

# Authority Monitoring Report 2022/23: Duty to co-operate

<b>1</b>	<b>Introduction</b> .....	<b>3</b>
<b>2</b>	<b>Background</b> .....	<b>4</b>
<b>3</b>	<b>Actions taken under the duty to co-operate</b> .....	<b>6</b>
3.1	Co-operation on documents produced by Bracknell Forest Council .....	6
3.2	Co-operation on documents produced by other authorities/bodies .....	7

# 1 Introduction

**1.1** This Report provides an overview of the actions that have been taken by the Council under the duty to co-operate and covers the period from 1 January 2023 to 30 November 2023.

**1.2** The document is divided into two parts. Section 2 provides a brief explanation of the duty to co-operate, including its national legislative and policy background. Section 3 summarises collaboration on documents produced by Bracknell Forest Council and those produced by others over the period covered by this report. It also includes advice on the location of further information.

**1.3** This AMR should be read in conjunction with other topic based AMRs such as:

- Progress against the Local Development Scheme
- Housing
- Economy

## 2 Background

### The duty to co-operate

#### (legislation relevant to the monitoring period covered by this AMR)

**2.1** National legislation<sup>(1)</sup> and policy<sup>(2)</sup> require local planning authorities (LPAs), county councils and ‘prescribed bodies’ (see para. 2.2) to co-operate with each other on strategic matters. These are matters that involve more than local issues that cannot be dealt with by one local planning authority working alone (including those that cross administrative boundaries). The aim is to maximise the effectiveness of the preparation of local development documents (including local plans and supplementary planning documents (SPDs)). This is called the ‘duty to co-operate’ and the bodies involved are collectively known as ‘duty to co-operate bodies’.

**2.2** The ‘prescribed bodies’<sup>(3)</sup> referred to above are as follows:

- Environment Agency
- Historic Buildings and Monuments Commission for England (known as Historic England)
- Natural England
- Mayor of London
- Civil Aviation Authority
- Homes England (formerly Homes and Communities Agency)
- Clinical Commissioning Groups (CCGs)
- NHS England (formerly National Health Service Commissioning Board)
- Office of Rail and Road (ORR)
- Transport for London (TfL)
- Each Integrated Transport Authority (not relevant for Bracknell Forest)
- Each highway authority (including National Highways, formerly Highways England)
- Marine Management Organisation (not relevant for Bracknell Forest)

**2.3** National legislation<sup>(1)</sup> also requires duty to co-operate bodies to co-operate with Local Enterprise and Local Nature Partnerships (LEPs and LNPs).

### Duty to co-operate compliance

**2.4** In the preparation of local plans, compliance with the duty to co-operate is tested by an independent inspector. There are two tests: a legal compliance test, which is undertaken initially after a plan is submitted for examination by the inspector, and a ‘soundness’ test, which is undertaken during the examination. It is essential that compliance with the duty to co-operate is robustly evidenced when the plan is submitted, as examination cannot proceed if the legal test has not been passed.

**2.5** For the ‘soundness’ test to be passed, compliance with co-operation requirements set out in the National Planning Policy Framework (NPPF, 2023) needs to be demonstrated. This includes a requirement for statements of common ground to demonstrate effective and on-going joint working<sup>(4)</sup>. Guidance on this is provided in Planning Practice Guidance (PPG).

1 Section 33A of the Planning and Compulsory Purchase Act 2004 (as amended by Localism Act 2011)

2 Para. 24 of the National Planning Policy Framework (NPPF, 2023)

3 As defined by Part 2 of the Town and Country Planning (Local Planning) Regulations 2012 (as amended)

4 NPPF para. 27

**2.6** The actions that have been taken by the Council to meet the requirements of the duty to co-operate in the preparation of local development documents are discussed in the next section.

## **The future of duty to co-operate**

**2.7** The 'Levelling Up and Regeneration Act' (LURA)<sup>(5)</sup> was enacted on 26 October 2023. Schedule 7 relates to plan making and replaces sections 15-37 of Part 2 of the Planning and Compulsory Purchase Act 2004. This includes replacement of S.33A (as outlined above) regarding the duty to co-operate in relation to the planning of sustainable development.

**2.8** Secondary legislation in relation to plan making has yet to be produced. A consultation on 'plan making reforms'<sup>(6)</sup> ended on 18 October 2023. This sought views on proposals for the implementation of the LURA in respect of plan making provisions.

**2.9** It is anticipated that the Government will introduce an 'alignment test' through amending national planning policy (updates to the National Planning Policy Framework). This will replace the 'duty to co-operate'.

**2.10** Any changes in approach will be reflected in a future AMR related to this topic.

5 LURA 2023: [www.legislation.gov.uk/ukpga/2023/55/enacted](http://www.legislation.gov.uk/ukpga/2023/55/enacted)

6 Plan making reforms consultation: [www.gov.uk/government/consultations/plan-making-reforms-consultation-on-implementation](http://www.gov.uk/government/consultations/plan-making-reforms-consultation-on-implementation)

## 3 Actions taken under the duty to co-operate

### 3.1 Co-operation on documents produced by Bracknell Forest Council

**3.1** As set out in the Progress against the Local Development Scheme AMR document, the Council has been in the process of preparing two local plans over the period covered by this Report: the Bracknell Forest Local Plan (BFLP) and the Central and Eastern Berkshire Joint Minerals and Waste Plan. No SPDs or other local development documents have been prepared over this period.

#### **Central and Eastern Berkshire Joint Minerals and Waste Plan**

**3.2** BFC, Reading Borough Council, the Royal Borough of Windsor and Maidenhead (RBWM) and Wokingham Borough Council (collectively referred to as the Central and Eastern Berkshire Authorities) worked in partnership to produce a joint plan. Hampshire Services of Hampshire County Council (HCC) were commissioned to produce the plan. HCC is the Minerals and Waste Authority for Hampshire and has a dedicated in-house team of specialist planners.

**3.3** The final Inspectors' report was issued on 20 October 2022<sup>(7)</sup>. The Inspectors' report concluded (paras. 12-16) that the Authorities had engaged constructively, actively and on an on-going basis during the preparation of the Plan, and that therefore the duty to co-operate had been met. The Plan was adopted by BFC on 11 January 2023.

#### **Bracknell Forest Local Plan (BFLP)**

**3.4** Once adopted the BFLP will replace the saved policies in the Bracknell Forest Borough Local Plan (2002) and the Core Strategy (2008) and provide the strategy for growth in the borough up to 2037. The BFLP was submitted to the Secretary of State for Levelling Up, Housing and Communities for independent examination on 20 December 2021. Stage 1 hearing sessions were held between 10 May and 15 June 2022, with Stage 2 hearings being held between 18 and 20 October 2022. The Inspectors' post hearings letter was received in January 2023<sup>(8)</sup>. The Council is currently consulting on Proposed Main Modifications to the Local Plan. The consultation runs from Tuesday 31 October 2023 to Tuesday 12 December 2023. The Inspectors will consider all responses following the close of consultation. They will then decide what further action, if any, needs to be taken before finalising their Report and a schedule of Main Modifications. Further updates can be viewed on the Examination website<sup>(9)</sup>.

**3.5** The Inspectors' post hearings letter concludes (para. 1) that the production of the BFLP has met the Duty to Co-operate and is legally compliant.

7 M&W Inspectors' report: [documents.hants.gov.uk/environment/CEBJMWLP-inspectors-report.pdf](https://documents.hants.gov.uk/environment/CEBJMWLP-inspectors-report.pdf)

8 Post Hearings letter: [consult.bracknell-forest.gov.uk/file/6134773](https://consult.bracknell-forest.gov.uk/file/6134773)

9 Examination website: [Examination of the Bracknell Forest Local Plan | Bracknell Forest Council \(bracknell-forest.gov.uk\)](https://www.bracknell-forest.gov.uk/examination)

## 3.2 Co-operation on documents produced by other authorities/bodies

**3.6** In addition to co-operating on the preparation of local development documents compiled by Bracknell Forest Council, it also co-operates with duty to co-operate bodies on other matters such as the production of joint strategies and development plan documents plus associated evidence produced by other local planning authorities. Some of the collaboration that has been undertaken during the period covered by this report is summarised below.

### Co-operation between the West of Berkshire Authorities

**3.7** BFC, Wokingham Borough Council, Reading Borough Council and West Berkshire Council, collectively referred to as the West of Berkshire Authorities, maintain a close relationship with one another as indicated through the production of the West of Berkshire Spatial Planning Framework (2016). This is due to strong linkages and flows that create an interdependence between the constituent authorities. For example, they are well-linked by road corridors such as the M4, A329(M) and A33, as well as the railway network, Reading Railway Station acting as a major transport hub. There are also navigable waterways flowing through the area - River Thames and the Kennet and Avon Canal.

**3.8** As reported in the 2020/21 Duty to Co-operate AMR, the West of Berkshire Housing Market Area (HMA) was considered the most appropriate geography on which to base a SoCG for local plan making purposes. A SoCG was finally signed off by all four authorities in August 2021.<sup>(10)</sup> In addition to the West of Berkshire SOCG, a Memorandum of Understanding (MoU) addressing unmet housing need documented in the Reading Borough Local Plan (2021 to 2036) was signed by the West of Berkshire Authorities<sup>(11)</sup>. The MoU establishes that Reading Borough's unmet need is that identified in the Reading Borough Local Plan and that this will be accommodated within the HMA. These statements were drawn upon in discussions on the emerging BFLP. However, it is now understood (as of November 2023) that Reading Borough Council intends to revisit the unmet need as part of its Local Plan Review. It is believed that the position in Reading Borough has evolved due to a number of factors including higher densities being achieved than expected, the development of a new evidence base and a focus on redeveloping central sites.

### Co-operation on transport matters

**3.9** Over the period covered by this report, the Council has been involved in dialogue with the other Berkshire Unitary Authorities on transport matters, including via the Development Plans Group<sup>(12)</sup>, Berkshire Strategic Transport Forum and Berkshire Local Transport Body<sup>(13)</sup> which includes membership from the six Berkshire authorities and the Thames Valley Berkshire LEP. The latter two groups cover strategic transport matters that are adopted in the shorter

10 West of Berkshire Area Statement of Common Ground For local plan-making August 2021 (LP/Ev/2n): <https://consult.bracknell-forest.gov.uk/file/5939372>

11 Reading's housing needs: Memorandum of Understanding (MoU) between the authorities in the Western Berkshire Housing Market Area, August 2021 (LP/Ev/2m): <https://consult.bracknell-forest.gov.uk/file/5939371>

12 Development Plans Group: comprising the Planning Policy Team Leaders of each of the Berkshire Unitary Authorities

13 Berkshire Strategic Transport Forum: comprising Thames Valley Berkshire Local Enterprise Partnership, the six Berkshire local transport authorities, Department for Transport, Network Rail, National Highways, Heathrow Airport Limited, and various train and bus operating companies. Information on the Berkshire Strategic Transport Forum and Berkshire Local Transport Body: <http://www.thamesvalleyberkshire.co.uk/berkshire-strategic-transport-forum>. Berkshire Local Transport Body meeting minutes can be found on the Slough Borough Council website: <https://democracy.slough.gov.uk/ieListMeetings.aspx?CI=601&Year=0>

term and covered by government funding. Information on growth planned in the BFLP has also been shared with Transport for the South East (the sub-national transport body) to support the preparation of a long term strategy.

### **Co-operation on natural environment matters**

**3.10** The Council is involved in well established cross-boundary partnerships concerned with the Thames Basin Heaths Special Protection Area (TBH SPA) and these have resulted in the following attainments:

- Thames Basin Heaths Joint Strategic Partnership Board and associated officer groups<sup>(14)</sup> (hosted by Surrey Heath Borough Council).
- Suitable Alternative Natural Greenspace (SANG) Capacity Agreement with Surrey Heath Council to enable housebuilding within its administrative area, but using available SANG capacity in Bracknell Forest SANGs.
- The facilitation of housing development in other authorities (such as Hart and RBWM) through utilisation of the Council's strategic SANG capacity.
- Continued and extensive working relationships between the Council and Natural England on TBH SPA projects.
- Day to day running of the SAMM Project in accordance with a legal agreement with Natural England and the 10 other local authorities affected by the Thames Basin Heaths issues - Waverley, Guildford, Surrey Heath, Woking, Hart, Wokingham, Elmbridge, Runnymede, RBWM, and Rushmoor Councils.
- Sharing good practice regarding SANG and TBH SPA issues including the monitoring of SANGs and the TBH SPA mitigation project.

**3.11** In relation to biodiversity:

- An officer from Bracknell Forest Council (BFC) chairs the Berkshire Biodiversity Net Gain (BNG) meetings. This aims to share information regarding joint working and collaboration on BNG policy, process and strategy across Berkshire.
- An officer from Bracknell Forest Council (BFC) sits on the Berkshire LNP Steering Group<sup>(15)</sup>, and Berkshire Local Authority Ecologists group<sup>(16)</sup>.
- Officers from Bracknell Forest Council (BFC) sit on the Local Nature Recovery Strategy (LNRS) Mapping and Data group which is being coordinated by RBWM (the Responsible Authority).

### **Co-operation on minerals and waste matters**

**3.12** As a Minerals Planning Authority, BFC is a member of the South East England Aggregate Working Party (SEEAWP). All members have a responsibility for planning the supply of minerals in their areas, through the preparation of minerals local plans.

**3.13** A Position Statement has been completed (November 2023), setting out technical information in respect of soft sand supply in the South East, which will be used as a basis for future Statements of Common Ground.

14 Information on the Joint Strategic Partnership Board, including member organisations and meeting minutes can be found on the Surrey Heath Borough Council website: <https://surreyheath.moderngov.co.uk/ieListMeetings.aspx?Committeeld=316>

15 Berkshire LNP Steering Group: <https://www.berkshirelnp.org/homepage/the-partners>

16 The Berkshire Local Authority Ecologists group includes a representative from each local authority in Berkshire



**3.14** Similarly, as a Waste Planning Authority (WPA), Bracknell Forest Council is also a member of the South East Waste Authority Planning Advisory Group (SEWPAG) comprising WPAs in the South East of England, the Environment Agency, representatives from similar forums in London and the East of England and waste industry representation through the Environmental Services Association (ESA). SEWPAG exists to help WPAs in the south east fulfil their 'Duty to Co-operate' responsibility on strategic cross boundary waste issues, and to give effect to the Government's stated intention of encouraging WPAs to work together in groups in order that they may carry out their individual responsibilities more effectively. A SoCG concerning the strategic matter of planning for the management of waste was completed in September 2021, and was drawn upon for the JMWP.

### **Duty to co-operate consultations and requests**

**3.15** Under the duty to co-operate, the Council responds to other LPA duty to co-operate consultations and requests. Over the period covered by this report, the Council has responded to the following:

- Responding to consultations on other LPA local plans:
  - West Berkshire Council:
    - Regulation 19 consultation on Local Plan Review (January - March 2023): BFC responded by objecting on grounds of soundness to the lack of consideration given to how the outstanding unmet need of 230 dwellings within Reading Borough's adopted local plan (covering the period 2021 to 2036) was to be addressed. A further letter was sent in November 2023 stating that Bracknell Forest Council no longer wished to object since Reading Borough Council was now intending to revisit its unmet needs as part of its Local Plan Review (see below).
  - Reading Borough Council
    - At the end of November 2023, RBC consulted BFC on its Local Plan Partial Update - Scope and Content document.
- Duty to Co-operate requests:
  - Reading Borough Council:
    - BFC attended a Duty to Co-operate meeting (October 2023) with RBC. RBC provided an overview of their Local Plan review timetable and issues to be addressed. It was also stated that RBC was hoping to initiate an update to the West of Berkshire HMA Statement of Common Ground.
  - West Berkshire Council:
    - Employment land needs request (January 2023): BFC responded on the basis of it being unable to assist West Berkshire Council with helping to address its unmet needs due to BFC experiencing similar problems to those faced by West Berkshire.

- Wokingham Borough Council:
  - Employment land needs request (September 2023): BFC responded on the basis of it being unable to assist Wokingham Borough Council with its unmet warehousing/industrial land needs.
  - Transport meeting (September 2023): discussed cross boundary transport issues and data needs.
  - Duty to co-operate meeting (September 2023): duty to co-operate meeting between WBC and BFC at which WBC gave an overview of its new local plan and future timetable.
  
- Rushmoor Borough Council:
  - Duty to co-operate request regarding intention to review policies in the Rushmoor Local Plan 2019: BFC responded (November 2023) by drawing attention to issues considered to have cross boundary implications.
  
- Oxfordshire County Council:
  - Duty to co-operate request (March 2023) regarding strategic waste movements: whilst BFC generally agreed with the strategic waste movements between BFC and Oxfordshire County Council, based on 2021 data, comments were made about the Hazardous Waste Data Interrogator (HWDI) being a useful data source for the tonnages of hazardous waste, and, that no reliance should be placed on a specified site in Bracknell Forest for the disposal of inert waste, in the future.
  
- Hampshire County Council:
  - Duty to co-operate meeting (September 2023): duty to co-operate meeting between HCC and BFC outlining the position following consultation on a draft version of the Hampshire Minerals and Waste Plan – Partial Update. Approximately 2,600 representations were received. These were being processed and consideration was being given to the issues raised which were outlined during the meeting. HCC stated its intention to carry out a Regulation 19 consultation in January 2024
  - Duty to co-operate request (September 2023) regarding strategic waste movements: BFC confirmed strategic waste movements established between BFC and Hampshire based on 2021 data.



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### **Nepali**

यस प्रचारको सक्षेपं वा सार निचोड चाहिं दिइने छ ठूलो अक्षरमा, ब्रेल वा क्यासेट सून्नको लागी । अरु भाषाको नक्कल पनि हासिल गर्न सकिने छ । कृपया सम्पर्क गनुहोला ०१३४४ ३५२००० ।

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Bracknell Forest Council  
Time Square  
Market Street  
Bracknell  
RG12 1JD