

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

08 January 2008

Report of the Director of Planning Transport and Leisure

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 DEVELOPMENT CONTROL

Summary

To report on changes to Development Control procedures including a consultation exercise in respect of the validation of planning applications.

1.1 Introduction

1.1.1 I reported to the last meeting with regard to Development Control performance and allied matters. Since that time a number of significant changes have occurred. Some of these are reported elsewhere on this Agenda (and provide reference points for some matters in this report). As mentioned in my last report I am also reporting back on procedures, especially in light of recent changes.

1.1.2 The matters which have emerged since my last report and the earlier one with regard to the Planning White Paper, and that have an immediate effect on Development Control are:

- The Planning Bill (see separate report)
- Proposed secondary legislation (see separate report)
- The Housing and Planning Delivery Grant (HPDG) consultation paper (see separate report)
- Development Control Best Value Indicator (BVI) User Satisfaction survey results
- The need for the Council to adopt "local validation standards" in line with the implementation of new national planning application forms (1APP)

1.1.3 Flowing from the matters listed above it is also appropriate to further reflect on:

- Options for and the implications of charging for pre-application advice.

- Further revisions to business practices in Development Control

- 1.1.4 At your last meeting I was also asked to secure a plain summary of the most up to date advice on the Planning Code of Conduct and the opportunities for Members to properly engage in discussion at the pre-application/pre-determination stage of a planning submission.
- 1.1.5 There is one general factor that remains paramount in the conduct of Development Control and is constantly reflected in the changes that the Government is making in the matters listed above and that is that speed of decision making remains the “holy grail. Indeed although HPDG is now focussed on the supply of housing, the payment is “incentivised” in the sense that Development Control performance must be maintained or the grant will be “abated” rather in the way that PDG was “abated” in the past for those Authorities with a poor appeals record. Happily we were not subject to such measures.
- 1.1.6 I would be grateful if Members could keep this in mind in the following sections of the report. Our aim is to ensure a fine balance is achieved between quality of service and speed and in doing so we aim to ensure a good outcome to external audit assessments and also HPDG settlement.

1.2 Best Value Indicator(BVI) - User Satisfaction Survey

- 1.2.1 This is a triennial survey of applicants and agents based upon survey questions prescribed by Government. We have achieved an 80% user satisfaction putting us in the “top quartile” in Kent, our CIPFA family group and nationally. While this is 4% below our performance 3 years ago the vast majority of other authorities have fared very much worse reflecting a general downturn in satisfaction in the planning system across the board. Indeed only 2 authorities in Kent have improved their user satisfaction, both of which are still behind us and one of which is still 10% behind us having started from a very low base.
- 1.2.2 There is no place for complacency but I do regard this success of remaining in the top quartile as a vindication of our willingness to engage with applicants and agents (as well as the public and amenity groups) in an open fashion.
- 1.2.3 It is true to say that those who obtained permission rated our performance significantly higher than those who were refused permission. I am, however, very pleased that we have achieved 80% satisfaction in the face of the ever increasing complexity of detail that we have been required to ask of applicants over the last 3 years.
- 1.2.4 We do need to maintain our vigilance in order to ensure that we do not slip from this position and therefore will continue to need to audit all of our processes to ensure that they are appropriate to the current climate and some of the recommendations below relate to process changes to ensure that we continue meet these satisfaction levels. Applicants, not unlike the Government, prize a speedy decision.

1.2.5 These triennial surveys will no longer be part of the BVI regime which is being replaced by the set of National Indicators. However, I consider that this User Satisfaction survey is a valuable tool and I would wish to reproduce it again in 3 years time. This will give, at least this Council, a set of time series data against which to judge its own performance (even if there will not longer be national, CIPFA or Kent comparative data). I shall also seek to persuade other Kent Authorities to do the same to enable comparative information to be gathered, although I cannot guarantee that all or any will be motivated to do so.

1.3 Local Validation Standards

1.3.1 From 1 April 2008 there will be an entirely new system of planning application forms provided nationally by the Government (for the first time since the inception of the current planning system in 1948). The arrangements to be put in place by Government will also set out for the first time a set of matters that **MUST** be dealt with in an application before it can legally be validated and processed. These are quite extensive and far more informative than the current level of detail required to make an application valid. I think that Members will find this (draft) list of interest and it is reproduced as **Annex 1**.

1.3.2 The new regime also allows Local Planning Authorities to determine their own local needs to ensure that all relevant detail should be available at the time of submission of an application. The Kent wide officer Development Control Forum has been working together to ensure that as far as is practical there is consistency across the County in the range of factors that may need to be addressed locally to ensure validity at the time of submission. The range of these, as drawn-up by the Forum and based on the recommendations in Government guidance, is set out below:

- Affordable Housing Statement
- Air quality assessment
- Archaeological assessment
- Contaminated land investigation
- Daylight/sunlight assessment
- Development contributions viability statement
- Drainage and foul sewerage
- Ecological site assessment, ecological survey and protected species
- Employment Land study
- Economic statement

- Environmental Impact Statement
- Flood risk assessment
- Government guidance/policy
- Green Belt
- Heritage statement
- Land contamination assessment
- Landscape and visual impact appraisal
- Landscape strategy /landscape plan
- Landscaping
- Listed building and conservation area appraisal
- Noise impact assessment
- Parking/servicing details
- Planning statement
- Planning obligation(s)/draft heads of terms – development contributions
- Recreation and open space requirements
- Renewable energy assessment
- Retail impact assessment
- Statement of community involvement
- Structural survey
- Sunlight/daylight assessment
- Sustainable design and construction assessment
- South East Plan
- Telecoms supporting statement
- Transportation assessment and travel plan
- Tree survey

- Utilities statement
- Ventilation/extraction details
- Waste management plan

- 1.3.3 Clearly not all of these will apply in every case but it is intended to be as comprehensive a list as possible so as to give the most assistance to applicants. Each of these subject areas is covered in detail in the draft guidance produced by Kent DC officers, including listing all relevant local policies, so as to enable potential applicants to cover all matters in their initial application. To further aid applicants, Development Control officers have designed over 20 validation checklists to cover the range and combination of applications possible using the new electronic application forms.
- 1.3.4 Although the process may at first sight seem very weighty, in reality not all of these matters will be relevant to every case but the list reveals the range and diversity of matters that are at present dealt with under a more informal process. The advantage of making these local factors mandatory is that any individual application should have all the relevant detail from the outset – a great advantage to both the Council and also the public and consultees who should be able to assess the case without awaiting further detail. This is the key intention of the change in approach that is being **required** by Government.
- 1.3.5 In order to make these local considerations a mandatory part of the validation process it is necessary to consult on the proposed provisions and the Government has issued guidance on the approach to doing this. I would intend to follow that guidance and report-back the result to the Board before formal adoption by Cabinet. I intend to do this depositing the draft documents on the website and inviting comment from agents, parish councils, amenity groups and statutory consultees and reporting back on their responses. The draft of all these specific documents when completed will form the basis of the consultation.

1.4 Charging for pre-submission advice

- 1.4.1 Several Kent authorities have introduced or are about to introduce charging for pre-submission negotiations. A key objective of this process is to generate income to cover part of the Development Control service offered – perhaps in the region of £20,000 in a full year.
- 1.4.2 We have also observed that a consequential impact is that far fewer speculative enquires are received and the presentation of work in progress that is carried-out by developers is far more focussed and meetings reputedly therefore more productive.
- 1.4.3 In the main charging practice by other authorities is confined to commercially based development and thus does not bear on those wishing to carry-out householder schemes such as domestic extensions. This seems to me to be an

appropriate arrangement and experience from elsewhere suggests that such an approach has not hindered the process in any material way. Indeed to adopt a more 'business-like' approach in the case of commercial development proposals might be seen to be entirely appropriate in the context of the overall planning and development process.

- 1.4.4 An independent assessment of the balance of issues surrounding charging for pre-submission enquiries has been carried-out by the Planning Advisory Service, the body charged with giving practice advice to public service planners and concludes that such practices are reasonable and can bring service improvements in the long run.
- 1.4.5 I take the view that the approach described here is generally appropriate and I would hope that members would agree the principle of charging in commercial cases. I am preparing a scale of charges drawing on established practice elsewhere and I intend to circulate this prior to the meeting of the Board.

1.5 Application processing

- 1.5.1 The key aim in our consideration of application processing is that it is necessary to ensure that all parts of the process are not only necessary but exercised in an appropriate fashion.
- 1.5.2 Authorities in the County now carry out very limited consultation on matters submitted pursuant to planning conditions. The general view we have found is that this has not been harmful to the planning process and it has enabled the redirection of some resources to those areas of work where improved performance is measured by the new National Indicator 157 (by which our HPDG settlement may be abated if speed of performance is poor).
- 1.5.3 As some Members may recall the Council made some changes to its consultation procedures following the Best Value Review and I think that the time is now right to revise our actions. In particular I intend to follow the lead successfully made by those Councils in Kent that do not consult on landscaping or materials but turn-round these decisions at officer level in a very efficient way. In parallel I intend to limit reconsultation on amended plans that have been secured to respond to comments made during the first consultation. This process is both consuming of staff time and costly when multiple copies have to be printed (under the new national procedures that the Council must implement in April next year we can ask for no more than 4 copies of plans and indeed if submitted electronically then the council bears the whole cost of printing).
- 1.5.4 All plans are displayed on the website as soon as they are deposited with the Council and I therefore intend to also publish List D (the list of decisions issued which is currently produced with the Area Committee agenda) weekly alongside List B to enable all parties to keep up to date with the speedier decision making on these plans.

- 1.5.5 As I made clear in my last report at least one Kent authority has abandoned the practice of negotiating *during the life of an application*. While pre-submission discussions take place the authority that adopts this approach takes a very firm stance against negotiation and, if a scheme is unsatisfactory, either seeks a withdrawal or refuses permission, without recourse to time consuming discussion and any subsequent re-consultation. We have been assured that after initial resistance this approach is improving the quality of submissions. This is an interesting approach but not one that I would endorse. Moreover the leading authority in charging for pre-application advice in Kent sees an improvement in the quality of submission that should obviate, in the longer term, the need for many of the negotiations currently necessary during the life of the application. At this stage I am not convinced that we need to or the time is right to curtail our negotiations during the life of the application but this is a matter that will need to be kept under review in light of the continuing pressure for speed and the importance of this for HPDG success.
- 1.5.6 I conclude this section by restating the point made in opening this report. The Development Control service we have developed at Tonbridge and Malling is predicated on a high quality of customer service and attention and it is absolutely not the intention of the approach described here to dilute that. Rather it is doing our very best to find the balance in the process and making ourselves more efficient but retaining the integrity of the general approach we adopt.

1.6 The Members' Code of Conduct

- 1.6.1 At the last meeting Members asked me for clarification of the position that they find themselves in with regard to their opportunity to engage with all parties before the submission of an application, through to the point of decision.
- 1.6.2 Detailed guidance is given in parts F4 to F6 of Protocol F to the Council's recently adopted Code of Conduct and members are referred to the details set out in that Protocol for a better disposition of the rules which apply.
- 1.6.3 In essence this means that Members must not give the impression of having predetermined their view on any case. This does not mean that Members cannot express an initial opinion or ask searching questions. Indeed Members may indicate their initial view on a matter (indicating a predisposition) provided that they also make it perfectly clear that they cannot reach a final view until they see the final report from Officers.

1.7 Legal Implications

- 1.7.1 If a Member is judged to have pre-determined an issue they will be regarded by the Courts as having a personal and prejudicial interest because of bias and should not take part in the meeting. If they do so then any decision taken on a matter in which they have such a bias is likely to be declared void and will have to be re-determined. Members should bear it mind that it is not what they think their

position may be, but whether a member of the public could reasonably believe from their words or actions that the Member may have pre-determined an issue.

1.8 Financial and Value for Money Consideration

- 1.8.1 Charging for pre-application advice will provide a potential new income stream based on sound business principles. I would not like to predict with any great confidence what the financial effect of this might be but I have suggested to the Director of Finance that a figure of £20,000 should be incorporated in the budget estimates, based on what we hear of experiences elsewhere.

1.9 Risk Assessment

- 1.9.1 A failure to maintain and improve performance in these areas would lead to risk to the credibility of the planning service as a whole which would reflect badly on the Council. Poor performance in applications processing could lead to an increased number of non-determination appeals and less success with HPDG.

1.10 Conclusions

- 1.10.1 Bearing in mind the continuing focus on the speed of decision, it is clear that the pressure for improved performance will continue into the foreseeable future.
- 1.10.2 We will need to continue in our approach of seeking change in processes to improve speed of performance particularly in the “back office” systems that we operate where we have a target of continuous improvement. It is clear that there is also a need to act decisively to further revise our approach if we are to make further substantial improvements and avoid difficulties with inspection and audits in the future and in part this must involve matters such as consultation. Similarly I am highly conscious of the need to proceed sensitively in the high profile area of development control.
- 1.10.3 The changes promoted in the report are in my view a balanced response to the need to maintain and enhance our performance.

1.11 Recommendations

- 1.11.1 I recommend that :
- 1.11.2 The results of the Best Value user satisfaction survey **BE NOTED**.
- 1.11.3 The Local Validation Standards consultation process **BE PROGRESSED** as described in the report.
- 1.11.4 The changes in application processing arrangements **BE NOTED**.
- 1.11.5 The provisions in respect of the Members’ Code of Conduct **BE NOTED**.

1.11.6 The practice of charging for pre-application advice in respect of planning proposals **BE INTRODUCED** from 1 April 2008 and be based on the scale of charges and advice note to be circulated to Members of the Board.

The Director of Planning Transport and Leisure confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Lindsay Pearson

Nil

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