

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

29 June 2023

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

For recommendation to Council

SUPPLEMENTARY REPORT

1 MEMBER CALL IN PROTOCOL – DEVELOPMENT MANAGEMENT

Summary: This report seeks Member endorsement of a retitled and amended Protocol- Member Call ins

1.1 Minor change to wording of report for clarification

1.1.1 Additional wording has been added to the Protocol attached as Annex 1 at paragraph 6.5 which seeks to add further clarity to the call in procedure by confirming that *in the event of conflicting views between the Director of Planning, Housing and Environmental Health and the Area Chair, the application shall automatically be referred to the Area Planning Committee for consideration.*

1.2 Financial and Value for Money Considerations

1.2.1 Having comprehensive protocols in place will ensure appropriate skills and expertise are utilised in an efficient and cost-effective manner and ensure that potential legal challenges through judicial review are limited.

1.2.2 The protocol changes have the potential to increase the number of applications to committee given the extra clarity provided on processes and the new options available and each committee report has a financial implication in terms of increased officer time cost due to the nature of the publication requirements. However, this is considered acceptable to ensure the democratic process is fair and transparent.

1.3 Risk Assessment

1.3.1 Not having the protocols in place could delay effective decision, increase the likelihood of challenge and limit the Council's ability to make effective planning decisions.

1.4 Equality Impact Assessment

1.4.1 No issues raised.

1.5 Recommendations

1.1.1 That Members **ENDORSE** the amended protocol at **Annex 1** and **RECOMMEND** to Council that the amended text in the protocol is included in the Constitution.

1.1.2 That the Monitoring Officer be authorised to make any necessary consequential changes to the constitution.

Background papers:

Nil

contact: Hannah Parker
Development Manager

Annex 1- Development Management Officer Protocol
Member Call Ins

Eleanor Hoyle
Director of Planning, Housing and Environmental Health

Annex 1

Member Call In Protocol – Development Management

1. The constitution sets out that planning applications will be determined under authority delegated to the Director of Planning, Housing & Environmental Health (DPHEH) unless in certain prescribed circumstances, including (inter alia) where:

1.1. Member for the relevant Ward in which the application site falls may request that the application be determined by the relevant Area Planning Committee provided that:

The request is made within 21 days of notification of the application to the Member; and

The request must include reasoned justification on proper planning grounds as agreed by the Director of Planning, Housing & Environmental Health, subject to the prior approval of the relevant Area Planning Committee Chair

2. Notification of applications to Members will usually be via the weekly case list, which is sent electronically. It is this email notification that starts the 21 day period. The weekly list can be also found on the view and comment on planning application section of the website.

[View and comment on planning applications – Tonbridge and Malling Borough Council \(tmbc.gov.uk\)](http://tmbc.gov.uk)

3. In order to register a call in, the relevant ward Member is required to email the Development Manager, copying in the Case Officer and the Director of Planning, Housing & Environmental Health to log the call-in request. The case officer's details will appear on the weekly list.
4. As outlined above reasoned justification on proper planning grounds should be given. Examples of such reasons include but are not limited to:
 - The number, size, layout density, design, external appearance of the building
 - Height, width, depth of a development
 - Access or highway safety issues
 - Landscaping/ open space layout/location
 - Impact on the character of the area
 - Planning history of the site
 - Overlooking
 - Overbearing nature of the proposal
 - Loss of outlook
 - Loss of light
 - Impact on parking
 - Loss of privacy
 - Loss of trees
 - Loss of ecological habitats
 - Land contamination from the previous use

- Land instability
- Effects on heritage assets for example listed buildings, conservation areas and Scheduled Ancient Monuments
- Effects on the setting of heritage assets
- Effects on AONB
- Effects on the Greenbelt
- Noise and disturbances
- Flood risk

Examples of factors that cannot normally be considered as proper planning grounds:

- Land ownership
- Boundary disputes / encroachment of gutters
- Private covenants
- Damage to property
- Potential profits
- Matters covered by other legislation and over which planning has no control
- Time taken to do work
- Building techniques

5. The proper planning ground(s) should be included in the initial call-in request

6. Upon receiving a request for call in, the planning case officer will:

6.1. Log the request via the recording mechanism (at present, this is the internal call-in spreadsheet)

6.2. Check that the request has been made by a Member whose Ward the planning application sits within

6.3. Check that the request has been made within the requisite 21 days period

6.4. Share the request with the relevant Area Chair, DPHEH and Development Manager within 3 working days of receipt setting out if there is any reason as to why there are not reasoned justification on proper planning grounds. The DPHEH will then consider the request and consult with the relevant Area Chair. If the DPHEH has any concerns about the proposed call in, these should be shared with the relevant Area Chair and should a follow up discussion be required with the Ward Member, this will be organised by the DPHEH.

6.5. Once a decision has been made by the DPHEH, subject to the approval of the relevant Area Chair (ideally within 3 working days of receiving the call-in request) the Ward Member will be advised in writing by the case officer of the outcome of their call-in request, explaining the position should the call in not be accepted. For the avoidance of doubt in the event of conflicting views between the DPHEH and the Area Chair, the application shall automatically be referred to the APC for consideration. This information should then be included in the internal record of call-ins so that the complete decision-making process is recorded.

7. Once an assessment of the case has been made, and prior to the committee report being drafted, **in all circumstances where there has been a call in**, arrangements will be made for an informal briefing to take place with the Chair, Vice-Chair and all Ward Members (not just the member who made the call-in request). For simpler cases an email setting out the issues may be acceptable with agreement from the relevant Chair.

8. The briefing, whether in writing or a meeting, should:
 - Provide an overview of the scheme
 - Explain the relevant policy position and all material planning considerations
 - Provide a summary of representations received and
 - Explain conclusions on what the recommendation to the planning committee will be
 - Allow for Members to ask questions of officers

9. Officers will then follow up with a written briefing note summarising the discussion that took place, which should be circulated to members, copying in the Development Manager, Head of Planning, DPHEH, relevant Chair and Cabinet Member.

10. Where a member in an adjoining Ward wishes to see an application considered at committee they should;
 - 10.1. Make contact with the ward Members to ascertain whether they are intending to call the application in. Members are encouraged to work collaboratively and to consider the issues raised by adjoining Ward members and to seek a call-in via the Ward Member process

 - 10.2. If there is a legitimate reason why the Ward Member(s) are not minded to or are unable to call-in the application (for example if they consider they have a conflict of interest), then adjoining Ward Members can request that DPHEH considers the application for consideration at committee. This request must be in writing and should also include their reasons for considering that the application has a potentially significant impact on their Ward and should also explain why the Ward Members are not minded to/are unable to utilise their call-in facility.

 - 10.3. A request from an adjoining Ward Member should follow the process laid out above for Ward Member call-ins; that is to make initial contact with the case officer and Development Manager.

 - 10.4. It is expected that adjoining Ward Members will have discussed their concerns with the case officer if they require any additional information about the potential impacts of the application on their ward. Some examples of 'potentially significant impact' could include highways, where the main access

to the development is in that ward or landscape, where the setting impacts of the development falls largely in the adjoining ward.

- 10.5. The relevant Area Chair should then ensure they have discussed the matter with the relevant Ward Members and seek to encourage use of the relevant Ward Member call-in provisions. If on balance they consider the application should be considered at committee, the relevant Area Chair can discuss this with the DPHEH, who may refer an application to committee under DPHEH delegated powers.
11. Such requests will then be considered via the same process as laid out above for relevant Ward Member requests. The DPHEH and Area Chair will discuss their considerations with the relevant Ward Members to ascertain their position and is required to give full consideration to the issues raised both by relevant and adjoining Ward Members in concluding whether a call-in from an adjoining Ward Member should be accepted.
12. The committee report should then be drafted in the normal way, having due regard to the particular issues that were raised during the briefing. If the call-in request is only made on the basis of a recommendation for approval and the officer view is that planning permission should be refused, the relevant Member(s) can be updated by email.
13. In order to ensure consistency in decision making, there will be a quarterly review session with the 3 Area Chairs, Cabinet Member for Development Management, Chair and Vice Chair of HPSSC, DPHEH, Head of Planning and the Development Manager to discuss call-ins made during that period and any relevant planning appeal decisions, which will now also be included as a standing item for note on Area Planning Committee agendas. The frequency of these sessions will be reviewed on an annual basis.