

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

14 June 2011

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 DCLG CONSULTATION – RELAXATION OF PLANNING RULES FOR CHANGE OF USE FROM COMMERCIAL TO RESIDENTIAL

1.1 The DCLG proposal

- 1.1.1 This latest proposal by the Government is part of its overall approach to promoting economic growth by enabling many more development opportunities to be realised by removing the need for planning permission in some circumstances.
- 1.1.2 The principal proposal is to allow a change of use from B1 (office, R&D and light industry) to C3 (dwelling house) as “permitted development” and thus not requiring a planning application. It is also proposed that similar opportunities should apply for change of use from B2 general industry and B8 storage and distribution to dwelling.
- 1.1.3 These opportunities are not to be available in cases where “works” are also involved – in such cases a planning application will still be required.
- 1.1.4 It is perceived that this relaxation will encourage the development industry to seek new opportunities which will contribute to a speedy improvement in the supply of residential property.
- 1.1.5 The Government feels that B1 locations are likely to be most suitable but that in B2/B8 locations developers will assess the position and are unlikely to take these opportunities in locations, for instance B2/B8, where it will be difficult to market new dwellings.
- 1.1.6 The clearly expressed motivation is to enhance the supply of housing units that may be provided with the minimum of constraint from the planning system.

1.2 Potential implications

- 1.2.1 The Borough has not, to date, received applications which would no longer be needed under these proposals – all applications have included “works” as well as

a change of use. Indeed it has been possible to grant permission for the proposals submitted thus far to the Council.

- 1.2.2 However in granting planning permission there has been the need to consider the implications of such applications – are the living conditions that would arise be acceptable as a result of the impacts of nearby businesses/light or general industrial uses. Another consideration is whether the new residential use led to complaints with regard to nearby businesses and would it, therefore cause constraints to be placed on those businesses?
- 1.2.3 Such considerations appear to be absent in the current proposal and it seems that the main consideration in DCLG’s mind is that the marketing environment alone will be a sufficient mechanism to prevent developers exercising the new rights in inappropriate locations.
- 1.2.4 Of course one of the risks that might arise from this proposal is that premises could be converted in close enough proximity to nearby business/industrial uses to lead to new residential occupants complaining to the Council, in its role as Pollution Control authority, with regard to noise disturbance/odours or other impacts from existing businesses. Not only does this add a potential burden to the work loads of Pollution Control staff but also runs the risk of constraining existing established businesses in their operation – hardly a recipe for guaranteed economic benefits from this proposed change.
- 1.2.5 It could also prove to be the case that these opportunities could lead to the loss of some economically productive being re-used for residential purposes instead.
- 1.2.6 Moreover the removal of the planning controls would also mean that it would not be possible to secure development contributions especially for affordable housing or the necessary leisure/sports provision as required by this Council’s planning policies. Demand for other services will not be subject to any required contribution by developers but the consultation assumes that for marketing purposes developers may wish to support some local provision. There can, of course, be no guarantee that this will occur and new dwellings may not be well served.
- 1.2.7 The consultation does go as far as to suggest that there could be controls/ limitations on these proposed new “permitted development” rights although only limited suggestions are put forward. One is that a “travel plan” would be required to be submitted to the LPA and would require “prior approval” before the “permitted development” rights could be exercised. It is suggested that a similar mechanism may be used in respect of noise – but it appears to relate to noise generated by the new residential use rather than the matters raised in 1.2.4 above. The consultation goes on to say that the LPA could use an Article 4 Direction to remove such “permitted development” rights where the LPA fears that the rights would have an adverse planning impact (but there may remain an obligation to pay compensation if permission is refused on an application made necessary as a result of the service of an Article 4 Direction).

- 1.2.8 It is proposed that any “permitted development” change to residential could be reverted to the earlier use within 5 years without needing a planning application.
- 1.2.9 The consultation also asks, briefly, if there is a case to make the change from residential use to some business uses “permitted development”. The Government does not anticipate at this stage a national change on this suggestion but would consider adopting such an approach if there is strong support for this approach. I do not believe that this is a desirable suggestion to encourage because of the potential for uncontrolled adverse impacts in residential areas.
- 1.2.10 A further proposal is to allow more than one flat to be created above retail facilities without the need to seek planning permission. Again it is suggested that any potential for adverse amenity for the new dwellings will be avoided because developers will not create unmarketable dwellings. Again there can be no guarantee that suitable living conditions will be achieved by this route.

1.3 A response to the consultation

- 1.3.1 I believe that this consultation makes proposals that for this Borough are likely to have limited impact in that we have not seen proposals that would benefit from the new “permitted development “ rights nor indeed has the Council had justification to resist the applications submitted to it. However should there be a flush of proposals once the rights are implemented then there may well also be a number of instances where the issues set out above occur – it will also depend on the strength of market liberalisation that emerges and that is very difficult to predict. What is certain is that it will not be practical to undo any negative impacts once the rights have been exercised.

1.4 Legal Implications

- 1.4.1 None at this stage as this is a response to a Government consultation.

1.5 Financial and Value for Money Considerations

- 1.5.1 Minimal even if the proposals are adopted

1.6 Risk Assessment

- 1.6.1 None at this stage as this is a response to a Government consultation.
- 1.6.2 If implemented then the adverse impacts identified in the report above will pose potential risk to both residential amenity and local businesses.

1.7 Equality Impact Assessment

- 1.7.1 See 'Screening for equality impacts' table at end of report

1.8 Recommendations

1.8.1 I **RECOMMEND** that the points raised in this report as reflected in Annex 1 thereto be provided to DCLG as this Council's response to consultation.

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

Steve Humphrey

Director of Planning, Transport and Leisure

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	This is a response to a Government consultation
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	This is a response to a Government consultation
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.