

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 PLANNING ENFORCEMENT

To report further on options for improving the powers comprised in the regime for planning enforcement.

1.1 Background

- 1.1.1 At the last meeting of this Board I reported on the procedural background to planning enforcement investigations. For Member's assistance that report is attached as **Annex 1**.
- 1.1.2 The Report highlighted the clear limitations to the considerations that a Local Planning Authority may take into account in deciding whether or not it is expedient to take enforcement action. In short the Local Planning Authority should take action against unauthorised works and uses only if it is satisfied that it is expedient so to do for proper planning reasons.
- 1.1.3 Since that report I have been giving further thought to the possibility of seeking to encourage Government to provide for a means to discourage those actions that lead to breaches of planning control, even if those breaches later prove to be "acceptable" in themselves.
- 1.1.4 At present there is no sanction available to the Local Planning Authority arising simply because of the failure to obtain planning or other related permission, comply with conditions or with approved plans. As a result, and as revealed in the history of recent cases, it is sometimes not possible to truly judge breaches of planning control until quite some time after the initiation of the breach. However the absence of a current authorisation for development or an opportunity for the Council and local interested parties to consider a revised proposal can understandably give rise to great anxiety in the locality around a site and also causes a lot of work in the investigation process.
- 1.1.5 I have come to the conclusion that it would be more helpful if there were some form of sanction available to the Local Planning Authority to act against the simple

failure to obtain all the necessary planning approvals before commencing development. This would be in addition to and not instead of the right to serve an Enforcement Notice that exists now. It would place a more direct responsibility on a developer, provide a simpler course of action on the part of the Local Authority and give some comfort to concerned local people that a course of action was at least able to be pursued.

- 1.1.6 I believe that the option for a speedy prosecution for failure to obtain the necessary consents would allow the Local Planning Authority to apply a sanction in a way that will, it is hoped, over time deter the carrying out of unauthorised development and in the meantime provide greater encouragement for applications to be made.
- 1.1.7 This will not be a universal panacea and is unlikely to prevent the type of high stake recently reported in the national press (for instance, the house constructed within a barn) but could be very effective against various cases that might in themselves be of local concern only but where experience shows serious concerns are held on the part of residents local to sites where the breaches occur.
- 1.1.8 Such a process would not necessarily lead to alterations in unauthorised development where the effect and impact is subsequently found to be acceptable in planning terms. However, it would provide greater encouragement and in some cases legally enforce circumstances that will result in more transparent consideration of such development and prosecution where that cannot be achieved.

1.2 Next steps

- 1.2.1 A letter be sent to DCLG commending a change in the law in the manner described in this report and fresh calls be made for support from the Local Government Association.

1.3 Legal Implications

- 1.3.1 Potentially additional work at the early stages of the introduction of such powers.

1.4 Financial and Value for Money Considerations

- 1.4.1 Some initial increase in cost which could be offset by reducing the cost on protracted enforcement investigations in the longer run.

1.5 Risk Assessment

- 1.5.1 A risk would arise only if the power were to be used other than in accordance with the terms of the Code for Crown Prosecutors.

1.6 Recommendations

- 1.6.1 **I RECOMMEND** that:

- 1.6.2 a letter be sent to the Department of Communities and Local Government encouraging the introduction of a new offence of carrying-out development without the necessary approvals under planning legislation and
- 1.6.3 that the letter be copied to the Planning Shadow spokesmen of the Conservative and Liberal Democrat parties and the Local Government Association encouraging them to support the approach to Government.

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:

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Nil

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Director of Planning Transport and Leisure