

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

23 February 2010

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 KCC CONSULTATION ON COMMUNITY INFRASTRUCTURE PROVISION AND SERVICE STRATEGIES

This report notes an initial response to this consultation and recommends adoption of the Officer level comments that were submitted to KCC to meet the deadline of 20 January 2010. The report also provides the opportunity to prove some context to the balance of competing demands for contributions towards community infrastructure arising from new development.

1.1 Description

1.1.1 This consultation by KCC sought a response by 20 January 2010. I have sent a response in line with my recommendation below indicating that if the Board wishes to modify the comments I will inform KCC accordingly.

1.1.2 This document is intended to inform the preparation of Local Development Framework (LDF) documents and to play a part in the Development Control process. In the latter case it seeks to set a context for the County Council's 'bids' for developer contributions in respect of the following services:

- Adult education
- KEY training (work based learning)
- Libraries and archive service
- Youth service
- Gateway strategy
- Primary and secondary education
- Adult social services.

1.1.3 For each of the above service areas there is a description of the County wide Strategy and a more specific description for areas of the County.

- 1.1.4 The list above is, of course, only part of the picture as far as the planning process is concerned. Development proposals might also give rise to other community need, such as children's play, open space and affordable housing. In respect of these matters the Borough Council has well developed planning policies guiding negotiations with developers. Other agencies, such as the PCT, may also signal needs arising from development projects.
- 1.1.5 In the following paragraphs some deficiencies in the KCC Documents are highlighted. Notwithstanding this approach, the securing of properly justified developer contributions is an important factor in assimilating new development into an existing community. As a matter of practice we have often pursued contributions of the type covered here but in so doing have sought clear, justified and practical evidence from KCC on a case by case review. The concerns expressed on the consultation document are about matters of evidence and balance rather than the principal of collecting appropriate funds from development to provide public facilities that are justified by new development proposals.

1.2 Procedures

- 1.2.1 Guidance in "Planning Policy Statement (PPS) 12 – Local Spatial Planning" reads:
"Preparation of supplementary guidance by other bodies:
 6.3 *Supplementary guidance to assist the delivery of development may be prepared by a government agency, Regional Planning Body or a County Council or other body (e.g. AONB committee) where this would provide economies in production and the avoidance of duplication e.g. where the information in it would apply to areas greater than single districts. Such guidance would not be a supplementary planning document. However, if the same disciplines of consultation... are applied, such information might, subject to the circumstances of a particular case, be afforded a weight commensurate with that of SPDs in decision making. This may be more likely if the district/borough/city councils to which it is intended to apply endorse the guidance or if the document is an amplification of RSS policy and it has been prepared by an RPB."*
- 1.2.2 The County Council states that the consultation has been executed as if it were pursuant to the Regulations that apply to LDF documents. While I do not believe that this is technically correct it is clear, in the context of PPS 12, that KCC has adopted the "same discipline" as the statutory provisions. However there is no indication as to whether or not KCC has engaged the development industry in this process.
- 1.2.3 There is some reference to economic viability and the balance to be made about potential contributions to various services which reads:
"...where Instances of development viability are concerned it is for the local planning authority and other public agencies to decide the balance between contributions and public sector provision, to enable the development to be acceptable on planning terms",

- 1.2.4 However this paragraph, while drawing from DCLG Circular 05/2005, is not entirely accurate, in that the power to make this balancing judgment resides **ONLY** with the decision-maker, usually the District Planning Authority but the Secretary of State in 'Call-In' cases and major appeals or his appointed Inspector in most appeals. The balance will be judged in the context of the views expressed by public service providers, one of which may be the County Council, but those providers are not empowered to formally decide the balance of any case.
- 1.2.5 The key context for the legal position for securing development contributions is DCLG Circular 05/05 which makes clear:

*“Obligations must also be so **directly related to proposed developments** that the development ought not to be permitted without them – for example, there should be a functional or geographical link between the development and the item being provided as part of the developer's contribution*

*Within these categories of acceptable obligations, what is sought must also be **fairly and reasonably related in scale and kind to the proposed development** and **reasonable in all other respects**. For example, developers may reasonably be expected to pay for or contribute to the cost of all, or that part of, additional infrastructure provision which would not have been necessary but for their development. The effect of the infrastructure investment may be to confer some wider benefit on the community but payments should be directly related in scale to the impact which the proposed development will make. Planning obligations should not be used solely to resolve existing deficiencies in infrastructure provision or to secure contributions to the achievement of wider planning objectives that are not necessary to allow consent to be given for a particular development.”*

1.3 Proposals in Tonbridge and Malling

- 1.3.1 The section of the document dealing with services in Tonbridge and Malling Borough identifies a wide range of potential projects but none is detailed specifically or costed and some imply expenditure outside the Borough (for example the "hub and spoke library/archives model"). This section does not, therefore, extend the level of knowledge to the Borough Council or any developer of the likely specific projects to be needed/funded nor, indeed, the level of funding required.
- 1.3.2 Such details as there are of Tonbridge and Malling projects are shown in **Annex 1**.

1.4 Other relevant documents and experience of their use

- 1.4.1 The document also cross-refers to another KCC document "Guide to Development Contributions and the Provision of Community Infrastructure (March 2007) (the 2007 Document). Earlier versions of this document have been around for some time and it is annually updated. It sets out a formulaic approach to

seeking cash payments for contributions towards the provision listed above. The document has been subject to some consultation (mainly through Kent Planning Officers' Group). Most recently this Council has made no objection to the 2007 document but drew attention to several matters:

- The formulae are unproven and have attracted criticism from Inspectors (see para. 12. below)
- The "bids" based on the formulae will form only part of the overall balance of assessment of the planning application concerned and do not obtain any special status in that assessment and
- The Borough Council itself is active in provision for youth and even if contributions are sought in that regard they may not be provided to KCC in whole or in part).

1.4.2 The 2007 Document does not appear to have ever been subject to the same nature or level of consultation as even the 2009 document and this must give rise to great concern if KCC is anticipating using the combined documents as the basis for bids. I have never been able to obtain a satisfactory explanation of how KCC could produce formulae specific to the Kent area unless and until specific projects have been identified and costed.

1.4.3 The ultimate test for the consideration of such matters is at planning appeals. In the most recent case of Sovereign House, Tonbridge appeal the Inspector, following the hearing of detailed oral evidence, was not able to support contributions in respect of Library and Youth services as he was not able to see the direct relationship with the proposed development. Although that appeal was dismissed he concluded the following in respect of contributions ...

"...the tests in Circular 05/2005 are exacting. On the basis of information before me, I am not persuaded that the levels of contribution sought would fully meet them."

1.5 Analysis

1.5.1 In light of all the foregoing I have concerns with regard to the 2009 document now the subject of consultation and indeed the earlier 2007 Document that has not been subject to meaningful public consultation.

Kent County Council, Community Infrastructure provision: Review of current and future service strategies in Kent" (the 2009 Document)

1.5.2 The document seeks to take a role as part of the plan-led system. However it is of little immediate benefit in this Borough for the following reasons:

- It is too late for the current 'round' of the Local Development Framework given that the relevant Development Plan Documents are already adopted and in use at TMBC. Unlike others in the County this Council has had its Core Strategy in place since 2007 and the Development Land Allocations DPD

since 2008. In any event, the 2009 Document does not have any clear and specific projects identified or costed which specifically reflect the site specific proposals of this, well established, TMBC development strategy. In this respect I believe that the 2009 Document does little to overcome the concerns underlying the views expressed by the Inspector, in respect of the 2007 Document approach, in the Sovereign House appeal decision.

- The 2009 Document fails to reflect the fact that the 4 major Strategic housing land allocations all have planning permission and have been commenced. Therefore they cannot be considered candidates for the negotiation of further contributions unless a significant change in circumstances is subsequently agreed. As a result the opportunity to seek contributions rises and falls on a few, limited scale, uncommitted allocated sites and the windfall sites that will emerge over time. Applying the 2007 Document formula approach will not be effective in delivering the ends aspired-to in the 2009 Document.
- It should also be noted that the time horizon of the 2009 Document only look 5 years ahead while LDF documents must look 15 years. Given the consultation process the net effective period for the 2009 Document is 2/3 years. Consequently, it will not inform the whole of the LDF plan period and would have to be reviewed as the development strategy proceeds over time. Unless the community infrastructure required is clearly specified for the plan period then there remains a serious risk of under achieving against KCC's own targets. This is because developers will not be willing to fund contributions early in the plan period for the provision of community facilities later in the plan period, if there is no certainty what subsequent contributions will be sought of other developers.

Guide to Development Contributions and the Provision of Community Infrastructure (March 2007) (the 2007 Document)

- 1.5.3 The frailty of the approach in the 2007 Document, as shown by the Sovereign House appeal decision, means that it is difficult to persuade developers to accept the costs arising from this "tariff type approach" adopted by KCC in the undifferentiated way in which they are published, especially in the current economic climate.
- 1.5.4 This weakness is carried forward into the 2009 Document because there is no mechanism now proposed to make the link between any cash sum sought and the identified, albeit mostly currently theoretical, projects which are unspecified and un-priced, within the Borough.

1.6 Legal Implications

- 1.6.1 There would be a risk legal action if the Borough Council declined to take any notice of either document. Similarly the Council could be open to challenge if it refused planning permission on the lack of contributions, where their justification was not robust.

1.7 Financial and Value for Money Considerations

- 1.7.1 Justified contributions from development can provide important public service facilities that would otherwise fall to the Borough Council, KCC or other agencies to address.

1.8 Risk Assessment

- 1.8.1 A risk would arise if the Borough Council chose to either ignore the documents or apply them "at face" value and indiscriminately.

1.9 Recommendations

- 1.9.1 **TMBC supports the principles behind the production of these documents and endorses the general thrust of the conclusions.** It will take them into account in determining planning applications.
- 1.9.2 However it raises the following concerns with regard to the 2009 Document and recommends that further steps of consultation be taken with regard to the 2007 Document so as to improve its credibility:

2009 Document

- It is not clear that the consultation approach adopted will give sufficient weight to the document - for instance have other "public service providers" and the development industry been directly consulted to allow them to comment upon the approach adopted by KCC?
- The 2009 Document fails to identify specific and clearly costed projects in TMBC area. This makes it very difficult to assess what level of (normally financial) contribution could be justified of a particular proposed development when planning permission is sought.

2007 Document

- Bearing in mind the Inspector's decision in the Sovereign House appeal there is an urgent need to expose the 2007 Document and its formulas to the same (appropriate) nature and level of public consultations as the 2009 Document.

- 1.9.3 In light of the above TMBC cannot endorse either the 2009 Document or 2007 Document for the purposes of full compliance with South East Plan policy CC7 or Tonbridge and Malling Core Strategy policy CP25, in Tonbridge and Malling Borough. TMBC will nevertheless give consideration to these documents in its assessment of individual planning applications. .

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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Director of Planning Transport and Leisure