

Doing your duty – practice update



The 'duty to cooperate' (the duty) was introduced by the Localism Act in November 2011. The Act inserted a new Section 33A into the Planning and Compulsory Purchase Act 2004. This placed a legal duty on all local authorities and public bodies (defined in regulations) to 'engage constructively, actively and on an ongoing basis' to maximise the effectiveness of local and marine plan preparation relating to strategic cross boundary matters.

The National Planning Policy Framework (NPPF) provides amplification on how strategic planning matters should be addressed in local plans (paragraphs 178-181). Local planning authorities are expected to work 'collaboratively with other bodies to ensure that strategic priorities across local authority boundaries are properly coordinated and clearly reflected in local plans' (paragraph 179). 'Strategic priorities' to which local planning authorities should have particular regard are set out in paragraph 156 of the NPPF.

Specific guidance on how the duty should be applied is included in the National Planning Practice Guidance (NPPG). This makes it clear that the duty requires a proactive, ongoing and focussed approach to strategic matters. Constructive cooperation must be an integral part of plan preparation and result in clear policy outcomes which can be demonstrated through the examination process.

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Introduction

Duty to cooperate practice is evolving both in terms of how local planning authorities are addressing it and how it is tested at examination. It is clear that a period of transition is coming to an end. Most of the case study councils featured here, that passed the duty test, were examined soon after the Localism Act came into force and consider that compliance is now being tested much more rigorously. With more experience informing the understanding of what the duty requires in practice, important learning is emerging from the local authorities that have been through examination more recently.

This practice review considers the experiences of a selection of local planning authorities in implementing the duty. It draws on Inspectors' letters and reports from those found to have met the duty and those who have not and draws out lessons learned and reflects on possible good practice.

"There was an understanding from the start that the duty is more than a procedural requirement – it is how authorities are expected to undertake strategic planning, and not only about speaking to your neighbours."

Jill Thompson, Ryedale DC

Duty to cooperate: key learning points

The process of cooperation

1. The duty is about good strategic planning based on co-operation
2. The onus is on the submitting authority to demonstrate effective cooperation
3. Start discussions early and carry on
4. Decisions need to reflect the evidence
5. Be rigorous, pro-active and persistent
6. Engagement needs to be constructive
7. Ensure partnership arrangements are fit for purpose
8. Work with new partnerships in strategic planning
9. The plan is tested on how it was prepared – not future arrangements

Evidence

10. Plans should reflect joint working and cooperation to address larger than local issues
11. Plans need to reflect Housing Market Assessments and contribute to the objectively assessed needs of the wider market area
12. Have an audit trail of cooperation to demonstrate outcomes

Other lessons

13. There is a need for corporate and councillor support and resourcing
14. Identify strategic priorities

Duty to cooperate: practice update

The process of cooperation

1. The duty is about good strategic planning based on co-operation

Some local planning authorities recognised early on that although the process for managing strategic planning issues was changing with the abolition of regional strategies, the need to address strategic issues would remain.

“Strategic planning is very much at the heart of what we’ve always done – we’ve always known that we have to work with other authorities, particularly with the working arrangements that were already in place with nearby authorities. We knew how important it was to continue addressing this when working on the local plan.”

Dave Simpson, Solihull MBC

Brighton & Hove City Council’s plan, although yet to be found sound at examination, has met the duty legal test. From early on they understood the importance of strategic planning and the duty and steps were taken to ensure compliance.

“We were immediately aware it was important as there is no way all our housing needs can be met within our own tightly constrained area. We identified a senior member of the policy team who was given specific responsibility for ensuring compliance with the duty which meant they effectively became the in-house expert on what was required and ensured that necessary actions were effectively identified and implemented”

Liz Hobden, Brighton & Hove City Council

Ryedale District Council took a strategic and high level approach to its strategic planning issues. Its Local Plan Strategy Development Document was delayed when the duty came in, along with publication of the NPPF, so it took stock and determined measures to achieve compliance. This involved first agreeing some high level principles in terms of what the role of the Council should be in a sub-regional spatial context, before identifying strategic issues and policy implications.

“It is a very powerful tool if you get agreement over a strategic approach because it is within the gift of local authorities to establish the agenda.”

Jill Thompson, Ryedale DC

2. The onus is on the submitting authority to demonstrate effective cooperation

All of the case study authorities with adopted plans compiled and submitted a 'Statement of Compliance with the Duty to Cooperate', a 'Cross Boundary Issues Statement' or equivalent background paper. These documents listed and detailed their strategic issues, the organisations that may be affected, the organisations which were engaged and the nature and outcome of cooperation. This approach worked well for those authorities that submitted plans in 2012.¹

West Lancashire DC found the production of its 'Statement of Compliance' and tabulated record of cooperation of engagement very helpful and would use this approach again, expanded to accommodate further details. This would include:

- developing Memorandums of Understanding (MoU) and Statements of Common Ground which are reflected in clear policy outcomes
- the potential for joint committees to discuss and agree at an early stage how to address issues joint working with other local planning authorities, e.g. to support the needs of Liverpool's and other local economies,

potentially through joint strategic housing market assessments (SHMA) and employment studies for the Liverpool City Region.

Brighton & Hove City Council found that while adequate engagement can lead to legal compliance with the duty it does not necessarily result in a sound plan. The Inspector concluded:

'I accept that the Council has sought to engage positively with neighbouring authorities in the region. My initial conclusion is that it has met the legal requirement under S.33A of the Act. Unfortunately, the cooperation with neighbouring councils has not led to a positive outcome, in the sense that none has offered to assist Brighton and Hove by offering to meet all or part of the objectively assessed needs that cannot be met in Brighton and Hove.'

Joint statements on process are only as good as far as they go. To be of real worth, joint statements must result in outcomes that are clearly translated into planning policy.

¹ See weblinks in appendix 1 for examples



The role of councillors in the process

Councillor engagement is essential in demonstrating and fulfilling the duty. They are required to actively engage in the process, negotiate and agree strategic planning outcomes and policies.

Councillor involvement in strategic planning work in the case studies varied depending on the timing of plan making, the existence of established partnership structures, historic joint working, and the range of issues requiring cooperation. It was recognised that establishing councillor joint working arrangements was an important element of demonstrating that strategic planning is ongoing and was key to the evidence presented at the Solihull Examination.

Winchester City Council noted that although there is no absolute requirement to have formal joint arrangements, councillors should discuss whether there are any strategic matters which require such arrangements. The minutes of these meetings would show that proper consideration to setting up such arrangements had taken place even if it was decided that they were not necessary.

3. Start early and carry on

Cooperation has to be early enough in the process to ensure any outcomes influence the content of the plan. Case study councils with sound plans all acknowledge that in future they will need to focus more on demonstrating cooperation from an early stage in the process, with a clear audit trail and more emphasis on outcomes.

Among local planning authorities that had failed the duty, it was often the case that there had been too little engagement with neighbouring authorities and so very little opportunity for them to genuinely influence the outcome of the plan. Engagement can't be left to the last minute. It must be shown that attempts to engage other authorities were made at a time sufficiently early in the process when the content of the plan could be changed to take account of any outcomes of that work.

Meeting the duty requires a coordinated, on-going process for resolving issues and securing sustainable development, not just consultation. It requires meaningful engagement with other local planning authorities and prescribed bodies, particularly where a new published strategy will differ from that previously being pursued for example those agreed under previous arrangements/ the Regional Strategy.

Solihull MBC felt that the duty's requirement for strategic cooperation to be 'ongoing' was one of the most important lessons. In its case there were still some potentially big strategic challenges to be resolved in relation to Birmingham's growth. Although Birmingham and other neighbouring authorities made it clear that they did not expect Solihull MBC to meet any of their housing needs at the time the plan was being prepared, this could change as plans elsewhere in the area are progressed. The Inspector acknowledged that the partnership arrangements were strong and ongoing but did highlight the need for an early review of the Solihull plan should the context change.

Authority Monitoring Reports are a useful vehicle for recording ongoing engagement.

4. Decisions need to reflect the evidence

Preferred strategic approaches must be based on evidence – not the other way round; a point made in several cases where the authority was deemed to have failed to meet the duty. In one case, a local planning authority was judged to have agreed its strategy before the outcome of work to update housing numbers had been known. In another, it was the Inspector's view that the authority only initiated discussion on meeting housing needs very late in the process; after it had already determined the level of housing it was intending to plan for. Inspectors' letters make clear that councils need to have considered all relevant evidence before agreeing a preferred strategy.

The evidence base used by a local planning authority for decision making must also take on board the development needs of others. In some of the case studies, Inspectors noted that no in-depth analysis of the issues

facing the local planning authorities in the area had been undertaken and that no robust assessment of how those issues should be addressed had been prepared. This approach was considered to be, at best, 'shaky'.

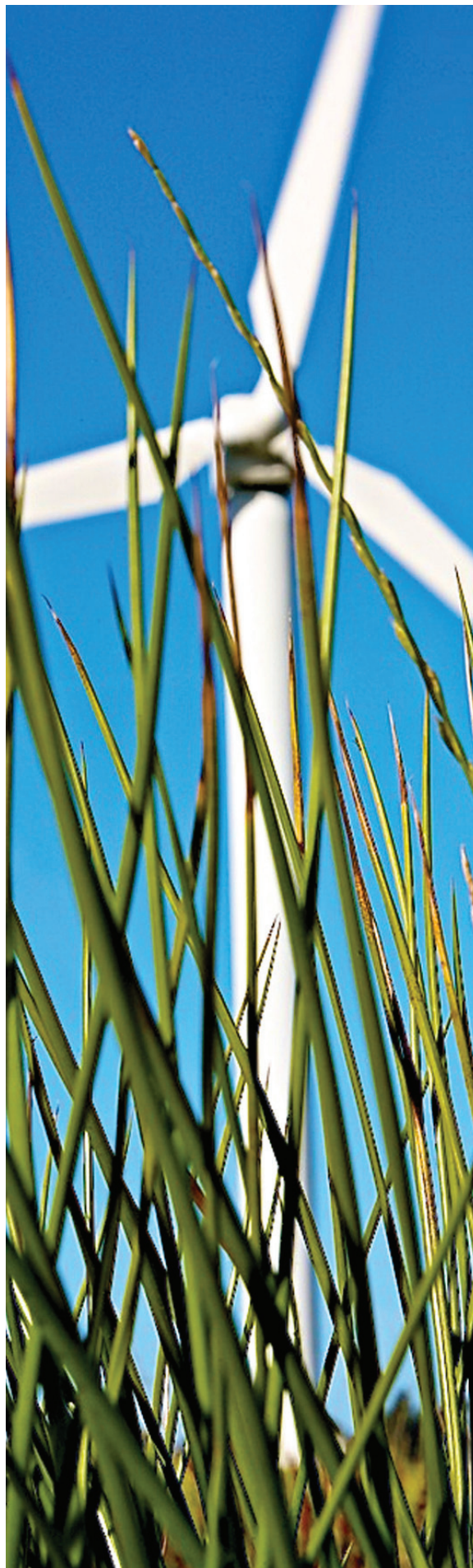
Inspectors are clear that councils should give detailed and rigorous consideration to the development needs of nearby authorities and draw robust conclusions with regards to whether or not any of those needs could be met in a sustainable way within their district.

5. Be rigorous, pro-active and persistent

Other local planning authorities and prescribed bodies need to be contacted at an early stage and actively pursued. A non response to requests for meetings to explore strategic issues and joint working must be followed up – it could just be that the right person didn't see the letter or email containing the invitation. Also, no response from an authority on duty to cooperate issues should not be taken as an indication that they have no comment to make or that there are no issues to be resolved.

In Brighton & Hove City Council's experience the level of cooperation received was mixed and engagement with one neighbouring authority had reached an impasse. Commenting on this the Inspector considered that the City Council had been 'too soft' and should have been more assertive in its approaches.

The expectation is that all local planning authorities, particularly those with tightly constrained boundaries who cannot meet their housing requirements, will leave 'no stone unturned' and do everything they can in seeking cooperation from authorities who may be able to assist and will need to be clear and assertive in their approach and have a clear record of actions taken.



6. Engagement needs to be constructive

It is important to demonstrate that key decisions are fully shared and supported by councils across strategic planning areas. In most cases, representations at examination from nearby councils on unresolved strategic planning issues are being taken by an Inspector as a clear indication of a lack of constructive engagement.

Although the duty is not necessarily about gaining agreement, where local planning authorities have agreed on policy issues, this helps demonstrate that cooperation has been undertaken in a positive manner. A number of Inspectors' letters have made it clear that even if it is felt that approaches to authorities are not going to result in the desired outcomes on strategic issues, genuine attempts to engage must be made regardless.

In one case study, the Inspector did not proceed to examine a plan against the soundness tests as he considered that there was a risk that the plan would not pass the 'positively prepared' test. This was because there was insufficient evidence to show that the plan had been based on effective joint working on its strategic priorities. In another case study, while an Inspector felt that the local planning authority had 'actively sought to discharge the duty on an 'ongoing basis', he was concerned that their evidence didn't adequately show that they had 'engaged constructively' as required by the duty. In this case the Inspector advised that preparation of a joint SHMA to help the local planning demonstrate compliance in future.

The outcomes of cooperation, as well as the process, are critical evidence of cooperation. For example, in a statement or topic paper prepared in advance of examination, if that evidence and outcome is not reflected in policy e.g. housing provision reflecting an up to date SHMA, then the duty may not have been met.

Experience has shown that constructive engagement is easier where historical cooperative arrangements have existed and have continued, albeit in different forms. Boards that bring chief executives and leaders together, and sub-regional partnerships with joint councillor committees, are strong working

vehicles. All these arrangements require ongoing corporate support.

The local planning authorities in Coastal West Sussex and Greater Brighton have prepared a joint Local Strategy Statement² underpinned by a strategic evidence base, including a study of objectively assessed housing needs on a sub-regional basis. This helps the authorities take a common approach to strategic planning and investment and agree strategic priorities for their local plans³, and can be used as a basis to engage with other local authorities on strategic issues in the wider context too, i.e. between adjacent or interlocking housing market areas.

7. Ensure partnership arrangements are fit for purpose

The need for, and the extent of engagement with other local planning authorities is based on the existence and nature of their strategic planning issues. Many authorities interviewed recognised that there was a limit to how much they could rely on their established joint working arrangements to address their strategic issues if they did not fully reflect their functional geography. Crucial to the success of local planning authorities in deciding who to engage with was the acknowledgement that there are likely to be new relationships outside their immediate strategic planning area which might need to be developed.

In some cases, this means new partners and new relationships at both officer and councillor levels which will take time to develop. Brighton & Hove City Council recognised that as well as further developing their historic relationships with the authorities in East Sussex and along the coast, they needed to look more diligently to the north and west.

Reigate and Banstead BC cited the Gatwick Diamond grouping as providing a helpful mechanism for cooperation and resolution of issues through both officer and councillor groups. Through this grouping, an MoU and a

2 Coastal West Sussex and Greater Brighton Local Strategic Statement www.brightonbusiness.co.uk/.../ni20140206.148678_52f3a2f71f58.pdf

3 PAS case study Strategic Planning in Coastal West Sussex and Greater Brighton <http://goo.gl/OiKR46>



Local Strategic Statements were prepared at an early stage of plan-making helping to meet the requirements of the duty by working out issues in advance of plans being submitted and avoiding surprises at examination. However, this process also highlighted the complexity of working with different geographies, the challenges of engaging with LEPs, and meeting housing needs across wider market areas.

Councils recognise that the work of LEPs, particularly given the role of Strategic Economic Plans and infrastructure funds managed by LEPs in the delivery of local plans will need to be reflected in the preparation of their plans.

With regard to waste, cooperation with authorities to which waste is being exported is key to identifying any issues which might inhibit future exports. West Sussex County Council contacted all waste planning authorities who had received any type of waste in the most recent year, and any authority which had received an average of 50 tonnes of hazardous waste or more in the previous four-year period to cover historical and emerging trends.

In some cases the emerging policy landscape has spawned joint working arrangements. The local authorities in Hertfordshire are working to establish formal infrastructure and planning partnerships and have appointed a coordinator specifically to help administer joint working.

8. Work with new partnerships in strategic planning

Some local authorities have struggled to get their respective LEP to engage with their plan-making. In part this was because, at the time, they were then very new bodies, initially with very little resources, and were still developing their role in relation to planning. Also in many cases, the LEP areas did not reflect the strategic planning geographies that local planning authorities are working in.

Ryedale DC identified the need to make links with the LEP in agreeing priorities in its Strategic Economic Plan and ensuring it reflects the role of place in their plan.

“The trick is to keep the momentum going and ensure that working with the LEPs doesn’t result in losing the wider spatial strategy.”

Jill Thompson, Ryedale DC

Dacorum BC recognises that demonstrating its ability to meet its objectively assessed housing need will require cross-boundary working and agreement and closer working with the Hertfordshire LEP. Together, the organisations need to coordinate housing and economic growth to provide spatial expression for planned growth, especially around the growth points of Watford, Hemel Hempstead and Stevenage, as well as migration from Luton.

9. The plan is tested on how it was prepared – not future arrangements

It is the strategic cooperation that has influenced the current draft plan that is tested at examination. This is stressed in several Inspectors' reports. Mechanisms need to be put in place to allow co-operation early enough in the plan-making process to ensure that the plan is truly based on a collaborative process. There needs to be robust evidence of collaborative engagement. This can include joint committees, joint planning policies, and MoU and the outcomes of collaborative working embedded in policies.

It is not sufficient for an authority to acknowledge that it may have to address potential unmet needs from within its own HMA and adjoining HMAs by including a proposed contingency approach in their plan to trigger a review with neighbouring authorities to agree a future strategic framework for local plans. The plan has to be assessed on the level of cooperation that had led to the current draft plan and not what may happen in the future.

The examination and hearing is at one point in time and details of existing and future joint working arrangements will be important to demonstrate ongoing cooperation. Mechanisms should be in place to ensure that strategic issues are addressed on an ongoing basis to deal with changing context and evidence (effective monitoring frameworks), supported by robust working and governance arrangements (generally the more formalised, the better).

Evidence

10. Plans should reflect joint working and cooperation to address larger than local issues

In many cases, joint studies with other local planning authorities formed part of the evidence used to demonstrate compliance with the duty. Past cooperation put many local planning authorities in a strong position, particularly where this has resulted in the preparation of sub-regional strategies, joint studies or common methodologies on SHMA, Strategic Flood Risk Assessment, economic assessments, Green Infrastructure studies, landscape and renewables assessments, and transport studies.

Waste and Minerals Planning Authorities have mostly retained the joint working arrangements used to support regional strategies. In the case of waste, the previous regional technical advisory bodies (RTABs) have largely continued and attempted to maintain a picture of waste generation and management across their regions and this has played an important part in meeting the duty. For aggregate minerals the Aggregates Working Parties play a similar role.

11. Plans need to reflect Housing Market Assessments and contribute to the objectively assessed needs of the wider market area

Objectively assessed housing needs, particularly for wider or inter-connecting housing market areas, has been the issue which consistently underlies difficulties with duty compliance.

When initially assessing whether a plan has satisfied the legal requirements of the duty, inspectors have tended to focus on how objectively assessed housing needs across a market area has been addressed and reflected in planning policy, although it has been made clear that this is not the only strategic issue that they will test to demonstrate the overall soundness.

Reigate & Banstead BC and Brighton & Hove City Council both identified meeting objectively assessed housing needs, including reflecting

migration from London, to be an ongoing issue and their greatest challenge requiring cross-boundary working and agreement.

“You need a positive and proactive approach to plan-making, but it’s difficult to meet needs from elsewhere if they aren’t meeting their own and you can’t meet your own.”

Cath Rose, Reigate & Banstead BC

For housing, the key outcome required appears to be proper reflection of the results of the SHMA in the plan’s housing provision. Ideally the SHMA would have been jointly prepared and agreed with all the authorities in the housing market area, or if timetables don’t enable this, then with planning authorities ensuring effective cooperating with others in production of their own SHMA.

12. Have an audit trail of cooperation to demonstrate outcomes

Effective cooperation can be demonstrated by records of meetings showing how outcomes have been arrived at and joint statements of policy or actions, i.e. those that every party is formally signed up to. While discussions about joint working may be useful, if nothing results from them then engagement cannot be said to have been constructive. Actions should include:

- keeping a clear audit trail of meetings, their outcomes, and decisions made
- getting decisions in writing from other authorities
- clarifying/confirming understanding/intentions in writing.

Other lessons

13. There is a need for corporate and councillor support and resourcing

Brighton & Hove City Council made good use of their Chief Executive to consolidate existing and to develop new strategic planning relationships with other councils in their area. Corporate and councillor support from all of the Coastal West Sussex councils enabled joint funding of a consultant to produce their Local Strategic Statement.

Ryedale BC reported that councillors in their area had been engaged in preparing the sub-regional strategy for North Yorkshire and that they had agreed to continue joint working on strategic planning and delivery. The ‘Local Government North Yorkshire and City of York’ grouping, as well as providing an important vehicle for strategic planning, has a corporate profile bringing together local authority chief executives and leaders with a number of boards, including the Spatial Planning Board, working to it.

14. Identify strategic priorities

Paragraph 156 of the NPPF makes it clear that local planning authorities should set out their strategic priorities in the local plan and include policies to deliver these.

Brighton & Hove City Council organised an in-house workshop, involving experienced officers, to identify an initial list of strategic priorities. These were then discussed at an initial meeting with neighbouring authorities specifically set up to launch their duty to cooperate engagement process.

Ryedale DC referred to the need for a high level understanding of the relative and respective role of places within the wider sub region as a basis for cooperation, before getting down to the level of dealing with specific strategic issues.

Solihull MBC and Winchester CC focussed on the strategic issues addressed through their respective existing joint arrangements. A key part of this was to look at the regional strategy and its evidence base and consider what was still relevant to the local plan. This helped avoid any strategic policy gaps when the regional strategy was finally revoked.

For more information on strategic planning please see our web site or contact the PAS team

The logo consists of the letters 'PAS' in a large, white, sans-serif font, centered within a solid green square.

planning advisory service

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Appendix 1

Authorities considered as part of this Practice Review

LPA	Link
Aylesbury Vale District Council	https://www.aylesburyvaledc.gov.uk/planning-policy/
Brighton & Hove City Council	http://www.brighton-hove.gov.uk/content/planning/local-development-framework/city-plan
Coventry City Council	http://www.coventry.gov.uk/info/1004/planning_policy
Dacorum Borough Council	http://www.dacorum.gov.uk/home/planning-development/planning-strategic-planning/local-planning-framework/core-strategy
Hart District Council	http://www.hart.gov.uk/index/top-planning/planning-policy/local_plan_core_strategy.htm
Kirklees Council	http://www.kirklees.gov.uk/business/regeneration/ldf/ldf.aspx
Mid Sussex District Council	http://www.midsussex.gov.uk/8264.htm
North West Leicestershire District Council	http://www.nwleics.gov.uk/pages/core_strategy
Reigate and Banstead Borough Council	http://www.reigate-banstead.gov.uk/planning/planning_policies/local_development_framework/coreexam/index.asp
Rushcliffe Borough Council	http://corestrategy.rushcliffe.gov.uk/
Ryedale District Council	http://extranet.ryedale.gov.uk/default.aspx?page=7158#Procedural_Documents
Solihull Metropolitan Borough Council	http://www.solihull.gov.uk/ldf
Waverley Borough Council	http://www.waverley.gov.uk/downloads/download/1627/withdrawn_core_strategy-key_correspondence
West Lancashire Borough Council	http://www.westlancs.gov.uk/planning/planning_policy.aspx
West Sussex County Council	http://www.westsussex.gov.uk/your_council/strategies_policies_and_publi/policies/minerals_and_waste_policy/waste_local_plan.aspx
Winchester City Council	http://www.winchester.gov.uk/planning-policy/

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