46. Bringing matters together engagement in the preparation of the New Local Plan can, in general terms, be said to have been active and on-going. There was a 'gap' in the overseeing strategic planning bodies in south Essex between 2014 and 2016. Whilst this may have diluted collaborative activities I am satisfied that it did not de-rail the process. Indeed, it would be unreasonable to ignore the longstanding links that exist at both officer and member level. The degree of interaction has not been either passive or irregular but has been sustained.



47. However, it is sometimes difficult to see how the work undertaken fed into and influenced the preparation of the New Local Plan and what the concrete actions and outcomes were. Engagement should also be constructive. This goes beyond the preparation of a joint evidence base, important though that is, but also encompasses the production of effective strategic planning policies and a positive approach. There would be no point in holding a continual dialogue if, at the end of the day, the policies produced ignored important cross-boundary dimensions. Unfortunately at Castle Point this is what has happened.

48. In specific terms the housing policies have failed to address how unmet need will be dealt with across the housing market area. This is exacerbated by the lack of consideration of this matter when reducing the housing target by 50%. Whether these policies are justified is a matter of soundness. However, there have been fundamental shortcomings in the steps taken, or not taken, to secure the necessary cooperation on the strategic cross-boundary matter of housing. In addition, the Council has not made every effort to consider how it might deal with the significant unmet need for traveller sites in south Essex arising, in particular, from Basildon.

49. Therefore my final conclusion is that the **duty to cooperate has not been complied with**. Clearly this is not the outcome that the Council would have wanted and it is not a view I have reached lightly or without full consideration of the material put to me.

50. Nevertheless I must recommend non-adoption of the New Local Plan under Section 20(7A) of the 2004 Act. In this situation the PPG advises that the most appropriate course of action is likely to be for the local planning authority to withdraw the plan under Section 22 and engage in necessary discussions and actions with others. That is the course of action I would favour. The alternative is to receive my report but the content of this would be substantially the same as this letter. This is a matter for you to consider but please advise the Programme Officer how you wish to proceed in due course.

*David Smith*

INSPECTOR

5 January 2017