

TONBRIDGE & MALLING BOROUGH COUNCIL

CABINET

10 October 2012

Joint Report of the Director of Planning, Transport and Leisure and Director of Health and Housing

Part 1- Public

Executive Non Key Decisions

1 HOUSING AND GROWTH STATEMENT

In September 2012 the Secretary of State for Communities and Local Government released a written statement to Parliament that provides some clarity regarding the Government's intention to relax some planning regulations, and its wider response to the Sir Adrian Montague report in relation to private rented properties. This Report to Cabinet sets out a proposed Council response to the Housing and Growth Statement.

1.1 Introduction

- 1.1.1 The Secretary of State (SoS) for Communities and Local Government released a written statement to Parliament on the 6th September describing the Coalition Government's approach to their priority to get the economy growing. The stated ambition is to "*create the conditions that support local economic growth and remove barriers that stop local businesses creating jobs and getting Britain building again*". The Statement generally seeks to further the ambitions described in the Government's previous comprehensive housing strategy from last November. A copy of the full statement can be found appended to this report.
- 1.1.2 We consider that the Council should broadly welcome the Government's announcement on housing and growth, and support its desire to provide a major step forward for housing supply and provide a stimulus for the economy. There are, however, important elements that seem less appropriate both in general terms and in respect of the local experience within Tonbridge & Malling. For ease of reference this Report will explore each initiative and related aspiration in the same order as set out in the SoS's Statement, but with a clear emphasis on the Tonbridge and Malling position. Some of the measures outlined in the statement are proposed to be the subject of formal consultation and the opportunity to comment in detail will be available at a later date.

1.2 Increasing Investment in the Private Rented Sector

- 1.2.1 The Government believe that the private rented sector can provide good quality homes, but growth has been constrained by the historic lack of large scale investment. The Montague Report described the barriers to such investment and consequently the SoS announced the intention to invest £200 million to ensure rented homes are available to institutional investors quickly. This will be orchestrated through a new emerging taskforce consisting of developers, management bodies and institutional investors to broker deals and deliver more rented homes.
- 1.2.2 Comment
- 1.2.3 Tonbridge and Malling does have a constrained private rented sector in terms of the number and type of available rented homes. The Council would naturally welcome a broader affordable housing offer within the borough, and a diversity of tenure is crucial in meeting our identified housing need.
- 1.2.4 However, officers keenly await the details of the delivery of the new rented units in terms of the safeguards and protections in place in comparison to the homes provided by our Partner Registered Providers (housing associations). The Council would not wish to see new rental units being provided to the detriment of our traditionally (very robust) programme of social and affordable housing, which is tightly regulated in terms of rent control, tenancy management, and nomination and access route.

1.3 Affordable Housing Guarantees and Tackling Empty Homes

- 1.3.1 The SoS has decided to extend the use of guarantees to cover the borrowing needed to deliver 15,000 more affordable homes. In addition there is an aspiration to extend the existing refurbishment programme to bring an additional 5,000 existing empty homes back into use. Both programmes have a combined budget of £300 million.
- 1.3.2 Comment
- 1.3.3 The news of significant additional capital funding for new affordable housing is always received positively, but it is noted that this initiative perhaps has the role of balancing the loss of affordable units predicted through the renegotiation of existing S106 agreements for stalled sites. The Council will continue to be very actively involved in seeking to maximise our potential to successfully bid for available capital monies from the Homes and Communities Agency, as the details become known.

- 1.3.4 The Council will continue to seek to encourage re occupation of long term empty homes through our work with the Kent Empty Property Initiative and participation in the No Use Empty scheme in accordance with the Empty Homes Protocol.

1.4 Helping First Time Buyers

- 1.4.1 To complement supporting the rented sector, the Statement included measures to promote home ownership. Primarily this is through “NewBuy”, which makes it easier to access a mortgage with only a 5 per cent deposit. This scheme is to be extended to March 2014 through an additional £280 million, with a matching contribution from house builders. This may allow up to 16,500 additional first time buyers to purchase a home

1.4.2 Comment

- 1.4.3 Tonbridge & Malling Borough Council have an excellent track record of providing tenures that promote homeownership through our Partner Registered Providers. For example, the Council is seeking to amplify this approach through the Local Authority Mortgage Scheme, described in a separate Report to this Cabinet.
- 1.4.4 It is well understood how the knock on effects of homeownership benefit the wider community and economy. Officers will continue to seek to provide intermediate and shared ownership tenures where possible, and to maintain the very strong relationship with the Homebuy Agent that administers many of these initiatives, Moat.

1.5 Accelerating Large Housing Schemes

1.5.1 Mediation

- 1.5.2 The Secretary of State notes that the Government will continue to work in partnership with local authorities, scheme promoters and local communities to accelerate the delivery of ‘locally supported, major housing sites’ referring to a recent example at Eastern Quarry.

1.5.3 Comment

- 1.5.4 The Eastern Quarry development in Kent Thameside had been stalled primarily due to delays in finalising a Section 106 agreement for junction improvements on the A2. In a new style of agreement between Kent County Council, Gravesham and Dartford Borough Councils, the Highways Agency and the Government itself, the cost gap has been reduced sufficiently to enable work on the first 1,500 new homes to begin as early as next summer (6,250 are planned in total). The agreement leaves a funding gap of £78m to be resolved and some of this will come from new homes bonus and Community Infrastructure Levy from the local authorities, but the source of the remainder remains unclear.

- 1.5.5 The Highways Agency and Department for Transport will now begin work on two junction improvements (there are seven improvement schemes in total) and collaborate with the councils to manage the others, to enable work to progress.
- 1.5.6 This new approach raises a fundamental question about the deliverability of sites, which is how to fund the necessary infrastructure to accompany development. The necessity for these road improvements has not diminished, if anything it may have increased, and the bill for the improvements almost certainly has. The need for transport improvements, affordable housing, public open spaces, leisure facilities and community facilities remains, even if the viability of a housing scheme is threatened as a result. Short term solutions may enable developments to proceed, but finding a long term solutions to these issues will be a challenge especially for Government and its wider aspirations.
- 1.5.7 The risk for local planning authorities is that if these requirements are waived or reduced to allow housing schemes to progress, this could create unsustainable communities and put a strain on existing services. What this means is that each and every project must be reviewed and assessed on its own merits to see how it may be best unlocked, if this is possible, without a significant adverse impact. It is feared however that this move will result in an expectation that all or many fundamental requirements within schemes can be set aside
- 1.5.8 A bigger role for off-site construction techniques
- 1.5.9 The Secretary of State also highlighted the potential benefits of off-site construction methods for accelerating housing delivery. This involves constructing building components remotely and bringing them to site for assembly. An industry-led group is investigating how this sector could be expanded.
- 1.5.10 Comment
- 1.5.11 Off site construction may have some benefits that are worthy of further consideration, but it is unlikely that having a ready supply of pre-constructed units will necessarily speed up the rate of housing completions as house builders will still need to convince banks and other lenders that the completed units will sell before they will be willing to fund new developments.
- 1.5.12 Once the market picks up, this form of construction could help deliver housing quickly on larger sites. New construction techniques and especially “factory fabrication” have been promoted over the last 10 years, but have yet to make significant contributions to increasing housing supply.
- 1.5.13 There has been one example in the borough where this form of building technique was used in respect of an affordable housing scheme in Tonbridge. This proved to be a significant challenge that led to long delays and high cost. However, there are other examples, which demonstrate that this form of construction can deliver sound and attractive schemes, for example at Murray Grove in Hackney, which was developed by the Peabody Trust.

1.5.14 Finance

There is also recognition of the fact that access to finance and land may be preventing some developers from building new homes. The Funding for Lending Scheme administered by the Bank of England provides incentives to lenders.

1.5.15 Comment

1.5.16 This is welcomed as it recognises that the availability of finance is a *real* and probably the most fundamental impediment to delivering housing. While helpful, it will be the ability of those building and buying the new homes to access finance that will be the ultimate stimulus to the market. The latest funding support for development in Getting Britain Building is welcomed but it is unfortunate that none of the sites in the Borough have been selected for support.

1.6 **Getting Surplus Public Sector Land Back Into Use**

1.6.1 Following a review by the Chairman of the Berkeley Group into the role that “surplus public sector land” could play in improving the supply of housing, the Government is proposing new powers for the Homes and Communities Agency outside London to accelerate the release of land by Government departments and agencies. A similar scheme will be worked up for London with the Mayor.

1.6.2 Comment

1.6.3 The Government already requires local planning authorities to identify a 5 year land supply for housing (plus a contingency of between 5 and 20% in the new National Planning Policy Framework). Moreover, developers tend to have land banks at their disposal, which are brought forward as and when demand or land values increase. Therefore unless the surplus public sector land in question is either in very sought-after locations or offered at reduced prices, it is unlikely that the availability of further land supply will be a sufficient stimulus on its own. It could also have an adverse impact on some sites if the sudden increase in supply has the effect of reducing the price of land in an area thus providing a disincentive to private landowners to release their land.

1.7 **Reducing Planning Delays**

1.7.1 The Secretary of State calls for a planning system ‘*which works proactively to support growth..*’ to get more homes, workshops, factories and offices built. He refers to the National Planning Policy Framework (NPPF) as a major step forward and as a result of its positive influence we are already seeing accelerated plan making and more positive decision taking.

1.7.2 The perceived top down imposition of the Regional Strategies is associated with the lowest level of house building since the 1920s and the Localism Act is heralded as putting the power to plan back in the hands of communities, although

this power comes with the responsibility to meet future needs for development and growth.

1.7.3 Comment

1.7.4 It is arguable whether the impact of the NPPF launched in March will prove to be responsible for an acceleration in plan making, as the highly complex and unavoidable processes involved are largely unchanged and take a number of years to complete. The use of the NPPF as a material planning consideration in localities where there are no up-to-date plans will no doubt have had an impact on decision making.

1.7.5 The reference to communities taking responsibility for meeting future needs is a cautionary message to safeguard against NIMBYISM. The Regional Spatial Strategies are the subject of ongoing environmental impact assessments and therefore have not been revoked to date and there is no indication when the South East Plan may actually be rescinded.

1.7.6 New Measures Announced

1.7.7 Improving performance

1.7.8 New legislation is proposed to allow the Planning Inspectorate to determine applications where there are clear failures in performance. Also more transparent reporting of council performance on planning and increased use of Planning Performance Agreements for major schemes

1.7.9 Comment

1.7.10 It is wholly unclear how this will work in practice and it may take some time to come into force as it will require legislative change. At face value it implies that local planning authorities that consistently *under perform* in terms of the length of time it takes to determine applications or in the quality of the decisions taken will have to defer to the Planning Inspectorate. Whether this is to be on a case by case basis or for all applications for a period of time, while performance issues are addressed is not yet known and it is quite difficult to see how this will work in practice. It is particularly unclear as to how the performance on the quality of local decision making will be judged.

1.7.11 This seems to be contrary to the principles of localism insofar as decision making would be taken away from locally elected representatives. There may be other legal questions to address in terms of the Council's role as local planning authority, and any necessary constitutional changes.

1.7.12 It also brings into question the independence of the Inspectorate. In practical terms, who would determine an appeal if the applicant appealed against a decision made by PINs? There is also the matter of resourcing this new role for

the Planning Inspectorate and fees (e.g. would the LPA be expected to reimburse PINs for the service?).

- 1.7.13 A crucial factor would also be how and where to set the bar in terms of poor performance. If the thresholds were subsequently revised downwards, possibly as an *incentive* to LPAs to increase their performance, this could have serious resource implications.
- 1.7.14 More powers for Planning Inspectors in awarding costs
- 1.7.15 Planning Inspectors are to have more powers to award costs in appeal proceedings where applications have not been handled with due process.
- 1.7.16 Comment
- 1.7.17 It is not clear what these additional powers will be, but it appears to represent an additional *incentive* on LPAs to adopt efficient and effective procedures.
- 1.7.18 Faster appeals process proposed
- 1.7.19 Consultations are to be arranged on how to speed up planning appeals including a new fast track procedure for some small scale commercial appeals.
- 1.7.20 Major housing and economic appeals are set to be prioritised by the Planning Inspectorate with immediate effect.
- 1.7.21 Comment
- 1.7.22 These proposals are welcomed in the wider perspective. Householder appeals are already “fast-tracked” and the principles used could be applied to small scale commercial proposals quite easily. It raises yet more questions over the future role and resourcing of the Planning Inspectorate. The Council will have an opportunity to respond to the consultations in due course but these types of appeal don’t tend to occur frequently and it remains to be seen if appellants themselves can and will support revisions. Appellants usually require their chosen agents/lawyers to be available and that can, for instance, lead to difficulties in agreeing an early date for an appeal to be heard at before an Inspector. .
- 1.7.23 Extension of the time limit for permissions
- 1.7.24 The Secretary of State has already extended the life of planning permissions for additional year (from 3 to 4 years).
- 1.7.25 Comment
- 1.7.26 This will give applicants more time to implement a planning permission and reduce the need for renewal. However, given that all of the other measures proposed are aimed at encouraging development it seems odd that this measure could actually lead to sites sitting idle for an extra year. When the time limit was

reduced from 5 to 3 years there was little appreciable change except that additional applications were required.

As of 31st March 2012 in Tonbridge and Malling 3,950 residential units had planning permission on 285 sites none of which were started or under construction.

1.7.27 A Greater role for Ministers in determining nationally significant applications

1.7.28 Special arrangements for determining nationally significant infrastructure proposals by Government Ministers is to be extended to include commercial and business development.

1.7.29 Comment

1.7.30 Depending on where the size threshold is to be set for commercial and business development, it could be argued that this remains an issue that is more appropriately decided by locally elected representatives rather than Ministers.

1.8 Reducing the Cumulative Burden of Red Tape

1.8.1 Renegotiating S106 Agreements that are no longer viable

1.8.2 The SoS believes S106 agreements negotiated before the recession should be renegotiated if, as the Government believe, they now mean schemes are no longer viable financially.

1.8.3 The Government intends to introduce legislation to be effective early in 2013 allowing any developer with a site that is considered to be unviable due to the number of affordable homes or other costs, to make an appeal with immediate effect. It is proposed that the Planning Inspectorate will assess how many affordable homes would need to be removed for the S106 agreement for the site to become viable in current economic conditions and a new agreement prepared.

1.8.4 This would be alongside a current consultation by the DCLG into the renegotiation of S106 agreements signed before 6th April 2010. If this consultation were to result in new rules, any S106 signed before this date could be subject to a formal request to the Planning Authority to reconsider (under current rules this can only be made 5 years after the agreement is signed).

1.8.5 Comment

1.8.6 Once again it is difficult to ascertain from the statement what is proposed by the Secretary of State in this new legislation and whether it is different to the existing consultation or an extension.

1.8.7 Both proposals, if formalised, will enable applicants/developers to challenge the amount of developer contributions attached to a planning permission if it can be

shown that they make a scheme unviable. This seems to be particularly targeted at affordable housing requirements.

- 1.8.8 This is a concern for LPAs, which have adopted policies to deliver a proportion of affordable housing based on needs assessments. It effectively means that these policies could be set aside if it can be demonstrated that the cost of doing so is excessive.
- 1.8.9 While appreciating that the deliverability of policies and plans is a crucial new test for local plans that will require a level of viability testing that we have not had to apply to date, these measures, aimed at stimulating new housing development, will have consequences for the future delivery of affordable housing that may not have not been fully appreciated. The impact does, in some degree, depend on the success or otherwise of alternative housing supply proposals made elsewhere in the Government's statement.
- 1.8.10 Other forms of community infrastructure may also be adversely affected by these proposals, raising further questions over the future role of developer contributions in meeting the needs of new development. There remains some confusion as to whether community infrastructure levy or S106 should fund affordable housing in future and in the light of these proposals the Government should be encouraged to clarify this at the earliest opportunity to enable LPAs to consider the best way forward for their areas.
- 1.8.11 To date there have been no requests for the renegotiation of S106 agreements for affordable housing in Tonbridge & Malling. Nevertheless we are aware of cases where viability may be becoming ever more marginal and we will need to be alert to the need to revisit.

1.9 Supporting Locally-Led Development

- 1.9.1 Review of Secretary of State Call In Powers for large scale housing developments
- 1.9.2 Comment
- 1.9.3 There is no detail on what is proposed here, but it suggests that the SoS may take a closer interest in these sorts of development in future to ensure there are no unnecessary delays.
- 1.9.4 Benefits from development to be shared with local communities
- 1.9.5 The SoS notes that to support locally-led development, communities will be able to benefit from financial incentives arising from new development such as new homes bonus, community infrastructure levy and business rate discounts.
- 1.9.6 Comment
- 1.9.7 The proposals insofar as they relate to a proportion of CIL being allocated to the communities in which developments are located is already known, although the

size of that proportion has yet to be agreed by Government. The reference to new homes bonus and business rates is less clear, i.e. whether the Government means local communities will benefit indirectly or directly from these sources from April 2013. Currently there is no defined ring-fencing for the new homes bonus and in many authorities it is used in practice to support local services across their areas in the face of continuing reduction in grant support for Local Government.

1.9.8 This should be clarified as Local Authorities are currently preparing their medium term financial statements and may have already accounted for these sources of funding.

1.9.9 Green Belt considerations

1.9.10 The role and purpose of the Green Belt is reaffirmed. Reference is made to the potentially negative impact on the Green Belt by the housing targets imposed by the Regional Spatial Strategies and the fact that these documents are in the process of being revoked (subject to the findings of the ongoing the environmental impact assessments).

However, Local Authorities are encouraged to review their green belt boundaries when preparing local plans to ‘...reflect local circumstances.’. Councils that decide to review their boundaries in this way will be prioritised through the public examination process.

1.9.11 Comment

1.9.12 The continued importance of green belts as a land use planning policy is welcomed. As part of the preparation of the new Local plan for Tonbridge & Malling an opportunity to review the green belt should properly be taken, but it is too early to say whether there will be any amendments to the boundary. An opportunity to clarify with the Government what is meant by ‘local circumstances’ should be taken before this review takes place.

1.10 Helping Homeowners Improve Their Homes

1.10.1 A further package of simplification measures to remove red tape and ease the burden on local authorities is proposed.

1.10.2 Consultations are to be announced shortly apparently to significantly change permitted development levels for extensions to homes and business premises in non-protected areas for a three year period. This will stimulate the local economy and free up valuable resources in local authorities.

1.10.3 Comment

1.10.4 This proposed move has caused perhaps the most negative reaction from a variety of sources, It has the potential to create considerable tensions between neighbours in residential areas, since the normal recourse for objecting to a

proposal will be removed. It also has the potential to create real planning harm. It is quite apparent that most local authorities act properly and grant planning permission in a timely fashion, should that be the proper decision to make on a case by case basis. That is the way that planning, at the domestic level, has operated fairly soundly for decades. There is no evidence advanced to demonstrate that the need for planning permission is a deterrent or obstacle to appropriate development and it seems to me that the current levels of permitted development are about right.

- 1.10.5 As a tool for reducing 'red tape' and stimulating local businesses, presumably the building trades, it is unlikely to have a significantly beneficial impact, since any proposals will rely on there being sufficient disposable income in the economy to take on such projects. As the proposal is for a relaxation of these rules for only three years it is likely to cause more confusion than positive economic regeneration.
- 1.10.6 Notwithstanding the comments above, if residents took the opportunity to improve their homes in this way, this could have the effect of raising the value of the existing housing stock and therefore exacerbating the problems associated with first time buyers and those in need of affordable housing. It also runs contrary to measures recently introduced to discourage the development of residential gardens by removing them from the definition of previously development land.
- 1.10.7 At least two councils (Richmond and Sutton) have responded to the proposals by stating that they will do all they can to resist implementing the changes.

1.11 Getting Empty Offices Into Use

- 1.11.1 Proposed changes to permitted development rights to enable change of use from a commercial to residential, while providing local authorities an opportunity to seek a local exemption, where they can prove such a move will result in an adverse economic impact.
- 1.11.2 Comment
- 1.11.3 This move has been mooted before, but did not appear in the final version of the National Planning Policy Framework in March. Although it is clear from the SoS's next sentence that it is intended to help regenerate towns and cities where vacant shops and businesses could be converted to residential without the need for planning permission to increase footfall for those businesses that remain, it is potentially quite dangerous.
- 1.11.4 With no control in the form of planning policy the viability of primary shopping areas could be vulnerable and employment land and buildings would also be lost to residential developments unless LPAs could argue an exemption. In a worst case scenario, this could result in a very unsustainable pattern of development, increased travel to work times and town centres becoming essentially dormitory areas with little prospect of being able to attract new commercial investment.

1.11.5 Moreover, if these conversions were made under permitted development rights there would be no scope for negotiating developer contributions for the necessary infrastructure to support these new populations, putting pressure on existing services.

1.12 Conclusions

1.12.1 This report summarises the statement made by the Secretary of State for Communities and Local Government made on 6th September and provides responses highlighting the need for further clarification and some of the concerns that could arise should these measures be implemented without addressing the wider consequences.

1.12.2 There is no formal consultation on the measures outlined in the statement although there will be recourse to do so if for example new legislation is proposed. Members may wish to use the comments as the basis of an informal response to Government to raise awareness of these issues and concerns.

1.13 Legal Implications

1.13.1 There are no direct legal implications arising from this report, although some of the proposals, should they be taken forward by the Government will have significant impacts on the statutory planning functions of the Council as Local Planning Authority.

1.14 Financial and Value for Money Considerations

1.14.1 There are no direct financial implications arising from this report, although some of the proposals, should they be taken forward by the Government will have significant impacts on the ability of the Council to raise developer contributions for community infrastructure and how other sources of funding such as the new homes bonus is deployed.

1.15 Risk Assessment

1.15.1 The risks of some of the proposals set out in the statement carry considerable risk, but the Government has not invited formal responses at this stage. The risk assessment will be more thorough in respect of formal consultations in due course.

1.16 Equality Impact Assessment

1.16.1 See 'Screening for equality impacts' table at end of report

1.17 Policy Considerations

Should the proposals be formalised there will be an impact on the Council's affordable housing policy and other planning policies with regard to the changes to permitted development rights.

1.18 Recommendations

1.18.1 Members are requested to note the contents of this report in respect of the recent statement by the Secretary of State on Housing and Growth and to consider responding informally to the Government with regard to some of the concerns that these measures would raise in advance of more formal consultations in due course.

Background papers:

Nil

contact: Chris Knowles
Ian Bailey

Steve Humphrey
Director of Planning, Transport and Leisure

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Director of Health and Housing

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	This report is responding to a statement by the Secretary of State about proposed changes to the Planning and Housing systems. This is not a formal consultation, but the Council is taking the opportunity to share its views with the Government.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	See above
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		Not Applicable.

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.