

Draft London Plan Legal, Procedural and General Matters

Duty to Co-operate

M4. Does the duty to cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004 apply to the Mayor's preparation of the Plan?

The GLA's answer to PQ7 clarifies the Mayor's position on the application of the Duty to Cooperate (DTC) in relation to the Draft London Plan (DLP). As with the examination of the previous London Plan (Further Alterations to the London Plan – FALP - adopted March 2015), the Mayor asserts that the DTC applies only to local planning authorities and the preparation of local development plan documents and other development plan documents, but not the London Plan because it is a spatial strategy. This was debated at the last London Plan examination (FALP examination). While accepting the London Plan is not a development plan document, the Inspector demurred from the GLA's view that the DTC did not apply in the case of the London Plan - see paragraph 8 of his report of November 2014. He referred to Section 33A (3) (d & e) that states that the duty applies to any activities that prepare the way of support the preparation of development plan documents. The DLP is clearly a activity that supports and prepares the way for local plan and development plan documents. We disagree with the GLA's argument in paragraph 10 of its response that the DLP does not 'prepare the way' for an LPD or DPD or is a 'supporting activity' for other planning documents. The DLP is a highly directive document and contains numerous examples of policies that instruct the London LPAs on what they must do when preparing local plans. It also goes further and undertakes certain functions that are central to local plan production such as assessing need, identifying land supply, stipulating levels of affordable housing, stipulating tenure etc.

We note that the Town and Country Planning (Local Planning) (England) Regulations 2012 defines the Mayor of London as a 'prescribed person' to whom the DTC applies.

The PPG at the time of the FALP examination referred to the Mayor being subject to the duty to cooperate (Para 005, Reference ID 9-005-20150402).

The updated PGG refers to the Mayor being subject to the DTC.

It is necessary to unravel why we are having this argument. It is because the Mayor is reluctant to take-on responsibility for the duty. This becomes clear in paragraph 19 of the Mayor's response to PQ7 and the discussion about how the Mayor has engaged with authorities outside of London. In terms of the DTC, the Mayor asserts that it does not extend to cooperating with planning bodies outside of London. He is only required to 'inform and consult' under the GLA Act. This is the line of argument that the Mayor has taken since at least 2014 when the current London Plan was submitted for examination.

This has resulted in a good deal of confusion as to who is responsible for discharging the DTC and managing cross boundary relations with authorities outside of London as local plans are brought forward.

Owing to this confusion - confusion that neither the Mayor nor the boroughs have been especially anxious to rectify - the London boroughs have been able to maintain at local plan examinations that certain strategic matters relating to London, such as responsibility for planning for the unmet housing need (established to be 6,600 dwellings per annum – see paragraph 33 of the FALP examining inspector’s report) is a matter for the Mayor and the GLA to deal with rather than themselves. In its representations the HBF referred to examples of this at London local plan examinations, such as the recent (and ongoing) Bromley local plan examination where the local authority has very firmly advanced the view at the hearing sessions that the DTC is the responsibility of the Mayor, citing the FALP Inspector’s report, paragraph 8 in its defence. This is an important issue, so we repeat here an example in our representations drawn from Bromley Council’s Local Plan Examination from its Statement in response to the Inspector’s Question 3 (examination document reference LBB/LP/002). This response illustrates how confused the situation has become across London:

“The Statement of Compliance with the Duty to Co-operate details the unique situation in London which has its own spatial development strategy, the London Plan. This means that planning for strategic matters and co-operation for London and its relationship with the South East region generally takes place at the London-wide level to inform the London Plan and is led and co-ordinated by the Greater London Authority (GLA). Paragraph 2.3 of SD9 explains that:

“Many of the strategic matters and key issues that would be addressed through compliance with the Duty to Co-operate are, in London, a matter for The London Plan and / or addressed through the preparation of the London Plan. This includes the overall amount of housing to be provided for London, borough by borough.”

The Council’s response to LB Croydon’s representation in relation to the strategic matter of housing is set out in Summary of Responses to Representations (SD18). This explains that neither Bromley nor Croydon can meet their Objectively Assessed Need on their own, but that as both authorities are part of London, and form part of the London Strategic Housing Market Area, this is primarily a matter dealt with by the London Plan 2016.”

We have provided an annex to this matter documenting other examples.

The position adopted by the London LPAs contrasts with the current London Plan which makes the following statement at paragraph 2.14:

“While the Mayor will promote inter-regional work on key strategic issues, engagement at a more local or sub-regional level will also be important, in line with the duty to cooperate.”

(Our emphasis)

Paragraph 1.2.4 of the Mayor’s Housing SPG (published March 2016) elaborates further:

“The Mayor will complement cross-boundary engagement undertaken by boroughs through their duty to cooperate in addressing his own responsibilities to inform and consult with neighbouring authorities under GLA legislation and in preparing the Full Review of the London Plan.”

These statements post-date the FALP Inspector’s report and make it clear that the Mayor considers that the London local planning authorities are responsible for the duty to cooperate.

This confusion needs to be resolved. The failure of London to plan for the strategic housing shortfall has become more serious as time has moved on and as supporting local plans in London have demonstrated their inability to grapple with this issue. The result is that planning for London’s housing shortfall is left in limbo as both sides argue that the other is responsible for discharging the legal requirements of the DTC. The situation could become worse under

the new London Plan if it remains unclear who is responsible for strategic planning with planning bodies in the wider south east.

Aside from the specific legal question, in the spirit of effective planning, the Mayor is wrong to continue to assert that the DTC does not apply to managing London's external relations with the Wider South East. The Government through the PPG is clear on this matter. The PPG 006 Ref ID 9-006-20160519 states that:

"The duty to cooperate applies in London where boroughs, alongside local planning authorities in the rest of England, are required to cooperate with other local planning authorities, county councils and prescribed public bodies..."

...Cooperation between the Mayor, boroughs and local planning authorities bordering London will be vital to ensure that important strategic issues, such as housing delivery and economic growth, are planned effectively."

Managing Greater London's strategic cross-boundary challenges clearly is a strategic matter that is germane to the preparation of the spatial strategy for London. The Mayor is adopting an overly legalistic interpretation of his responsibilities. Irrespective of the legal position, the Mayor could, and should have, volunteered to undertake this responsibility on behalf of the 35 London local planning authorities (LPA - the 32 boroughs, the City of London and the two development corporations). The Mayor is much better placed than the individual LPAs to discharge the DTC on their behalf and can do so far more effectively and with greater authority.

It is the HBF's view that the Mayor must assume responsibility for the Duty to Cooperate in full – that is managing relations within London and outside – because as the plan-maker responsible for assessing development needs, and deciding the most appropriate strategy for accommodating those development needs, it is axiomatic that he must also assume responsibility for cooperating with the Wider South East (and potentially further afield too) on behalf of the 35 local planning authorities of London if those needs cannot be accommodated in full within Greater London's boundaries. Planning for these strategic needs cannot be managed effectively by the 35 LPAs acting individually. On a practical basis, and using the question of housing as an example, it would be impossible for a London LPA to know how much of the housing shortfall it was responsible for negotiating (whether the 6,600 dpa shortfall in the current London Plan 2015 or the new 1,000 dpa in the new DLP) because the OAN is assessed on a London-wide basis. It is assessed on a London-wide basis because London is regarded as a single housing market area. Only the Mayor, with his strategic plan-making powers, can do this effectively on behalf of the 35 LPAs.

Because the shortfall is not apportioned among the 35 LPAs the LPAs are unable to know how much of the unmet housing need they are responsible for negotiating. This means they are unable to plan effectively to accommodate London's unmet housing need. This undermines effective and positive plan-making required by the tests in paragraph 182 of the NPPF 2012.

Responsibility for the DTC in London – including managing strategic issues with authorities outside of the Greater London area - needs to be clarified once and for all through this examination.

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HBF/DRAFT LONDON PLAN, DECEMBER 2018

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Annex to Matter 4

Extracts from Inspector's reports on London local authority local plans: conclusions on the duty to cooperate and arrangements for dealing with the unmet housing need.

Particularly relevant passages are underlined.

From the inspector's report considering the Hounslow Local Plan (paras 28 and 29, July 2015)

28. London as a whole has been recognised as a single Housing Market Area through successive London Plan Examinations in Public, and as a result the Mayor has had a role in coordinating the work of London boroughs with planning authorities in the South East and East of England. Two workshops were held with representatives from planning authorities across the wider south east and London – one on strategic planning generally (March 2013) and one specifically on housing/demography (October 2013). Emerging from these discussions has been the establishment of an officer working group which has met four times since October 2013, facilitated by a consultant engaged by the Mayor. Entitled the Strategic Spatial Planning Officer Liaison Group (SSPOLG) and chaired by a senior GLA officer, this group of officers from London and across the wider south east has developed a housing, demography and economic focus.

29. Because the Mayor is seeking to address London's housing needs within the London Housing Market area and because Hounslow Council intends to address its own housing needs within the Borough, the Council has not sought to negotiate with other Councils to distribute the shortfall in housing provision to other areas using the duty to cooperate. However, as the housing supply proposed in the Examination Plan leaves a significant shortfall in supply over the Local Plan period, the Plan strategy needs to provide for early plan review which is discussed in the Report in order to secure additional supply.

From the inspector's report for the Croydon Local Plan (para. 64, January 2018)

So, in setting a housing requirement of 32,890, which is robustly justified by capacity analysis, the partially reviewed Croydon Strategic Policies exceed the target of 28,700 for Croydon set by the London Plan and so, conform both with it and the legal requirement to do so. In any event, Croydon sets its requirement as a minimum. The difference of 11,259 between Croydon's housing requirement set in its reviewed Local Plan and the local OAN identified in its SHMA is a component in a London-wide housing market. As several other London Boroughs commented in their responses to Croydon's consultations under the Duty to Cooperate, the matter is one to be considered in future iterations of the London Plan.

From the inspector's report for the Camden Local plan examination (para. 10, April 2017)

Housing is one of the key strategic matters on which the Council has sought to develop common approaches through cross-boundary working. Cooperation has mainly focused on work with other London boroughs and the GLA. However, as set out in the Mayor for London's Housing Supplementary Planning Guidance (SPG) (2016), the GLA has also undertaken engagement with authorities in neighbouring regions on cross-boundary strategic planning and coordination issues. This has included the sharing of data on demographic assumptions and out-migration in relation to housing needs. As a strategic planning body, and given the practicalities of engaging with numerous authorities outside London, I consider that the GLA is appropriately based to undertake cross-regional work in this regard.

From the inspector's report for the Sutton Local Plan examination (paras 26 and 27, January 2018)

26. *In line with the PPG the Council has considered increasing the total housing figures in order to help deliver the required number of affordable homes. Over the plan period this amounts to 15,270 according to the SHMA. However, the housing requirement is based on that in The London Plan. Furthermore, increasing housing supply to meet all affordable housing need would equate to about 5 times the identified capacity. This is unrealistic given the constraints and likely sustainability impacts on the Borough.*

27. *Neither the implications for labour supply nor affordable housing therefore warrant increasing the housing target. In the specific London context, where for planning purposes the capital is a single housing market, the figure in Policy 1 of 6,405 new homes over the plan period is justified as the housing requirement for Sutton.*

From the inspector's report considering the Hammersmith & Fulham local plan (para 34, December 2017)

I am mindful that at present the housing market area of London informs the overall London housing need which is disaggregated across the Boroughs to ensure the delivery of the identified requirement; the Council has sought to engage with neighbouring councils and the GLA, who do not raise any conformity concern, with regard to this strategic issue. I have noted concerns that the London-wide housing needs, in addition to the wider south east of England, and the overall requirement contained in the London Plan may not be met. However, a shortfall of the latter is not certain and the Plan satisfies the London Plan target (whilst exceeding the forecast needs of the Borough). Whilst the provision of necessary housing across and beyond London remains an area upon which multi agency cooperation is required, this is a matter to be addressed as part of any new London Plan. I am satisfied that for the purposes of the submitted Plan the Council has, through its collation of evidence and liaison with key partners, adequately discharged its duty to cooperate at this time.

From the inspector's report considering the Richmond Upon Thames local plan (paras 34 to 36, April 2018)

34. *I have noted concerns that the London-wide housing needs, in addition to those of the wider south-east of England, and the overall requirement contained in the London Plan may not be met. However a shortfall of the latter is not certain. I note that some nearby Boroughs are seeking to provide a greater level of housing than the London Plan identifies as a minimum and that the strategic issue of housing provision across the south-east is more properly a strategic matter for London as an administrative whole and other relevant Councils.*

35. *I am aware that a new London Plan is emerging which will revisit the issue of housing provision across the city and engage within the wider south-east of England on housing requirements. This is a key point and opportunity for the Council to address positively the content of any new London Plan and challenge itself to review the content of its own Plan to accommodate strategic changes. This may necessitate a reassessment of its currently identified constraints, for example a review of its designated GB and the urban capacity of its existing sites and centres.*

36. *In the interim, I am satisfied that the submitted Local Plan is based upon robust evidence, is justified by the evidence base, is consistent with national policy and is in general conformity with the London Plan as regards housing. Policy LP 34 establishes the minimum housing target and the broad areas within the Borough which will accommodate the growth. For the effectiveness of the Plan in the immediate term, I recommend the Council's proposed modification to the text of Policy LP 34. This clarifies that the indicative targets are not to be considered limits and that the overall housing target is to be exceeded in addition to clarification that a potential review of the Local Plan may be required following the adoption of any new London Plan (MM3).*

From the inspector's report considering the Redbridge local plan (paras 30 to 32, January 2018)

30. *The NPPF provides that to boost significantly the supply of housing, local planning authorities should ensure that their local plans meet the full, objectively assessed needs for market and affordable housing in the housing market area as far as is consistent with its policies. However, The London Plan 2015 does not expect Boroughs to identify their*

own objectively assessed needs. Rather Policy 3.3 provides that Boroughs should seek to achieve and exceed the relevant minimum annual average housing target in Table 3.1. Where possible this should be augmented with extra housing capacity to close the gap between identified housing need and supply.

31. For Redbridge the annual monitoring target to 2025 is 1,123. By rolling this figure forward Policy LP2 indicates that the Council will deliver a minimum of 16,845 new dwellings over the plan period. This is consistent with The London Plan and can be taken to be the housing requirement for Redbridge.
32. If completions across the capital for 2013-2015 have fallen below those assumed in the London Strategic Housing and Land Availability Assessment Redbridge Local Plan 2015-2030, (SHLAA) then this backlog will presumably be 'captured' in the next London-wide assessment of housing need. In this regard a revised draft of The London Plan was published for consultation in December 2017. The final version of that document is some way off and, in particular, the housing target for Redbridge has not been settled. There is still too much uncertainty about this and over the implications of Brexit to warrant any adjustment to the current London Plan target. Policy LP2 is accordingly justified.

END