

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

16 May 2012

Report of the Director of Planning, Transport and Leisure

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 REVIEW OF THE LOCAL DEVELOPMENT FRAMEWORK – A NEW LOCAL PLAN FOR THE BOROUGH

This report responds to the Government's reforms to the planning system by considering a review of the Local Development Framework (LDF) towards a new Local Plan. Key matters for consideration will be to assess the evidence base necessary for undertaking the review, the resource implications, including responding to other requirements on the planning service.

1.1 Background and Introduction

- 1.1.1 The Government is committed to reforming the planning system as part of its localism agenda. A summary of the Government's planning reforms set out in the Localism Act, the National Planning Policy Framework (NPPF) and a new national planning policy for travellers is set out in a separate report on this agenda for information. This report sets the scene for undertaking a review of the LDF towards a new Local Plan for Tonbridge and Malling and seeks a steer from Members on how to take this work forward.
- 1.1.2 Prior to the publication of the final NPPF there was some speculation as to whether the Government would introduce the changes with a transitional period to allow Local Planning Authorities (LPAs) time to respond. The Government announced on publication that Local Development Plan Documents (DPDs) adopted since 2004 will carry full weight in determining planning applications until the 27th March 2013, as long as there are no significant conflicts with the NPPF. Where there are no adopted plans or policies and/or there is a serious conflict, the NPPF will be the key consideration. It is worth noting here, that as before, other parts of the LDF, such as the Supplementary Planning Documents, will still be material considerations, but will carry less weight than the adopted policies.
- 1.1.3 An initial assessment of the adopted DPDs for T&MBC suggests that they will carry maximum weight for the prescribed period. The revocation of the South East Plan by the Secretary of State, which currently forms part of the development plan for the Borough and is reflected in the LDF, would result in gaps in policy or parts

of the plan becoming out of date, but there is no indication when this might occur. It is possible that the Secretary of State is considering postponing revocation until next year to coincide with the 27th March deadline, but this is only speculation.

- 1.1.4 What is less clear is to what extent the weight of our adopted policies will diminish after 27th March 2013, although for consistency the Government will not wish this date to be seen as a 'cliff edge', so after the 27th March 2013, our policies will retain significant weight. In addition, if the LPA is in a position to demonstrate that a review is underway with an agreed programme for adopting a new Local Plan, this will put us in a stronger position.

1.2 Preparing to Review the LDF and produce a new Local Plan

1.2.1 Local Plan Process

- 1.2.2 The process for plan preparation is largely unchanged by the planning reforms, with the exception of two significant amendments. The first relates to the tests of soundness which are used by independent Inspectors at the Examination stage. There is to be a new test in relation to the Duty to Cooperate, introduced by the Localism Act. In future LPAs will have to demonstrate how they have consulted, considered and collaborated with neighbouring LPAs to address strategic planning issues in their plans. This is intended to fill the gap in strategic planning policy left by the removal of Regional Planning Bodies and the revocation of the Regional Spatial Strategies.

- 1.2.3 The second change relates to Inspector's reports following the Examination stage. Under the previous arrangements these were binding, meaning that LPAs had no recourse to respond to the Inspector's recommendations with modifications. The Localism Act now limits Inspector's discretion in changing the wording of local plans insofar as the LPA on receipt of an Inspector's report has some flexibility in responding to the recommendations rather than having to accept them as binding.

1.2.4 The Duty to Cooperate

- 1.2.5 The process of consulting and liaising with neighbouring planning authorities on major applications and emerging planning documents is not a new one and there are county wide forums to consider emerging planning policy matters and to discuss issues of a wider than a Borough significance. There has always been the opportunity for LPAs to prepare joint plans, but due to a variety of reasons, not least that LPAs are often at very different stages of plan production at any given time, this is quite a rare occurrence. The new duty to cooperate formalises a lot of informal practice and for the first time requires LPAs to demonstrate how they have positively planned to address strategic issues at the examination stage.
- 1.2.6 How this will work in practice is unclear. As a minimum it will require some form of memorandum of understanding to be agreed between relevant LPAs and at the other end of the scale, possibly joint planning solutions to meet any identified issues.

- 1.2.7 For the purposes of this report complying with the duty is perhaps most relevant in terms of examining the evidence base for a new Local Plan, for example, in determining the level of housing needed or revising the accommodation assessments for travellers (see below).
- 1.2.8 As some LPAs are continuing to progress Development Plan Documents (for example, Maidstone Borough Council's Core Strategy) it will be interesting to see how Inspectors assess the extent to which the duty to cooperate has been observed.
- 1.2.9 Neighbourhood Planning
- 1.2.10 The Localism Act also introduces new powers for local communities in relation to the planning of their area. Parish Councils, or Neighbourhood Planning Forums in non-parished areas, have new powers for designating neighbourhood planning areas and preparing neighbourhood plans. These are not obligatory and are at the discretion of local communities, however, if the plans meet all of the necessary criteria, complete the plan preparation process (similar to that for a local plan) and secure a simple majority of local people voting in a referendum, they have to be adopted by the LPA as part of the development plan for the area. The LPA would continue to determine planning applications for development in the neighbourhood planning area using the relevant parts of both the Local Plan and the Neighbourhood Plan.
- 1.2.11 Importantly, neighbourhood plans cannot be used by local communities to stop or prevent development, they can only be used to argue for more than the Borough Council's Local Plan requires. Neighbourhood plans have to be in accordance with the strategic policies of Local Plans, including any housing allocations or targets and the policies of the NPPF, which includes a presumption in favour of sustainable development.
- 1.2.12 The Government sees neighbourhood plans playing an important part in involving communities in the development process as it relates to their area, by providing for development needs, influencing the location of development, the design and character of new buildings and planning for new community infrastructure.
- 1.2.13 There are other risks associated with preparing these plans. Although LPAs are required to provide some support to communities wishing to prepare neighbourhood plans and the Government is making available some financial support, there will have to be commitment on behalf of the members of the community to engage in the plan making process and support the outcomes through a local referendum. There will be a need for the Parish Council or neighbourhood forum to develop in house or buy in specialist skills, inevitably involving some financial costs. There is also a need to comply with legal requirements and justify the provisions of a Plan at the Examination. There must also be a potential risk that all this could all be no benefit if a simple majority of those voting in the referendum at the end of the process vote 'no'.

- 1.2.14 The first step in providing support for communities will be in raising awareness of the basis for Neighbourhood Plans and the process as far as we know it, the potential risks and setting out what these plans can and cannot do. There will be a presentation to the Parish Partnership Panel on the 17th May to begin this process.
- 1.2.15 It may be that many local communities will conclude that they can better achieve their aspirations for their areas by working closely with the LPA in reviewing the LDF rather than via the neighbourhood planning route. It will however be important for the Council to understand local communities' aspirations and the logistics of neighbourhood planning in terms of resourcing the review of the LDF and therefore early engagement is recommended.
- 1.2.16 Determining a level of Growth for T&MBC for the plan period
- 1.2.17 One of the most important considerations in reviewing the LDF will be agreeing a level of growth for the Borough for the period of the plan (the NPPF suggests a 15 year time horizon for Local Plans). As noted, the South East Plan is to be revoked and LPAs will have to decide on a future level of housing and employment growth that in the words of the NPPF meets 'objectively assessed needs' in full. This will flow from the evidence base and looking forward will inevitably require some challenging decisions about the scale and location of new development for the Council to reflect new national planning policy.
- 1.2.18 On these matters in particular, engagement and consultation with local communities will be vital if we are to successfully provide the development needs that the Borough and its current and future residents will need in the future.

1.3 Compiling an Evidence Base

- 1.3.1 The NPPF introduces the word 'proportionate' to requiring an evidence base to support a Local Plan. At paragraph 167 of the NPPF there is some explanation of what this may mean in practice:
- 1.3.2 *"Assessments should be proportionate, and should not repeat policy assessment that has already been undertaken. Wherever possible the local planning authority should consider how the preparation of any assessment will contribute to the plan's evidence base. The process should be started early in the plan making process and key stakeholders should be consulted in identifying the issues that the assessment must cover."*
- 1.3.3 Some of the evidence base for the LDF will remain relevant and, subject to reviewing the contents, it may be sufficient to undertake a refresh rather than a new study in some cases. However, there are gaps in the evidence base as a result of new requirements introduced by the NPPF, as a result of government guidance emerging while the LDF was being prepared and because some of the studies are now out of date. The following is a summary of the relevant headings set out in the NPPF.

1.3.4 Housing

1.3.5 The requirement for preparing Strategic Housing Market Assessments (SHMA) and Strategic Housing Land Availability Assessments (SHLAA) as part of the plan making process was introduced after the adoption of the LDF Core Strategy. The NPPF has reiterated the importance of these documents as forming part of the evidence base for Local Plans. A SHMA was prepared jointly with Tunbridge Wells and Sevenoaks Councils, but is now out of date. There has not been a SHLAA prepared for the Borough, but as reported to the Board last November, preliminary work has already started.

1.3.6 The SHMA will have to assess the full need for market and affordable housing for the area and should be prepared with neighbouring LPAs where housing market areas cross boundaries. The NPPF states that Local Plans should identify and update annually a supply of deliverable sites sufficient to provide 5 years worth of housing against these housing requirements, with an additional buffer of 5%.

1.3.7 The Gypsy and Traveller Accommodation Assessment prepared as a joint study with other Kent Authorities is now out of date and in the light of the recently published national Traveller Policy needs to be revised, preferably in collaboration with neighbouring authorities to accord with the duty to cooperate.

1.3.8 Building a strong, competitive economy

1.3.9 Paragraph 20 of the NPPF states that LPAs should plan proactively to meet the development needs of business and support an economy fit for the 21st century. This will require evidence prepared with neighbouring LPAs and Local Enterprise Partnerships to identify those development needs. As a minimum it will require an update of the existing Employment Land Review and a Viability Assessment.

1.3.10 In the draft NPPF the Government proposed removing the protection of employment land in local plans, but in the final version paragraph 22 notes that policies should avoid the long term protection of sites for employment, where there is no reasonable prospect of a site being used for that purpose. This is welcomed as now there is no significant conflict between our policy approach and the NPPF, but it does suggest that we need to review those allocations to re-evaluate the prospect of our currently safeguarded sites coming forward for employment uses within a reasonable timeframe.

1.3.11 The NPPF retains a strong 'town centre first' message and calls on LPAs to undertake an assessment of the need to expand town centres to ensure a supply of sufficient sites to meet the needs for retail, leisure, office and main town centre uses. Retail studies are already in the process of being commissioned for Tonbridge.

1.3.12 Infrastructure

1.3.13 The NPPF states that LPAs should work with other LPAs and infrastructure providers to assess the quality and capacity of infrastructure for transport, water supply, waste water and its treatment, energy, telecommunications, utilities, waste, health, social care, education, flood risk and the need for any strategic, nationally significant infrastructure in their area. An Infrastructure Plan would also be needed as part of the evidence base for a CIL charging schedule.

1.3.14 Assessing the transport impact of future development, against a review of natural transport changes will be a major feature of the work required for the Local Plan and will involve working closely with the County Council and transport providers.

1.3.15 Defence, national security, counter terrorism and resilience

1.3.16 This is a new requirement for LPAs to liaise with the Ministry of Defence Strategic Planning Team to ensure they have taken into account the latest information on defence and security needs in their area.

1.3.17 Environment

1.3.18 The NPPF requires planning policies and decision relating to the natural environment to be based on up to date information, which could include:

- River Basin Management Plans;
- Assessments of ecological networks;
- Assessments under the EU Habitats Regulations;
- Strategic Flood Risk Assessments; and
- Assessment of the potential for and feasibility of renewable and low carbon energy sources

Much of this work was done for the preparation of the LDF and, subject to assessment, may not need to be significantly revised.

1.3.19 Historic Environment

1.3.20 A similar approach is proposed in respect of the historic environment, in particular on heritage assets, areas of archaeological potential and, where appropriate, landscape character assessments.

1.3.21 Health & Well Being

1.3.22 LPAs are to work with public health leads and health organisations to understand and take account of the health status and needs of the local population (e.g. for sports, recreation and places of worship).

1.3.23 Public Safety from Major Accidents

1.3.24 Policies should be based on up to date information on the location of major hazards and the mitigation of the consequences of major accidents.

1.3.25 Ensuring Viability and deliverability

1.3.26 The NPPF places a lot of emphasis on viability, both in terms of the deliverability of policy and of developments. Paragraph 173 of the NPPF states that developments should not be subject to such a scale of obligations and policy burdens as to make them unviable. This is also the section of the Framework that suggests CIL charges should be worked up and tested alongside the local plan, presumably to take viability into account.

1.3.27 Although paragraph 174 argues that viability assessments of the cumulative impact of standards and policies should be 'proportionate, using only appropriate available evidence' this is another, potentially, significant part of the evidence base for a new local plan.

1.4 Resource Implications

1.4.1 The preceding section sets out the elements of a potential evidence base for preparing a new Local Plan. While some of the work can be addressed in-house, there is clearly a significant resource implication associated with compiling such a comprehensive, albeit proportionate, evidence base.

1.4.2 Engaging and involving communities in the local plan process is at the heart of the planning reforms and may convince some potential neighbourhood forums to work together with the LPA on the Local Plan rather than considering a neighbourhood planning alternative. However, this will also have a resource implication on the Policy Team as well as balancing normal day to day policy tasks.

1.4.3 The current Planning Policy Team comprises 6 members of staff: one manager, four senior planners (3 FTE), a senior planning technician and a part time planning technician. It is inevitable that some of the work mentioned will need to be externalised due to both capacity and in some areas the need to bring in specialist advice. The Council operates a funding reserve for assisting the preparation of its planning policy function, in recognition of the fact that work comes in peaks and troughs over the years, and this mechanism will assist in this way.

1.4.4 A thorough assessment of the resource implications will require further consideration of the evidence needs, an indication of what may be needed to meet the duty to cooperate and an estimate of the impact on resources of engaging with local communities and supporting any requests for neighbourhood plans. A decision on whether to prepare for CIL in parallel with the Local Plan will also have a significant impact on resources. There may also be a requirement for training for staff, for example in respect of viability testing, to ensure that the plan

is deliverable. This will need to be the subject of further consideration when more information is available.

- 1.4.5 In addition to the resources necessary to progress the new Local Plan a significant Member involvement will be required to consider some of the key issues that the plan will have to address and provide a steer for the detailed work that will be ongoing. It is therefore recommended that further consideration be given to the establishment of a Member Local Plan Panel.

1.5 Timescales

- 1.5.1 It is quite difficult to estimate a timescale for adopting a new Local Plan in advance of the Council deciding on a level of growth and whether or not to prepare a CIL charging schedule in parallel. A thorough review of the evidence base will also be necessary to ascertain the impact on timing and resources and as mentioned, there is the unknown factor of responding to potential neighbourhood plans and meeting the requirements of the duty to cooperate. In addition, as with any new system, there will no doubt be further Government changes in the process, which will have to be accommodated. For example the Government is committed to reducing the remaining central planning guidance (e.g. the Planning Encyclopaedia, Circulars, and Guidance notes to Chief Planning Officers) to a similar extent as the Planning Policy Statement series now represented by the NPPF.

1.6 Legal Implications

- 1.6.1 The Council acting in its capacity as Local Planning Authority is required to have an up to date development plan.

1.7 Financial and Value for Money Considerations

- 1.7.1 Although there are significant costs involved in preparing a new Local Plan there may be significant financial implications associated with an out of date plan, for example, losing planning appeals. There is currently a surplus in the Reserve fund which can support studies this year but it will be necessary, when estimates are being reviewed in the autumn, to assess whether the Reserve will need to be reinforced to support the production of the new Local Plan.

1.8 Risk Assessment

- 1.8.1 There is a risk associated with not having an up to date development plan insofar as meeting the Council's aspirations for encouraging growth and prosperity in appropriate areas, while affording protection to others and meeting the needs of residents, businesses and visitors to the Borough.

1.9 Equality Impact Assessment

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

1.10 Policy Considerations

The development plan both reflects and contributes to the delivery of the Council's corporate policy objectives.

1.11 Recommendations

1.11.1 The Board note the contents of this report and recommends to Cabinet that a programme of work towards the new Local Plan be developed and progressed at the earliest opportunity under the guidance of a new Member Panel;

Background papers: NPPF (March 2012)

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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 report updates Members and sets out a process for reviewing the LDF. Any equality impacts will be addressed through future reports as the review progresses.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	The review of the development plan will provide a further opportunity for community engagement and involvement in the plan making process.
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

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