

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

27 May 2009

Report of the Director of Planning Transport and Leisure

Part 1- Public

Matters for Information

**1 DEVELOPMENT CONTROL – APPLICATIONS AND APPEALS
PERFORMANCE AND CHANGES IN DEVELOPMENT CONTROL PRACTICE**

To advise Members on performance for the year 2008/09, explain some recent change in Development Control practice arising from Government action and to report likely further changes in practice required by Government.

1.1 Planning applications

1.1.1 The performance for the determination of planning applications for the whole of the last financial year compared with targets set by the Department of Communities and Local Government (DCLG) and our own targets was as follows:

Application type	DCLG target	TMBC target	Actual
157 Major % in 13 weeks	60	70	72.73
157 Minor % in 8 weeks	65	77	75.65
157 other % in 8 weeks	80	90	91.21

1.1.2 We have successfully and comfortably met all the performance standards set by DCLG and also our own targets with the exception of the marginal shortfall in respect of the Minor applications category. I should point out that the 'Minor' description is somewhat of a misnomer in that it includes cases, for example of up to ten dwellings and can include some of the most complex and controversial cases that we deal with. It is also worth pointing out that these cases have been most affected by new procedures governing validation and additional information requirements introduced during the year which has not helped in the speed of determination of cases. In addition we have been experiencing an increased propensity amongst applicants who wish to negotiate within the application

process, not least because of the impact of the economic situation where development has become ever more marginal and the importance of changes in schemes becomes increasingly vital in viability terms. The shorter time period for decision making on Minors compared to Majors also explain the divergence in these figures.

- 1.1.3 Based on recent experience I feel that it is very likely that applicants will continue to want to constantly make adjustments to schemes including those that have already been through the system in an endeavour to maintain viability whatever the external situation dictates.
- 1.1.4 Nevertheless, I am pleased with the overall performance that has been sustained. Obviously these are difficult times for the development industry as a whole and the economic downturn has affected the level of activity in all categories. We have been managing our staff resources accordingly to address this situation. What is important in this respect is that we are well placed to respond to an upturn in conditions when this occurs.

1.2 Appeals

- 1.2.1 During the past year there have been a total of 57 appeal decisions. The success rate for last year against our target, for appeals against the refusal of planning permission, is as follows:

	TMBC target	Actual
% appeals allowed	29	18.8

- 1.2.2 The performance on appeals is very good against target, which is of course derived from an assessment of performance over previous years. It would not in my view be prudent to revise the target on the strength of this one year performance but we will keep that under review. For comparative purposes members should be aware that the national average of allowed appeals, as reported in, unverified, comparable figures recently published by the Planning Inspectorate, is running at 34%.
- 1.2.3 It is very difficult to highlight any specific reasons why our success rate has been so good this year. Obviously the soundness of our planning policy position might be one factor but to use those familiar words, each case falls to be judged on its own merits and the quality of the original decision either by the Area Planning Committees or through delegated decisions is clearly important as is the quality of the evidence put forward in particular cases, often supported by local representation.
- 1.2.4 In a couple of cases the decision of the Council to refuse permission was found to be unjustified by the evidence available and as a result costs were awarded against the Council. This was somewhat surprising as the sites lie within the

Green Belt, and of course this is a matter that we should keep under review in the continuous examination of our practices.

1.2.5 There were key changes in Appeal procedures introduced in April:

- All appeals dealing with Householder refusals are now only dealt with by electronic means. No additional evidence can be advanced by the Council or consultees after the Council's decision has been made.
- The decision as to whether the appeal is decided by written representations, an Informal Hearing or a formal Local Inquiry is now wholly in the hands of the Planning Inspectorate.
- Costs can now be awarded in all types of appeal (whereas previously it was normally only cases that were heard that were subject to costs).

1.2.6 The effect of these changes is that the Council is less able to influence the appeal process itself and is required to be scrupulous in its decision making because costs may now be awarded for unreasonable decisions, which includes an absence of adequate evidence to justify the reasons for refusal, in any type of appeal.

1.3 Major Infrastructure Projects

1.3.1 As Member's will be aware there are proposals for a new Infrastructure Planning Commission to deal with major projects. We are beginning to receive further information on the processes that will be involved and the expectation that applicants will be required to carry out extensive presubmission consultations. However there is still some way to go before Government brings forward the necessary secondary Legislation required prior to the implementation of these new procedures.

1.3.2 We do now know that the Chairman of the Commission will be Sir Michael Pitt, who carried out the recent review of flooding and was previously Chief Executive of Kent County Council.

1.3.3 When the Commission was first announced it seemed unlikely that it would have much relevance in the Borough. However, should the emerging Borough Green and Platt Strategic Rail Freight Interchange project ever become a formal proposal it is highly likely that the Commission would be the decision maker rather than this Council.

1.4 Killian Pretty review of Development Control

1.4.1 I have reported previously on this review set up by Government to take a "root and branch" look at the Development Control process. Following publication of the Review findings and recommendations the Government has now published its own response to those findings.

1.4.2 It reads:

“The need for action is urgent and we have already:

- *established a programme office within Communities and Local Government to take forward a wide range of actions*
- *created a stakeholder Sounding Board to develop and test emerging proposals with representatives of key bodies in the planning process*
- *discussed with stakeholders how they propose to help take forward some of the recommendations, for example the Local Government Association propose to issue updated guidance which will help clarify councillor engagement in the planning application process, and the British Property Federation are working on guidance to encourage developers to use Planning Performance Agreements*
- *worked with PAS to identify a number of actions to support implementation, including:*
 - *commissioning a project to help increase the use of Local Development Orders by local authorities*
 - *ten regional events on integrating a development management approach into the planning service*
 - *developing guidance on development management*
- *commissioned research to look at how we might streamline the process for minor changes to planning permissions*
- *delivered the e-Consultation Service (Hub). The Planning Portal is now working with local planning authorities and consultees to drive take up*
- *strengthened the arrangements for co-ordination between the bodies who help build skills and capacity in the planning sector.*

In addition, by summer 2009 we propose to:

- *consult on:*
 - *draft proposals to extend permitted development rights for businesses and public services – which will make it easier for them to make some small scale alterations or extensions to buildings*
 - *a possible simplified process for some minor commercial development, such as new shop fronts*
 - *draft proposals to streamline information requirements for applicants*
 - *possible changes to give local authorities greater flexibility to determine how best to notify the public about planning applications*
- *identify options for an improved approach to minor amendments to*

planning permission

- *publish an action plan to develop new national policy on Development Management, together with a staged programme to deliver simplified and consolidated secondary legislation*
- *report on progress in developing proposals to take forward the other agreed recommendations, in particular in relation to changing the performance framework, engaging statutory consultees and improving the use and discharge of planning conditions, with consultation on the latter two issues in the Autumn.*

In winter 2009 we will provide a further update on our progress in taking forward the agreed recommendations, against the mile stones set in the progress report published in summer 2009"

- 1.4.3 Clearly there is an intention to bring forward further changes in aspects of the planning system, which seems now to be under almost constant review. Members will note that one proposal is for a revision to the validation procedures that were only recently introduced, after much detailed work by Officers around the County to support recent legislative changes. We will alert Members to these consultations and related legislative changes as and when they occur.

1.5 Legal Implications

- 1.5.1 These will be clear only when detailed outcomes from Killian Pretty are published.

1.6 Financial and Value for Money Considerations

- 1.6.1 These will be clear only when detailed outcomes from Killian Pretty are published

1.7 Risk Assessment

- 1.7.1 Risk will arise only if the Council fails to put in place adequate procedures to reflect any changes in legislation that are as yet unidentified.

Background papers:

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Nil

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