

**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**PLANNING and TRANSPORTATION ADVISORY BOARD**

**06 January 2009**

**Report of the Director of Planning Transport and Leisure**

**Part 1- Public**

**Matters for Information**

**1 PLANNING UPDATE**

**Summary**

**This report provides a brief update on a number of changes in the Planning system as a result of recent legislation and to also provide headline details of recently published research studies which may lead to further legislation, changes in statutory procedures and national guidance/policy statements, in due course.**

**1.1 Planning Act 2008**

1.1.1 This legislation has been trailed through various Green and White Papers over the last 3 or so years. It was given Royal Assent in late November.

1.1.2 The main provisions in the Act surround the introduction of a new, independently operating, Infrastructure Planning Commission which will deal with applications for nationally significant projects. The Act lists the types of development envisaged to be controlled in this way are:

- Electric lines
- Underground gas storage, liquefied natural gas facilities, gas reception facilities, gas transporter pipe-lines
- other pipelines
- highways
- airports
- harbour facilities
- railways
- rail freight interchanges

- dams and reservoirs
  - transfer of water resources
  - waste or water treatment plants
  - hazardous waste facilities.
- 1.1.3 The Act sets out criteria by which to determine if a scheme is considered to be of “national” status and thus subject to the Act. Each case will need to be assessed on its individual merits.
- 1.1.4 The need to obtain Consent under the Act will obviate the need for separate consents under various legislative provisions (for instance planning or listed building controls and the electricity acts). Following the debate in the House of Lords the Government has conceded that certain regulatory regimes would remain in force even after the grant of Consent. These are quite specialist in nature and it should be noted that it will not be possible to, for instance, serve an Abatement Notice in respect of Consented Development.
- 1.1.5 National Policy Statements are to be drafted to give guidance on the Government policy approach to these types of case. Clearly, to operate this system there will be a mass of secondary legislation to control the management of the process as a whole. We will report on these matters as and when they emerge in draft forms and as relevant to the Council.
- 1.1.6 The Act provides the power to allow the transfer of functions of the Regional Planning Boards to the Regional Development Agencies.
- 1.1.7 Regional Spatial Statements and Local Development Frameworks (LDF) must now include policies to address climate change, a matter that we are addressing through the forthcoming Managing Development and the Environment DPD.
- 1.1.8 Pursuance of good design is now enshrined in legislation which strengthens the hand of planning authorities in exercising their development control functions.
- 1.1.9 Amongst other changes that will require detailed secondary legalisation or which are dealt with in detailed schedules to the Act are:
- Power to correct errors in decisions
  - Powers of the High Court in relation to Plans
  - Powers to decline applications
  - Matters in relation to the consent regime for Tree Preservation Orders
  - The power of the Secretary of State (through the Planning Inspectorate) to determine the method by which appeals are dealt with and

- The power to introduce the Community Infrastructure Levy (CIL) system for development contributions. In this respect it is proposed that Regulations are published with a view to a new discretionary system coming into force in the autumn of 2009. Depending on the final form and detail of this new regime it may be necessary or desirable for the Council to prepare and 'infrastructure plan' or similar document in order to provide a basis for implementing CIL. This is clearly an important but evolving area of planning regulation that I shall watch and report on very carefully in coming months.

1.1.10 We will update Members as these various provisions become clear and are introduced by Government. At present no part of the legislation is in force but the Government is in the position to make Commencement Orders and Regulations as soon as it sees fit.

## **1.2 Associated draft legislation**

1.2.1 The Government has also, in early December 2008, announced the intention to legislate to allow costs to be awarded, in the event of unreasonable behaviour on behalf of one of the parties, in all written representation appeals. At present costs can be awarded only in appeals that are subject to an oral hearing, except for enforcement notice appeals where they may be awarded in written representation appeals. The Government believes that this change must be brought forward as a direct result of its taking powers to determine the mode of consideration of appeals.

## **1.3 Planning and Energy Act 2008**

1.3.1 This enables Local Planning Authorities to bring forward energy policies in the LDF documents and including the opportunity to require standards above those set out in the Building Regulations.

1.3.2 Work on this subject is being progressed in the draft Managing Development and the Environment DPD which will be reported to the LDF Panel later this month.

## **1.4 The Killian Pretty Review (KPR) of Development Control**

1.4.1 This is a Government sponsored study which attempts to establish further ways to revise the planning applications process to overcome perceived problems with the current system. It is the latest in what seems like an ever moving approach to development control matters and to some extent has made recommendations that seem to promote the review of recently introduced changes.

1.4.2 The reviewers set out their approach as follows:

"We were able to identify five key areas of concern, namely:

a) Proportionality – in particular, that the requirements and process in relation to many smaller scale developments were not proportionate or reasonable in relation to the scale of development or its impact;

b) Process – some stages in the process were particularly problematic, namely, the pre-application stage and discharging of conditions following the grant of planning permission;

c) Engagement – that the involvement of some key parties, in particular elected members and some statutory and non statutory consultees, was not working effectively;

d) Culture – in particular, that the current target regime is having some harmful, unintended, effects on behaviours and outcomes; and

e) Complexity – in particular, the national policy framework and the complexity of the legislation governing the consideration of applications.”

#### 1.4.3 There are 15 Recommendations to Government.

- The number of minor applications should be reduced by increasing permitted development rights, particularly for minor commercial proposals, and also through the introduction of “lighter touch” prior notification procedures to a wider range of proposals thus reducing the burden to both developers and LPAs.
- The information requirements to support applications should be made more proportionate. This bears on the revised arrangements brought into place as recently as April 2008 to support changes in Government guidance published a little earlier at the end of 2007.
- Improvements should be made in the level and quality of guidance provide by Government and the LPAs. The emphasis is on Internet/web based solutions making information readily available.
- Government, LPAs and others should make the pre-submission process more effective.
- Government should encourage further smoothing of the process by improving electronic consultation options via the Planning Portal. Government should also promote business process re-engineering through the promotion of the soon to be published outputs of the National Process Improvement Project.
- Government should radically review the extent and use of conditions.
- Government should secure the scaling back of S106 obligations and re-focus towards the Community Infrastructure Levy together with more specific advice to ensure the remaining system becomes more effective.
- Government should reduce the burden of making minor changes to approved schemes.

- Government should redefine the method and extent of consultations. In particular it suggests that statutory consultees must be required to be timely and publish their comments and their speed of response. It is also suggested that Government should re-emphasise the fact that the LPA retains primacy in assessing the weight to be assigned to consultation responses.
- The input of elected council members into the planning application process needs to be better targeted on those developments which will make the greatest contribution to the future development of the area. It is suggested that training is crucial to members' role and that the cabinet member should be a member of the planning committee. It suggests that the national organisations give much clearer advice to elected members to allow them to be more actively engaged in appropriate ways in pre-application discussions on more significant developments.
- Applicants should be encouraged to engage in pre-submission consultations and report the result when they actually apply. LPAS should be given autonomy to select methods of consultation. One specific suggestion is that public notices in newspapers could be dispensed with.
- More options for alternative conflict resolution should be investigated by Government.
- "Local planning authorities and other bodies should provide greater encouragement and recognition to those agents who prepare good quality applications on behalf of their clients, in order to drive up the standard of applications submitted."
- Government, the LPAS and the professional bodies should address the shortage of staff resources and skills.
- "Government should replace the current approach to targets, which is based simply on the time taken between the submission of, and a decision on, an application by a new, broader and more flexible approach to measuring the whole application process." The current speed of performance based NPI 157 should be replaced by a "satisfaction with the planning service indicator".
- Government should produce clearer national policy statements and should take steps to reduce the duplication with other control regimes.
- Government should substantially overhaul national policy framework and secondary legislation to reduce complexity and create a more positive atmosphere to development management.

1.4.4 On the one hand there seems to be merit in many of the process issues identified during this review that seek to facilitate more streamlined procedures,

notwithstanding that many of those procedures have themselves been introduced by regulation in relatively recent times. I am sure, however, that the Board may share my view that there are matters in these recommendations that are unhelpful and by way of example I refer to the proposal to extend the regime of prior approval which is simply not well understood by the public at large.

- 1.4.5 It now remains to be seen how the Government responds to these recommendations. Once it becomes clear how proposed practical changes are emerging we will report further.

## **1.5 Heritage matters**

- 1.5.1 It had been anticipated that a new Heritage Bill would be announced in the Queen's Speech. The Government has now revealed that this Bill will not be promoted in this Parliamentary Session. However, a Joint Ministerial Statement (from DCLG/DCMS) indicates that we should expect a new draft Planning Policy Statement on Heritage matters before the Easter 2009 recess. The Government also intends to publish a clear statement of its vision and priorities for the historic environment during 2009.

- 1.5.2 The Heritage Bill as it was drafted raised some important issues about the streamlining of the system of listing and consents but also raised other matters that may have been a resource burden on LPAs. We will watch this area of policy and procedural development closely and at the appropriate time invite a senior English Heritage representative to make a presentation to the Board on the most likely way forward and the implications for the Council.

## **1.6 Legal Implications, Financial and Value for Money Considerations and Risk Assessment**

- 1.6.1 These will become clear only when the Government publishes detailed proposals flowing out of the above.

## **1.7 Recommendation**

- 1.7.1 This Report **BE NOTED**.

Background papers:

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Nil

Steve Humphrey

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