TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

04 June 2013

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Council Decision

1 THE GROWTH AND INFRASTRUCTURE ACT 2013 AND OTHER GOVERNMENT PROVISIONS TO "DEREGULATE" THE PLANNING SYSTEM

This report provides a summary of some of the key provisions affecting the operation of the planning system contained in the new Growth and Infrastructure Act

1.1 THE GROWTH AND INFRASTRUCTURE ACT 2013

1.1.1 This new Act received Royal Assent in late April 2013. The overriding aim of the Act is to encourage regeneration by creating a "swift and responsive planning system". The Act, which runs to 35 clauses, impacts on many aspects of the planning system mostly in relation to consenting regimes, development control, land disposal procedures and introducing constraints to the use of non-planning procedures to frustrate development and the planning decision making process.

1.2 Domestic permitted development

1.2.1 There are some key elements of the Act that will have a potentially profound effect, most notably the hotly debated (in the Houses of Parliament and beyond) provisions to extend the right to create single storey extensions of significantly larger proportions than previously without the need to make a planning application.

1.2.2 The depth of disquiet in Parliament led to the Government introducing a series of "safeguards" which have been embodied in Regulations that come into force on 30 May. Somewhat perversely, these Regulations embody some "safeguards", with regard to the notification of neighbours and response to any comments made, that means that the process is little different from a conventional planning application and in some ways potentially more complex and less certain for the parties involved. From 30 May the opportunity will exist for utilising these rights on single storey extensions 8 metres in length on detached house and 6 metres in length for all other houses. At present it is proposed that these extended rights will be available only until the end of May 2016.

1.2.3 The Planning Minister has set out the key parameters of the process in a recent letter as follows:

- *"Homeowners would notify their local planning authority with the details of the proposed extension.*
- *The council would then inform the adjoining neighbours, as already happens for planning applications.*
- *If no objections were made to the council by those neighbours consulted, within a set period, the development would be able to proceed.*
- *If objections are raised by neighbours, the council would consider whether the development would have an unacceptable impact on neighbours' amenity and either approve or refuse permission for the development.*
- *If the householder was not informed the development was unacceptable within a prescribed period they would be able to proceed.*
- *There would be no fee for householders to go through this process. The lighter touch process will save councils' considerable time, however, we will consider any new net costs for councils in line with the prevailing New Burdens principles."*

1.2.4 The Minister's letter is attached as **[Annex 1]**.

1.2.5 Where the Minister describes those to be notified as "neighbours" the actual regulation refers more specifically to "owners or occupiers of adjoining premises…" Representations must be made within 21 days. Where an objection is made, the Council, in reaching a decision as to whether to intervene, must have regard to all representations and to the impact on all adjoining properties, not just those from properties from which objections have been received. In these cases the Council also has a new duty to inform the developer of those properties notified of the proposal.

1.2.6 The Council may seek additional information from the developer to assist the Council in considering the impact on adjoining premises if any objection is received. The Council has no more than 42 days, from the original receipt of notice, to consider the position.

1.2.7 If there are no objections then after 21 days (but before 42 days) the Council is able to issue a notice saying 'prior consent' is not required or, alternatively, after the 42 day period has expired and the Council has not reached a decision, then the development may go ahead as permitted development.

1.2.8 If the Council conclude during the 42 day period that prior consent should not be granted because of considerations as to impact on affected properties then a notice must be issued to the developer that effectively establishes that the

proposal is not permitted development. Therefore, while the legislation is a little ambiguous in its wording, my understanding is that the net effect of the Council refusing "prior consent" would be the need for a planning application to be submitted. (This would of course bring a right to make an appeal should that application be refused).

1.2.9 It appears that only an objection from an adjoining property will trigger the consideration of the impact on amenity and that neither the Council itself nor a Parish Council is entitled to trigger such an assessment.

1.2.10 The manner in which this legislation has evolved has, in my view, led to some doubt over precise interpretation and it is my intention to seek further written confirmation of the position from The Department of Communities and Local Government on the matter. In any event the understanding we have now reached means that various administrative changes will need to be put in place. There are also some consequential implications of the arrangements in terms of the Council's Constitution and these are set out in 3.8.4 below.

1.3 S106 agreements and affordable housing

1.3.1 Another section of the Act is a very specific provision for developers to seek to modify or remove their S106 Obligation. This provision is directed *solely* to obligations provisions in respect of affordable housing. The driver appears to be the Government's wish to ensure that development schemes are not made unviable as a result of the retention of previously negotiated affordable housing S106 contributions.

1.3.2 The Government's recently published guidance on this matter explains:

"The Government encourages a positive approach to planning to enable appropriate, sustainable development to come forward wherever possible. The National Planning Policy Framework establishes that the planning system ought to proactively drive and support sustainable economic development. It also requires that local planning authorities should positively seek to meet the development needs of their area.

Unrealistic Section 106 agreements negotiated in differing economic conditions can be an obstacle to house building. The Government is keen to encourage development to come forward, to provide more homes to meet a growing population and to promote construction and economic growth. Stalled schemes due to economically unviable affordable housing requirements result in no development, no regeneration and no community benefit. Reviewing such agreements will result in more housing and more affordable housing than would otherwise be the case.

The Growth and Infrastructure Act inserts a new Section 106BA, BB and BC into the 1990 Town and Country Planning Act. These sections introduce a new application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing.

Obligations which include a "requirement relating to the provision of housing that is or is to be made available for people whose needs are not adequately served by the commercial housing market" are within scope of this new procedure.

The new application and appeal procedures do not, in any way, replace existing powers to renegotiate Section 106 agreements on a voluntary basis. The application and appeal procedure will assess the viability of affordable housing requirements only. It will not reopen any other planning policy considerations or review the merits of the permitted scheme.

Affordable housing obligations on sites granted in accordance with a Rural Exceptions Site policy are exempt from this procedure. Where the affordable housing obligation is linked to a planning permission which was granted in accordance with a rural exception policy, an application under Section106BA or appeal under Section 106BC cannot be made."

1.3.3 This new provision should be seen in the context of other opportunities presented to developers to seek review of their S106 Obligations. In addition to those mentioned above and well established legal provisions to review obligations, there is a further system for review, through a developers submission to the Homes and Communities Agency (HCA), for an independent evaluation of a project in terms of its viability. Indeed Taylor Wimpey has made such a submission for a review at Leybourne Chase. The Borough Council has indicated a willingness to be engaged in that process, not only because there are so many other options that the developers might take up, but more importantly because, in the case of Leybourne Chase, the promoter and current landowner of the site is the HCA – the body charged with leading the Government's regeneration and affordable housing agenda. After a faltering start the project looks to be now gaining momentum. Local Members and this Board will be kept up to date as further information emerges.

1.4 Applications direct to the Secretary of State

1.4.1 This provides a right to apply directly to the Secretary of State if the Local Planning Authority is deemed, according to criteria adopted by the Secretary of State, to be underperforming.

1.4.2 The Secretary of State must publish the formal criteria in Parliament for 40 days. (He is free to commence that process immediately). On the basis of informal statements during the life of the discussion of the Bill these provisions are likely to relate only to Major applications (10 dwellings or more – 1000m^2 of business floorspace) and assessed on speed of decision-making and appeal success rate. On the basis of these indications the Council historically has performed such that it would not be subject to the application of these provisions. Nevertheless their enactment reinforces the need to monitor performance to ensure that we do not fall foul of this provision.

1.5 Information needed to support planning applications

1.5.1 The Act establishes that the information *required* to be provided to support a planning application is both reasonably related to the scale and nature of the development and also must be material to the decision before the Council.

1.5.2 Other recent changes by Government have identified the need to review the detailed guidance provide by Local Planning Authorities to applicants to enable the "validation" of their planning application.

1.5.3 We will carry out an operational review of the detailed procedural documentation in light of the above considerations.

1.6 Other provisions

1.6.1 There are a number of administrative/technical provisions intended to simplify and speed-up development control decision-making. Most of these relate to measures such as those controlling the diversion/stopping-up of public rights of way that are affected by development, or the prevention of the use of the process of designating a Village Green as an ulterior tool to frustrate development. There are other provisions that control telecommunications systems equipment and a substantial number of changes that deal with the new legal provisions introduced in 2008 for "major infrastructure projects."

1.7 Coming into force

1.7.1 Some provisions came into force in late April and some, but not all of those, will require secondary legislation. Other parts of the Act will come into force in June 2013.

1.8 Further Changes to Permitted Development

1.8.1 In addition to matters raised through the 2013 Act, the Government has published new secondary legislation extending permitted development rights from the end of May 2013.

1.8.2 The most publicised of these is the right to change the use of an office building to housing. Members may recall that the Council expressed concern with regard to this proposal during one of the earlier consultations. The opportunity will apply to offices either in use at the end of May, or if vacant last used as offices, but will not be available for buildings erected as offices and never actually occupied as such. The rights can only be exercised after seeking a view from the LPA as to whether "prior approval" is required on any possible issues related to traffic/highways impacts, contamination or flood risks on the site. There are other limitations, not least that the opportunities do not apply to Listed Buildings. A number of local authority areas have been granted limited exclusions to these provisions mostly in the large city business districts. Sevenoaks and Ashford have some very limited

exclusion, but it is far from clear what criteria were by the Secretary of State used to exclude these very limited areas where the new provisions will not apply.

1.8.3 Agricultural buildings of up to 500m^2 and the associated curtilage may be changed to a "flexible use" for shops, professional services, restaurants, offices, storage and distribution, hotels or assembly and leisure. There are some pre-implementation procedures for the first 150m^2 and between that and 500m^2 the arrangements described in 3.7.2 apply.

1.8.4 Other new provisions allow, subject to a number of considerations:

- In respect of "State funded schools", to use a building and its curtilage for one academic year. A separate provision allows extensions to be developed during this period. Flexible permissions to uses for shops, professional services, restaurants, business from shops, professional services, hot food takeaways business, non-residential institution and assembly and leisure – for a period of 2 years.

- Increased/new rights to extensions to industrial buildings, warehouse buildings, shops, offices, restaurant/catering buildings until the end of May 2016.

- A relaxation of controls over telecommunications equipment until 30 May 2018.

1.8.5 A significant administrative change is the Government's ever increasing reliance on "prior notification" procedures whereby the Council has to give a view on the need, or otherwise, for submission of additional information before the "permitted development rights are able to be exercised. The Council is also required to provide additional publicity for some of the "extended" permitted development rights.

1.9 Conclusions

1.9.1 Members will appreciate that behind the changes described above there is a myriad of procedural changes that are required to support the technical changes themselves. Planning Service staff are actively preparing for these changes.

1.9.2 In terms of regeneration potential it is the overall, cumulative, impact that may be considered to be beneficial nationally. I do not anticipate that at Tonbridge and Malling that this will open the flood gates to a substantial level of new development.

1.9.3 I should caution, however, that there might well be the likelihood of a potential increase in enforcement investigations and general correspondence and queries, especially in relation to the residential extensions changes.

1.9.4 In a practical sense there is a further implication of these changes in that under the current Constitution my delegated powers do not explicitly allow me to deal with the procedures for new temporary domestic permitted development and the latest version of prior notifications . Failure to comply with the new timetables could lead to projects gaining the right to proceed by default and therefore I must be able to act on the Council's behalf expeditiously. It is therefore necessary to amend the Constitution and my recommendations below reflect this.

1.10 Legal Implications

1.10.1 The need to update the Constitution in respect of DPT 100.01, DPT 120 and as a consequence DPT 100(v).

1.11 Financial and Value for Money Considerations

1.11.1 These are obligatory statutory provisions that have to be complied with, facilitated and monitored.

1.12 Risk Assessment

1.12.1 The risk is that the very substantial amount of change involved will be difficult to embrace immediately and monitor in the longer term. The Development Control Section is experienced in such matters but this transition will be a key priority for Section management.

1.13 Equality Impact Assessment

1.13.1 See 'Screening for equality impacts' table at end of report

1.14 Recommendations

1.14.1 The details of the changes to planning controls as outlined above **BE NOTED**.

1.14.2 The Director of Planning, Housing and Environmental Health's delegated powers **BE AMENDED** to cover the revised procedures for new permitted development rights in relation to the matters covered in this report (and any other or consequential/associated implications identified by the Director of Central Services).

Background papers:
Nil contact: Lindsay Pearson

Steve Humphrey
Director of Planning, Housing and Environmental Health

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	The Government legislated provisions apply universally and in relation to planning uses independent of the occupier/user
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	no	No change over current legislation
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.