



Independent Examination: East
Cambridge Single Issue Review (2022)
Matter 1: Procedural/Legal
Requirements

Church Commissioners for England

October 2022

Matter 1: Procedural / legal requirements

Question 2: “If the DtC [Duty to Cooperate] was engaged, is there clear evidence that the Council has engaged constructively, actively and on an ongoing basis with neighbouring authorities and prescribed bodies in accordance with section 33A of the 2004 Act in respect of any such strategic matters with cross-boundary impacts through the preparation of the Plan?”

- 1.1. In May 2022 East Cambridgeshire District Council (‘the Council’) published their “Statement of Compliance with the Duty to Cooperate” Evidence Report, which detailed their compliance with Section 110 of the Localism Act 2011.
- 1.2. Section 110 of the Localism Act introduced the “duty to co-operate” (‘the duty’). The duty requires planning authorities, county councils and prescribed bodies to co-operate effectively with each other when preparing:
 - Development plan documents;
 - Other local development documents;
 - Marine plans; and
 - When undertaking activities that prepare the way for the preparation of, or the support of the preparation of, the above documents.
- 1.3. Section 110 states that the duty only applies to activities which are a ‘strategic matter’. Section 33A (Part (4) of the Planning and Compulsory Purchase Act 2004 defines ‘strategic matter’ as:
 - a) *“sustainable development or use of land that has or would have a significant impact on at least two planning areas, including (in particular) sustainable development or use of land for or in connection with infrastructure that is strategic and has or would have a significant impact on at least two planning areas, and*
 - b) *Sustainable development or use of land in a two-tier area if the development or use –*
 - i) *is a county matter, or*
 - ii) *has or would have a significant impact on a county matter”.*
- 1.4. The Council identifies the following prescribed bodies:

Local Planning Authorities

 - King’s Lynn and West Norfolk;
 - West Suffolk (Forest Heath and St Edmundsbury);
 - South Cambridgeshire;
 - Huntingdonshire; and
 - Fenland.

County Councils

 - Cambridgeshire County Council;

- Norfolk County Council; and
- Suffolk County Council.

Other prescribed bodies

- Environment Agency;
- Historic England;
- Natural England;
- Homes England;
- NHS Cambridgeshire and Peterborough Clinical Commissioning Group;
- National Health Service England;
- Office of Road and Rail;
- Highways England;
- Marine Management Organisation; and
- Cambridgeshire and Peterborough Combined Authority.

- 1.5. Whilst strategic planning remains in the stewardship of the individual planning authorities, the Combined Authority has a wide range of projects that it delivers for its members and residents, to empower and level up wellbeing and economic growth across the region. The Combined Authority provide support and funding for housing and transport infrastructure – which can be considered ‘strategic matters’ under the definition laid out in Section 33a of the Planning and Compulsory Purchase Act 2004.
- 1.6. The Council’s Duty to Cooperate Statement identifies the Combined Authority as a ‘Prescribed Body’; however, no comments have been received from the Combined Authority in response to the Council’s consultation request.
- 1.7. It is the Church Commissioners’ view that a lack of response should not be considered to mean that there are no issues or matters that the Prescribed Bodies deem necessary to take into account in the preparation of a Plan. Similarly, the Commissioners would also like to highlight the lack of response from other Prescribed Bodies, as outlined in the Duty to Cooperate Statement.
- 1.8. The Council’s Single Issue Review Consultation document (July 2022) states in Issue 9 (page 12) that the Council liaised “*very closely with neighbouring districts in the preparation of the SIR*”. However, from the five local authorities consulted, only South Cambridgeshire and Huntingdonshire District Council provided a response confirming they did not wish to respond. It is the Commissioners’ view that the lack of response from neighbouring authorities cannot constitute as proper cooperation and engagement.
- 1.9. The Commissioners understand that officers from the Council engaged with officers from many of the Prescribed Bodies in bi-monthly “Planning Policy Managers” meetings. However, there is no evidence provided to demonstrate that engagement in the context of the Single Issue Review was constructive, ongoing and active, as is the requirement of section 33A the Planning and Compulsory Purchase Act 2004.

- 1.10. Furthermore, the Commissioners disagree with East Cambridgeshire’s decision that *“there is no rationale for preparing and consulting on any Statement of Common Ground”* (Duty to Cooperate Statement, May 2022 para 5.1.2.) for the Single Issue Review in the context of the duty. Paragraph: 010 Reference ID: 61-010-20190315 of the national Planning Practice Guidance states:
- “It [statement of common ground] 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.”*
- 1.11. Such a statement would significantly strengthen the evidence base demonstrating the Council’s compliance with the duty and provide the further evidence required to understand whether the Council’s housing requirement is appropriate with consideration of neighbouring authorities.
- 1.12. The Commissioners understand that the ‘duty to cooperate’ does not mean a ‘duty to agree’, however, the lack of any formal response from the majority of identified Prescribed Bodies and the apparent lack of evidence to demonstrate engagement has been constructive, ongoing and active (as per the the requirement of section 33A of the 2004 Act) is a notable omission within East Cambridgeshire District Council’s Duty to Cooperate Statement.



This report has been prepared by for the client and on the understanding that it will be made publicly available. All copyright and other proprietary rights in the report remain the property of Deloitte LLP and any rights not expressly granted in these terms or in the Contract are reserved. Deloitte LLP accept no liability to any other party who is shown or gains access to this document. The information contained within this report is provided to assist the client with representation in the plan-making process. The report makes use of a range of third-party data sources. Whilst every reasonable care has been taken in compiling this report, Deloitte LLP cannot guarantee its accuracy.

Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 1 New Street Square, London, EC4A 3HQ, United Kingdom. Deloitte LLP is the United Kingdom affiliate of Deloitte NSE LLP, a member firm of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"). DTTL and each of its member firms are legally separate and independent entities. DTTL and Deloitte NSE LLP do not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.