

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

20 November 2012

Report of the Director of Planning, Transport and Leisure

Part 1- Public

Matters for Information

1 GOVERNMENT PLANNING REFORMS UPDATE

Summary

This report provides Members with an update on the latest Government Planning Reforms. As a Local Planning Authority it is vital that we are aware of the many and various changes to the Planning System that the current Government have initiated.

1.1 Background

1.1.1 The Coalition Government has introduced a number of planning reforms since coming to power in May 2010, including those in the Localism Act (November 2011) and the National Planning Policy Framework (March 2012). Since the last update for the Board in May there have been more recent announcements and proposals. These can be grouped under the following headings:

- Proposed amendments to permitted development rights;
- New measures set out in the Growth and Infrastructure Bill (18th October) including:
 - Legislation to allow for the renegotiation of planning obligations;
 - Reducing the paperwork to accompany planning applications;
 - Preventing the misuse of village green applications;
 - Removing some of the consent regime for communications infrastructure;
 - Fast track proposals for large commercial and business applications;
 - Implementing the recommendations of the Penfold Review by reducing overlapping development consents; and
- Proposed amendments to appeal procedures and planning fees.

- 1.1.2 All of the provisions of the Bill are likely to require further definition in Secondary Legislation or Directions some of which will involve further consultation in due course.
- 1.1.3 The Government has also recently commissioned two further independent reviews, which will report back on their findings between now and next spring.
- 1.1.4 On the 16th of October it was announced that Lord Matthew Taylor of Goss Moor will lead and chair an external group conducting a review of the remaining 6,000 pages of planning practice guidance, which supports the implementation of national planning policy and which the Department for Communities and Local Government owns or has jointly badged with other Government Departments or agencies. The aim is to enable the production of an accessible and more effective set of practice guidance, dramatically reducing the existing guidance, and ensuring that new guidance supports effective planning.
- 1.1.5 There are no details at the present time, but it is anticipated that the review will make recommendations to reduce the remaining planning guidance by the same extent as the National Planning Policy Framework did for the 25 planning policy statements and guidance notes in March this year. Lord Taylor will report to Planning Ministers in advance of the autumn statement about the scope of the review.
- 1.1.6 On the 31st of October a review of the standards used for new housing was also announced. An independent challenge panel will consider the current range of national and local standards for new build under the planning and building control regimes and report back to the Government in the spring with recommendations for reducing duplication and simplifying standards for new housing.

1.2 Proposed amendments to permitted development rights

- 1.2.1 In the Secretary of State's Housing and Growth Statement of the 6th September, some of the proposals sought to increase permitted development rights in certain circumstances to 'remove red tape', 'generate economic activity' and 'help get empty properties back into use'. The statement formed the basis of a report to the Cabinet on 10th October, which raised a number of concerns.
- 1.2.2 There were two proposals for change. The first looks to increase permitted development rights for extensions to homes and businesses in non-protected areas for a three year period. The second is a proposal to introduce permitted development rights to enable the change of use from commercial to residential use. There is no detail currently as to what these proposals might mean in practice and there will, presumably, be consultations before the changes are introduced.
- 1.2.3 The proposal for a temporary extension of permitted development rights for homes and businesses has generated a lot of media interest and some Councils have publicly announced that they will do all they can within the rules to avoid

implementing the change. The Cabinet report noted that it has the potential to raise considerable tensions between neighbours in residential areas and the potential as a stimulus for local businesses building these extensions is uncertain, since this will depend on there being sufficient desire for home improvement and the disposable income to take advantage of the change. Later comments by Government have intimated that the period over which extended permitted development rights might be longer than the 3 years originally proposed.

- 1.2.4 The proposal to allow change from commercial to residential use appears to be aimed at bringing empty property in town centres back into use, but if it applies to all commercial development it could have a significant impact on employment uses when the housing and/or commercial markets recover. By taking this out of the planning system it also removes the mechanism for negotiating developer contributions and the means to deliver infrastructure to support the new development.
- 1.2.5 In an earlier announcement by the Government, consultations took place between July and September entitled 'New opportunities for sustainable development and growth through the reuse of existing buildings'. This sought views on proposals to introduce new permitted development rights to allow the change of use of buildings used for agricultural uses to uses supporting rural growth, without planning permission. It also proposed increasing the thresholds for permitted development rights for the change of use between business/office (B1) and warehouse use (B8) and also from industry use (B2) to B1 or B8. Changes of use from hotels and guest houses to residential (Uses C1 to C3) were also proposed along with a new proposal to allow for temporary changes of use for up to two years where there is low impact.
- 1.2.6 The Government has yet to respond to the results of the consultation that closed in September and has yet to announce new consultations in respect of the new proposals in the statement of the 6th September.

1.3 The Growth and Infrastructure Bill (October 2012)

1.3.1 Legislation to allow for the renegotiation of planning obligations

- 1.3.2 This proposal also featured in the SOS statement of the 6th September. Its inclusion in the Bill reflects the Government's aspiration to have powers in place early in 2013. Once in place developers with sites that are considered to be unviable due to the number of affordable houses or other costs associated with a planning agreement would be able to appeal to the Planning Inspectorate, who would assess what requirement would make the scheme viable based on current economic conditions. Once agreed this would form the basis of a new agreement. Details in the Bill may need to be refined if the principle is adopted.
- 1.3.3 To date there have been no specific requests for the renegotiation of S106 agreements for affordable housing in Tonbridge & Malling, but the issue of viability has emerged informally in a number of cases. There is no pattern to those

discussions, although the purchase price of sites at the top of the market and also existing use values, both feature. The current position emphasises the importance of viability testing future policies and allocations in the Local Plan.

1.3.4 Reducing the paperwork to accompany planning applications

1.3.5 The Bill proposes that in future supporting evidence to accompany planning applications should be proportionate to the scale and nature of the development proposed and relate only to matters likely to be a material consideration in determining the application. This matter has been raised many times by both the previous and current government – only when the detail is published will it be possible to tell if there is vital information that is to be dispensed-with. Officers take the view that for some planning applications for relatively modest development the requirements placed on applicants seems unnecessary.

1.3.6 Preventing the misuse of village green applications

1.3.7 The Bill proposes changes that will effectively mean the use of village green applications to prevent development will be removed. Where village greens have already been identified they will continue to be protected and the legislation set out in the Commons Act 2006 remains, but when land that is not currently a village green that is subject to a planning application or is designated for development in a local plan or neighbourhood plan, the right to register will cease to apply. The use of the village green registration is not common, but also not an unknown approach adopted by some objectors to planning proposals in the Borough.

1.3.8 Removing some of the consent regime for communications infrastructure

1.3.9 The Bill proposes changes to other forms of legislation that will have the effect of giving providers permitted development rights for the installation of electronic communications infrastructure such as broadband technology. After 6th April 2018 these permitted development rights will also apply in national parks and areas of outstanding natural beauty. The only exception, where a planning application will still be a requirement, will be in Sites of Special Scientific Interest.

1.3.10 Fast Track proposals for large scale business and commercial applications

1.3.11 The Bill provides for some large scale applications to be submitted directly to the Secretary of State for determination in future and the intention is that these will be decided within 12 months. Existing requirements to consult local communities will be retained.

1.3.12 In other cases, where the local planning authority has a persistent record of poor performance in determining planning applications, the Planning Inspectorate may be called upon to determine planning applications in future.

- 1.3.13 What is unclear at present is precisely what criteria will be adopted to define “poor performance” against which the transfer of case to the Secretary of State will be judged.
- 1.3.14 Implementing the recommendations of the Penfold Review to remove overlapping consent regimes
- 1.3.15 Currently there are some development consents that have to be applied for separately from planning permission, which can cause delays. These may include requests for rights of way orders (to close or divert a public right of way for development to take place), or stopping up orders (to close or divert roads or footways). The Bill will propose changes that will allow for these matters to be dealt with concurrently.
- 1.3.16 It remains to be seen if the Government decides to act on an earlier suggestion to combine Planning and Listed Building application regimes, as this does not seem to figure in the supporting documentation for the Bill despite being discussed in Penfold.

1.4 Review of appeal procedures and the role of the Planning Inspectorate (PINS)

- 1.4.1 The Government has recently launched a consultation the “technical” aspects of planning appeal procedures. While these are essentially about administrative procedures rather than policy matters this consultation does indicate a direction of travel in Government thinking with the emphasis on making the process “**faster** and **more transparent**”. Officers will respond to this consultation that runs until 13 December.
- 1.4.2 Members may also have heard recently suggestions from senior Government figures that the role of the Planning Inspectorate might be increased. Specifically it has been suggested that in some cases where a Local Planning Authority has not determined a case within 6 months then it could be referred to PINS to deal with. We await any further progress with this potentially impractical proposition.

1.5 Planning application fees

- 1.5.1 It is understood that increases in national fee schedules have at last been laid in Parliament and reports suggest that they may come into effect before the turn of the Calendar year. That has been the assumption made in respect of our current budget estimates. Should any announcement be made before the Board meeting we will update Members.

1.6 Legal Implications

- 1.6.1 There are no legal implications arising from this update report, however, there will be legal implications associated with any new legislation that the Government

introduces as a consequence of the Bill, but these will form the basis of separate reports in due course.

1.7 Financial and Value for Money Considerations

- 1.7.1 There are no financial implications arising directly from this report. If the proposed changes to permitted development rights are introduced by the Government there will be implications for planning fees as the number of planning applications will fall. There may also be financial implications associated with the renegotiation of planning agreements, although there have been no requests to do so to date.

1.8 Risk Assessment

- 1.8.1 A full risk assessment will be carried out when the Government's proposals are firmed up in the form of new legislation and requirements on Local Authorities.

1.9 Equality Impact Assessment

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

1.10 Policy Considerations

- 1.10.1 The Government's on going planning reforms will have to be taken into consideration as part of the preparation of the new Local Plan. The Council's future policies in respect of the delivery of affordable housing, safeguarding employment land, ensuring the vitality and viability of town centres, protecting the environment, particularly in the AONBs, and delivering sustainable development generally will have to be carefully considered in the light of these proposals.

Background papers:

Growth and Infrastructure Bill (October 2012)
Secretary of State's Statement on Housing and Growth
(September 2012) and report to Cabinet (10th October
2102)

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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 is an informative report updating Members of the Government's proposed planning reforms.

Screening for equality impacts:		
Question	Answer	Explanation of impacts
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	By raising awareness of the issue with elected representatives.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

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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