

TONBRIDGE & MALLING BOROUGH COUNCIL



EXECUTIVE SERVICES

Chief Executive

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NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.

Contact: Democratic Services
committee.services@tmbc.gov.uk

20 July 2020

To: MEMBERS OF THE PLANNING AND TRANSPORTATION ADVISORY BOARD

(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Planning and Transportation Advisory Board to be held online via Microsoft Teams on Tuesday, 28th July, 2020 commencing at 7.30 pm. Information on how to observe the meeting will be published on the Council's website.

Yours faithfully

JULIE BEILBY

Chief Executive

A G E N D A

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5. Development Management - Processes and Procedures 29 - 36

This report seeks to provide an update on Development Management following a report to this Board in March 2020. The proposals in this report would, if agreed, result in some savings to support the Council's medium term financial strategy and service efficiencies.

6. Section 106 Protocol and Monitoring Report 37 - 66

This report provides an overview of planning obligations for the period 2018-2020 and provides an update on upcoming changes to how future monitoring of obligations will take place. It also seeks approval for the adoption of a Planning Obligations Protocol which is intended to provide a clear and transparent framework in respect of how the Service will negotiate and secure planning obligations under section 106 of the Town and Country Planning Act 1990 in order to mitigate the impacts of development taking place across the Borough. Successful negotiation of planning obligations requires effective management and monitoring to ensure timely and appropriate use of collected obligations.

7. Local Plan Update 67 - 72

This report provides an update of the progress of preparing the Local Plan including new provisional dates for the first phase of Examination Hearings that were postponed due to the Coronavirus restrictions in March.

8. Planning for the Future White Paper 73 - 80

This report summarises the main topics set out in the recently published White Paper 'Planning for the Future' and highlights specifically those matters which may potentially have significant implications for the operation of the Development Management function.

9. Transportation Update 81 - 86

This report reviews the outcomes of the TMBC Cycling Strategy, considers options for an updated strategy framework for Cycling and Walking, and provides an update on the South Eastern rail franchise and Lower Thames Crossing.

10. Urgent Items 87 - 88

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12. Urgent Items 91 - 92

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MEMBERSHIP

Cllr R W Dalton (Chairman)
Cllr J L Botten (Vice-Chairman)

Cllr T Bishop
Cllr M D Boughton
Cllr V M C Branson
Cllr D J Cooper
Cllr D A S Davis
Cllr M O Davis
Cllr S A Hudson

Cllr D Keers
Cllr D W King
Cllr Mrs C B Langridge
Cllr H S Rogers
Cllr N G Stapleton
Cllr M Taylor
Cllr D Thornewell

Apologies for absence

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Declarations of interest

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TONBRIDGE AND MALLING BOROUGH COUNCIL

PLANNING AND TRANSPORTATION ADVISORY BOARD

Tuesday, 3rd March, 2020

Present: Cllr R W Dalton (Chairman), Cllr J L Botten (Vice-Chairman), Cllr T Bishop, Cllr M D Boughton, Cllr V M C Branson, Cllr D J Cooper, Cllr D A S Davis, Cllr M O Davis, Cllr S A Hudson, Cllr D Keers, Cllr D W King, Cllr H S Rogers, Cllr N G Stapleton, Cllr M Taylor and Cllr D Thornevell.

Councillors Mrs J A Anderson, M A Coffin, N J Heslop, M A J Hood, F A Hoskins, Mrs F A Kemp, D Lettington, Mrs R F Lettington, B J Luker, Mrs A S Oakley, M R Rhodes, R V Roud, J L Sergison and Mrs M Tatton were also present pursuant to Council Procedure Rule No 15.21.

PE 20/1 DECLARATIONS OF INTEREST

Councillor M Davis declared an Other Significant Interest in the agenda item relating to the Local Plan on the grounds of his status as a partner of Warner's Solicitors. In accordance with the dispensation granted at Minute GP 19/13 ([General Purposes Committee of 19 June 2019](#)) he remained in the meeting and addressed the Advisory Board but took no further part in the discussion.

PE 20/2 MINUTES

RESOLVED: That the notes of the meeting of the Planning and Transportation Advisory Board held on 13 November 2020 be approved as a correct record and signed by the Chairman.

MATTERS FOR RECOMMENDATION TO THE CABINET

PE 20/3 LOCAL PLAN UPDATE AND TIMETABLE

(Decision Notice D200025MEM)

The report provided an update on the progress of the Local Plan since November 2019 and considered the next stages in the process. A revised timetable was recommended for approval. Progress in neighbouring authorities was also reviewed.

Members were advised that the first phase of Local Plan Hearings were scheduled for 19-21 May at the Orchards Conference Venue at East Malling Research Centre. Since the publication of the agenda, additional dates of 24-25 June had also been arranged. It was explained that discussions at these Hearings would be guided by

'Matters, Issues and Questions' raised by the Planning Inspectors. These had recently been received and the Borough Council had until 9 April to submit statements.

In addition, Members were informed that the Borough Council had been appointed a new Lead Planning Inspector. It had been confirmed that the change of Inspector would not affect the Hearing dates. Members noted that the new Lead Local Plan Inspector was Louise Crosby and not Susan Crosby as stated in the report.

The revised timetable, set out in Annex 1 to the report, allowed a reasonable estimate of time for each of the remaining key stages of the Local Plan process but this remained subject to confirmation.

Members welcomed the recent acceleration in progress but expressed frustration at the length of time taken between the Local Plan being submitted and the Hearings being scheduled.

RECOMMENDED: That:

- (1) the content of the report be noted; and
- (2) the revised Local Plan timetable, set out in Annex 1 to the report, be endorsed.

PE 20/4 DEVELOPMENT MANAGEMENT - PROCESSES AND PROCEDURES

Following feedback from consultees and stakeholders on engagement processes the report provided an update on Development Management with a view to ensuring parity and improving efficiency and effectiveness. If approved, the proposals could result in savings to support the Borough Council's Medium Term Financial Strategy, support the Borough Council's commitment to the Climate Change and Digital Strategies and create service efficiencies that enabled planning applications and decisions to be dealt with in a timely way.

Members recognised the value in reviewing internal working practices to ensure that the development management function was delivered efficiently for the benefit of residents and applicants. In particular, Members welcomed the proposals around notification deadlines, validation dates and the use of 'List B' to trigger the commencement of the 21 day notification period. Members also supported the principle of stricter measures being in place to reduce last minute amendments to planning applications

However, concern was expressed that the proposals represented a significant challenge for parish councils, who would have to adapt their current practices to adopt the changes. To support parishes through this

process Planning Officers would actively engage with parish councils (and other interested parties) to understand the issues and concerns around the proposals and to identify potential digital solutions. It was not the Borough Council's intention to prevent anyone from engaging in the planning process.

It was also intended to hold a number of training sessions, working in partnership with the Kent Association of Local Councils (KALC) and the Parish Partnership Panel to support parish councils in using digital tools such as the Public Access portal and My Account to keep informed of planning applications in their area. There would be a transition period from 1 June 2020, during which the approach would be tested and there would be discussions between planning officers and parish councils to identify any issues.

Finally, reference was made to late representations and the need to retain flexibility around any information received to ensure that fundamental matters were addressed when considering a planning application.

Members discussed the proposals in detail and Officers responded to concerns, comments and questions raised.

RECOMMENDED: That the proposed changes to process, set out in the report and detailed below, be agreed: 

- (1) from 1 September 2020, the Borough Council will not accept representations on applications received after the relevant 21 day period from any party not included in the statutory (technical) consultees definition (as set out in paragraph 1.2.9 of the report). It would, however, be recognised that there could be exceptions to this where fundamental matters were raised outside the period, which could leave the authority open to legal challenge or raised new material considerations.
- (2) from 1 September 2020, the Borough Council will notify Parishes via the weekly List B and they will have 21 days from then within which to make representations (as set out in paragraph 1.2.12 of the report) and therefore the provision of hard copies of planning applications to Parish Councils will cease and they will be required to view relevant papers online (as set out in paragraph 1.2.12 of the report);
- (3) the savings derived from changes to how Parish Councils will be notified will contribute to both the Savings and Transformation Strategy and the Medium Term Financial Strategy (as set out in paragraph 1.2.14 of the report);

- (4) from 1 September 2020, amendments to planning applications will not be accepted, other than where the changes sought were considered to be 'de-minimis', correct errors or discrepancies identified by officers or where a Planning Performance Agreement was in place that provided for such amendments to be negotiated between the parties (as set out in paragraph 1.3.7 of the report); and
- (5) progress on the proposals will be updated at the meeting of the Planning and Transportation Advisory Board scheduled for 28 July 2020.

***Referred to Cabinet**

PE 20/5 PROPOSED REVISION TO THE JOINT TRANSPORTATION BOARD AGREEMENT

The report of the Director of Street Scene, Leisure and Technical Services presented a revised Joint Transportation Board Agreement between the Borough Council and Kent County Council for consideration. There were no financial implications related to the proposal and therefore no impact on the Medium Term Financial Strategy.

A copy of the revised Agreement (attached at Annex 2 of the report) incorporated an amendment to paragraph 2.2 of the First Schedule agreed at the meeting of the Joint Transportation Board held on 23 September 2019, stating that Parish/Town Council representative(s) nominated by the Area Committee of the Kent Association of Local Councils (KALC) would be able to speak on any item on the agenda. It was confirmed that Parish/Town Council representatives would not have voting rights as part of this amendment.

RECOMMENDED: That the revised Joint Transportation Board Agreement (attached at Annex 2 of the report) be approved. ◀

***Referred to Cabinet**

MATTERS SUBMITTED FOR INFORMATION

PE 20/6 PLANNING CONDITIONS

The report of the Director of Planning, Housing and Environmental Health provided an update on how planning conditions would be sought on planning permissions through the use of a comprehensive, published compendium.

Members welcomed the use of a compendium as a valuable and informative tool and noted that its use would be in the interests of good and consistent decision making.

MATTERS FOR CONSIDERATION IN PRIVATE

PE 20/7 EXCLUSION OF PRESS AND PUBLIC

There were no matters considered in private.

The meeting ended at 9.50 pm

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TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 PLANNING ENFORCEMENT SECTION 215 PROTOCOL

Summary

This report seeks approval for the adoption of a Planning Enforcement Section 215 Protocol which is intended to provide a clear and transparent framework in respect of how the Service will decide whether to take action to serve formal notices, in particular how sites will be assessed to establish whether such action is appropriate and proportionate and whether any other powers held by the Council should be called upon as an alternative. This will ensure that Council financial and personnel resources are properly focused given the high number of complaints the enforcement team receive on such matters.

1.1 Introduction

- 1.1.1 Matters relating to planning enforcement were last reported to the Board on 13 November 2019. At that time, officers reported that a key aspect of planning enforcement that causes a high volume of complaints across the Borough relates on untidy sites and powers afforded to the Council as Local Planning Authority under Section 215 of the Town and Country Planning Act 1990 (as amended).
- 1.1.2 Whilst there is mention of the circumstances when it might be appropriate to take action to remedy untidy sites within the adopted Planning Enforcement Plan, a review of cases since its adoption does indicate that complainants do sometimes find it difficult to understand when and how we might look to take such action.
- 1.1.3 Best Practice Guidance on a national level does exist albeit in a dated form (published by the ODPM, January 2005) and initial research indicates the Local Planning Authorities across the country rely on this to provide guidance to their local residents. Clearly, matters have moved on somewhat since publication of this document, particularly since the production of the NPPF and associated PPG. Whilst the published guidance does continue to provide some useful, high level advice on best practice, and this should not necessarily be simply replicated at a local level, it is considered that a Borough specific protocol which sets out plainly

how this Council will respond to complaints would be a beneficial tool to all parties involved in the process.

- 1.1.4 As such, and in order to improve transparency concerning how these cases will be dealt with it, is considered that a further protocol to sit alongside the main Planning Enforcement Plan and Direct Action Protocol would be appropriate. The draft protocol is attached in full at **[Annex 1]**.

1.2 Relevant policies and guidance:

- 1.2.1 The Council's objectives in producing a Section 215 Protocol are consistent with the National Planning Policy Framework (2019) (NPPF).

- 1.2.2 Paragraph 58 of the NPPF relates to the enforcement of planning control and states:

'Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.'

- 1.2.3 The proposed protocol does not conflict with the contents of the Council's wider enforcement policy or with legislation or Government guidance.

1.3 Key themes of the Protocol

- 1.3.1 The protocol sets out in detail what detailed assessments officers will make in establishing whether formal action is necessary and proportionate in light of all the prevailing circumstances of a case. These assessments will be focused on the following criteria:

- Assessment of the condition of buildings;
- Assessment of the condition of land;
- Key features/attributes of wider locality (context);
- Relevant history of the site;
- Whether there are any alternative, more appropriate powers available to the Council; and
- Whether any other contributory or mitigating circumstances exist.

- 1.3.2 In terms of the condition of land and buildings, it is important to recognise that before any formal action should be taken any identified harm arising must be greater than simply an untidy garden or building that neighbours would *prefer* was maintained in a better condition. Similarly, context is everything in this respect

and the circumstances of the site and the nature of the specific surroundings must play a key role in assessing the level of harm arising.

- 1.3.3 Equally, it must be recognised that the Council has other powers available to it that might mean planning enforcement action simply is not the most appropriate route to resolve a situation. The protocol makes these clear and officers will always seek to liaise with colleagues across the Council to ensure the most appropriate powers are utilised in any given case. Most commonly, this liaison will take place with Building Control, Environmental Protection, Licensing and the Community Safety Unit.
- 1.3.4 Similarly, officers will always be mindful that there might be occasions where other contributory factors mean it would simply not be appropriate to take planning enforcement action. Examples of this include where there are issues surrounding our statutory equalities duties or where the health and well-being of individual residents may be interrelated. Where officers believe this may be the case, they will always firstly liaise with the Community Safety Unit to establish a best course of action.
- 1.3.5 Having considered each of those aspects, the protocol advocates the importance of engaging in informal negotiations to seek improvements in the first instance in order to give landowners an opportunity to rectify a situation or explain of any genuine mitigating circumstances we might not be aware of. We will only seek to engage in informal negotiations on occasions where the condition of the land is such that amenity is being adversely affected sufficient to justify further action. The route of informal negotiation is not intended to enquire as to whether those untidy sites which are less than harmful could be tidied up. Rather, it is a precursor to more formal action taking place.
- 1.3.6 **[Annex 2]** of this report sets out some practice examples of investigations in these respects.

1.4 Legal Implications

- 1.4.1 Without an adopted protocol in place setting out when such action might be taken, such decisions may be subject to legal challenge through the Courts. A formal protocol also assists good governance and transparency in decision making.

1.5 Financial and Value for Money Considerations

- 1.5.1 The protocol will ensure that Council resources are properly focused on appropriate cases, which is important given the high volume of complaints received.

1.6 Risk Assessment

- 1.6.1 The adoption of a clear protocol by which decisions will be made will reduce the risk of any challenge as it clearly sets out the process and procedures the Council will adhere to in seeking to take such action.

1.7 Equality Impact Assessment

- 1.7.1 The protocol as drafted will need to make clear that any decisions made will have full regard to the Public Sector Equality Duty as set out at Section 149 of the Equalities Act 2010.

1.8 Recommendations

- 1.8.1 It is recommended to Cabinet to **APPROVE** the following proposals with effect from 01 September 2020:

- 1) Adopt the Planning Enforcement Section 215 Protocol as attached at **[Annex 1]**.

The Director of Planning, Housing and Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

contact: Emma Keefe

Planning Enforcement Section 215 Protocol
Section 215 Action Case Studies

Eleanor Hoyle
Director of Planning, Housing and Environmental Health

Planning Enforcement Plan: Section 215 Protocol

Contents:

- 1 Introduction and Context
- 2 Aims and Scope
- 3 When action might be taken?
- 4 Consideration of whether a Section 215 Notice should be served
- 5 When amenity is judged to be harmed

1. Introduction and Context:

- 1.1 This Protocol supplements the information published in the adopted Tonbridge and Malling Borough Council's 'Planning Enforcement Plan'. It has been prepared having regard to the Council's corporate policies and plans, and relevant planning policy and guidance. The National Planning Policy Framework (NPPF) states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately”.

- 1.2 The Council has at its disposal a range of planning enforcement powers to ensure effective enforcement, including the power to serve a notice under Section 215 of the Town and Country Planning Act 1990 (as amended) requiring steps to be taken to where it is considered that the condition of the land is such that it has an adverse affect on the amenity of the area.
- 1.3 Such notices, when used properly and proportionately can assist in maintaining and improving the quality of the environment, tackle dereliction and respond positively to legitimate public concerns.
- 1.4 This protocol serves to provide details of the procedures in place which will be followed in considering such complaints and sets out the nature of assessment that will be carried out in order to establish whether formal action should be taken. It is intended to provide a comprehensive advice on how the Council will assess such matters and take appropriate and proportionate action.
- 1.5 The protocol should be read in conjunction with the adopted Planning Enforcement Plan, Direct Action Protocol and specific national guidance set out in the Planning Practice Guidance.

2. Aims and Scope

- 2.1 The primary aims of this protocol are to:
- Acknowledge the principles of consistency, transparency and proportionality in the decision-making process and overall approach to the serving of Section 215 Notices;
 - Promote awareness of the relevant policies and procedures;
 - Ensure compliance with the Council's statutory duties including its equalities duties;
 - Ensure compliance with the Council's procurement rules and corporate procedures.

3. When action might be taken?

- 3.1 'Amenity' is a broad concept and not formally defined in the legislation or procedural guidance, i.e. it is a matter of fact and degree. Untidy sites are rarely dangerous to public health but it is well understood that areas that are well cared for assist in making people feel safe and secure whereas areas that become neglected over time can feel unsafe and adversely impact upon enjoyment. That is not to say, however, that the Planning System has a legitimate role in policing certain ideals as to what a place should look like or requiring all residents to adhere to specified standards of routine maintenance of their own land.
- 3.2 The Council will only take action to improve the condition of land in the event that clear harm is considered to arise in any given case. This will always be a matter of judgement. Each case will be different and what would not be considered amenity harm in one part of the Borough might well be considered so in another. The Council must therefore consider the condition of the site, the impact on the surrounding area and the scope of our powers in tackling the problem before we decide that harm is arising sufficient to issue a notice.
- 3.3 The scope of works that can be required in such notices is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting. In preparing notices it is critical that we ensure that the works specified by a notice do not themselves result in a breach of planning control e.g. unlawful works to a listed building, or material alterations to premises for which planning permission should be sought.
- 3.4 Many of the problems we receive complaints about are relatively easy to put right for example:
- blocked gutters and down pipes - water ingress will eventually destroy a building through frost and rot
 - fallen fences
 - dilapidated walls / broken windows / graffiti
 - land with fly tipping, industrial or demolition waste,
 - builders rubble,
 - dumped sofas/furniture,
 - abandoned vehicles,
 - dumped tyres or
 - Significantly overgrown gardens.

4. Consideration of whether a Section 215 Notice should be served:

4.1 Before deciding whether a Notice should be served an assessment will be undertaken as to whether this is an appropriate and proportionate course of action, having full regard to all of the circumstances of the case. This will include, but not necessarily be limited to the following considerations:

Assessment of the condition of buildings:

- Including the condition of brickwork, cladding, broken/missing windows and doors, damaged guttering and downpipes that might be causing water ingress and damage
- Evidence of whether the building is empty or occupied and the likelihood of that changing in the short term such as where properties are up for sale, going through probate.

Assessment of the condition of land:

- Including dilapidated boundary treatments, presence of graffiti, abandoned vehicles, dumped rubbish and significantly overgrown gardens

Key features/attributes of wider locality (context), for example:

- Proximity of listed buildings and whether harm is arising to the significance of their individual settings
- Formal designations such as Areas of Outstanding Natural Beauty and Conversation Areas where there is a duty for local authorities to preserve and enhance
- Character and appearance, having particular regard to any wider contribution the site makes

Relevant history of the site:

- Has previous informal negotiation been necessary and if so was it successful in remedying the breach in an effective manner?
- Does the land benefit from any extant planning permissions that are likely to be implemented in the short term thereby remedying the breach?

Whether there are any alternative, more appropriate powers available to the Council, such as:

- Sections 76 - 79 of the Building Act for defective premises, dangerous buildings, ruinous and dilapidated buildings and neglected sites;

- Section 29 of the Local Government (Miscellaneous Provisions) Act 1982 for works on unoccupied buildings;
- Section 79 - 82 of the Environmental Protection Act for abatement or prohibition of a nuisance;
- Listed building legislation such as Repairs and Urgent Works Notices
- Completion Notices; and
- Compulsory Purchase Orders.

4.2 Officers will proactively engage with other services across the Council to ensure that we are utilising the more appropriate skills and powers in any given case. In particular, this liaison will include with Building Control, Environmental Protection, Licensing and the Community Safety Unit as necessary and appropriate to do so.

Whether any other contributory or mitigating circumstances exist:

- Any personal circumstances or equalities issues that arise, in particular through liaison with other services that would indicate a different course of intervention.

4.3 In this respect, particular regard will be had to the Public Sector Equality Duty is set out at Section 149 of the Equalities Act 2010. In making any decision as to whether or not to take action under Section 215 of the Act, the Council in undertaking its role as Local Planning Authority will have full regard to this duty.

4.4 Each case will be considered on its merits, having regard to the facts and circumstances of the case. As necessary, enforcement officers will liaise with other Council services to establish whether there are any more appropriate powers or any limitations

4.5 In the event that requests to take such action are expressly made by elected Borough Councillors, the same process and procedures will be followed and a detailed evaluation will take place accordingly.

5. When amenity is judged to be harmed:

5.1 If it is determined by Officers that the condition of buildings or land **is** having an adverse affect on amenity that is capable of being addressed through Section 215 of the Act, in the first instance the Council will write to the owner of the land setting out what steps should be taken to resolve the problem, giving a reasonable period of time to allow for this to happen. The time period will inevitably depend on the nature of the works that are deemed to be necessary.

- 5.2 After that time period has passed, Officers will visit the site to establish whether the requested works have been undertaken. If they have not, a formal Notice can be served which will specify precisely what needs to be done to correct the situation, again within a given timescale. It is an offence not to comply with the notice within the specified period. If the requirements of the notice are not carried out in the required timescale the landowner could be fined and have a criminal record.
- 5.3 There is a right of appeal against a notice issued under this section to the Magistrates Court (not the Planning Inspectorate as is the case with Enforcement Notices). Failure to comply with the requirements of the notice constitutes a criminal offence subject on conviction to a fine not exceeding £1000.
- 5.4 The Council is also empowered to enter land to carry out the works specified in the notice and reclaim costs from the land owner in accordance with our Direct Action procedures.

Case Study 1:

A site in Ightham where informal negotiations with the landowner successfully resulted in the site being cleared. In cases such as this, it is important to remember that legislation around fly-tipping can only be instigated in the event the Council can prove who is responsible, whereas Section 215 action is taken against a landowner. Similarly, in these cases officers will also be required to reach a conclusion as to whether any other breaches of planning control are occurring, for example changes of use to open storage, which was clearly not the case here.



Case Study 2:

A site in Tonbridge where officers concluded that whilst the site was overgrown and the front boundary was in some disrepair it was not of such poor condition to be said to be adversely affecting wider amenity, particularly in light of the fact that planning permission had been recently granted for a new house on the site meaning that any perceived local problems would be resolved in the short term.



Case Study 3:

A case in Hadlow where a residential garden had become so overgrown so as to adversely affect wider amenity. A formal notice was served but not complied with and the Council has recently taken Direct Action in line with the adopted protocol to secure compliance.





TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Information

1 DEVELOPMENT MANAGEMENT – PROCESSES AND PROCEDURES

Summary

This report seeks to provide an update on Development Management following a report to this Board in March 2020. The proposals in this report would, if agreed, result in some savings to support the Council's medium term financial strategy and service efficiencies.

1.1 Introduction

- 1.1.1 At this Board in March, Members recognised the value in reviewing internal working practices to ensure that the development management function was delivered efficiently for the benefit of residents and applicants. In particular, Members welcomed the proposals around notification deadlines, validation dates and the use of 'List B' to trigger the commencement of the 21 day notification period. Members also supported the principle of stricter measures being in place to reduce last minute amendments to planning applications.
- 1.1.2 However, concern was expressed that the proposals represented a significant challenge for Parish Councils, who would have to adapt their current practices to adopt the changes. To support Parishes through this process, it was agreed that Officers would actively engage with them (and other interested parties) to understand the issues and concerns around the proposals and to identify potential digital solutions.
- 1.1.3 It was also agreed to hold a number of training sessions, working in partnership with the Kent Association of Local Councils (KALC) and the Parish Partnership Panel to support them in using digital tools such as the Public Access portal and My Account to keep informed of planning applications in their area. It was intended that there would be a transition period from 01 June 2020, during which the approach would be tested and there would be discussions between planning officers and parish councils to identify any issues.
- 1.1.4 Finally, reference was made to late representations and the need to retain flexibility around any information received to ensure that fundamental matters were addressed when considering a planning application.

1.1.5 The recommendations to Cabinet were subsequently taken to the meeting of 03 June where it was resolved that those recommendations be deferred until the meeting on 30 June 2020 in order to allow for discussion with Parish Councils at the meeting of the Parish Partnership Panel on 11 June.

1.1.6 Cabinet on 30 June resolved that the proposed changes to process, as set out in the report and detailed below, be approved:

(1) from 1 September 2020, the Borough Council will not accept representations on applications received after the relevant 21 day period from any party not included in the statutory (technical) consultees definition (as set out at paragraph 1.2.9 of the report). It is, however, recognised that there could be exceptions to this where fundamental matters are raised outside the period, which could leave the authority open to legal challenge, or raises new material considerations, or where the application has a large degree of complexity resulting in there being a significant amount of information to assess;

(2) from 1 September 2020 the Borough Council will notify Parishes via the weekly list B and they will have 21 days from then within which to make representations (as set out in paragraph 1.2.12 of the report) and therefore the provision of hard copies of planning applications to Parish Councils will cease and they will be required to view relevant papers online (as set out at paragraph 1.2.12 of the report);

(3) the savings derived from changes to how Parish Council's will be notified will contribute to both the Savings and Transformation Strategy and the Medium Term Financial Strategy (as set out at paragraph 1.2.14 of the report);

(4) from 1 September 2020, amendments to planning applications will not be accepted, other than where the changes sought were considered to be "de-minimis", to correct errors or discrepancies identified by officers, or where a Planning Performance Agreement is in place that provides for such amendments to be negotiated between the parties (as set out in paragraph 1.3.7 of the report);

(5) progress on the proposals will be updated at the meeting of the Planning and Transportation Advisory Board scheduled for 28 July 2020; and

(6) the Borough Council will commence a programme of engagement with Parish Councils to offer technical advice and training, and to assess their individual needs, in order to remove barriers to viewing applications online.

1.2 Engagement Undertaken

1.2.1 Clearly, since the recommendations cited above were agreed by the Board, ways of working across Development Management have needed to fundamentally change in many ways for reasons outside of our control. This has included the necessary step of notifying Parish Councils of new applications via the weekly list and ceasing the production of hard copies of applications, requiring them instead

to view the documentation online as of 23 March. These actions align with Recommendation (2) set out above but the circumstances in which this has occurred has meant that we have not been able to front load any training sessions in association with KALC and PPP in the manner anticipated at the start of March.

- 1.2.2 Notwithstanding this, officers have produced an advice note on the use of Public Access which was circulated to all Parish Councils and we have been actively engaged in listening to and advising on individual issues and questions as they have arisen in order to understand common themes and how our future training sessions might best be framed.
- 1.2.3 Equally, officers are continuing to work on the content of the weekly list to improve its functionality with the overarching intention of having this as an electronic tool with hyperlinks that immediately take the reader to the application(s) they wish to view. It is also likely that some of the content deemed to be unnecessary will be removed to avoid any confusion, particularly around dates and are intending to make much clearer what the 21 day deadline for responses is; that being the key piece of information needed for Parishes to plan for making their representations (and equally for Borough Councillors to request an application be reported to Planning Committee in line with the Constitution).
- 1.2.4 We are very grateful to the Parish Councils for their willingness in working with us to date in such unusual circumstances. It is however still important to understand fully how the changes are working in practical terms, with a view to making any necessary refinements as and when we are able to do so. As such, officers have embarked on a series of engagement exercises with the Parishes, local developers and agents and our own officers which is intended to guide how the necessary changes to our process are framed and in particular how any key training needed to assist Parishes are delivered in a constructive manner. At the time of writing this report, the engagement exercises have commenced and officers are hopeful that this will provide a constructive insight into how the proposed changes can be delivered in a positive and helpful manner wherever possible. The initial outcomes of the engagement exercise will be reported verbally by officers at the Board.
- 1.2.5 We have also had the opportunity to discuss the changes at PPP and KALC in recent weeks. It is understood via these sessions that there remains some concern about how these changes will be delivered and broadly what this means for the relationship between the Borough and Parish Councils. The message delivered at both sessions, which remains fundamental, is that these changes are not intended to diminish the value of the role of the Parishes within the planning application process but rather that the role is part of an improved way of delivering the service overall. Inevitably, that will mean some different ways of engaging and communicating but hopefully the changes implemented already, albeit quicker than anticipated and out of necessity, have demonstrated that such changes can arise without any diminishing of roles.

- 1.2.6 Receipt of late representations remains an issue for the service and ways of resolving this in accordance with Recommendation (1) remains paramount to ensure the changes to processes are fair. Officers are reflecting on recent experiences concerning late representations made and a key aspect of initiating this change in our practices will be around messaging, having unambiguous processes in place for officers to follow; ensuring that they are robust but allow for flexibility where necessary to protect the Authority from challenge. It will also be important to ensure messaging on our website and through the means by which we consult members of the public are explicit in this respect.
- 1.2.7 I am aware that some concern already exists that the quality of decision making will diminish in preference for speed as a result of some of the proposed changes to our processes. Members should be assured that this is not the case. Officers recognise absolutely the value in ensuring the highest quality developments come forward within the Borough wherever possible and this should not be diluted. The changes recommended in terms of how we achieve this is intended to frontload our negotiations to encourage meaningful and more extensive pre-application discussions at the inception of a development and the increased use of Planning Performance Agreements (PPAs).
- 1.2.8 Positively, since the adoption of the PPA protocol there has been an uptake in developers utilising these. The first application with a PPA since the new protocol and fee charging regime was put in place was determined by the Area 1 Planning Committee on 25 June within the agreed timeframe and still allowing for improvements to be made during the course of the application regarding the position of windows in order to ensure privacy would be maintained to neighbouring properties following objections that were raised during the consultation process. This is exactly how the process should work when a PPA is in place and is a demonstration of the system working at its best. There are now a number of other schemes undergoing assessment which are subject to PPAs and I anticipate the same positive decision making to be facilitated by this tool going forward.
- 1.2.9 It is recognised that the quality of the pre-application service is a crucial element to this. Part of the engagement being undertaken with local developers and agents and the DM officers focuses on how the current service is perceived and what limitations and opportunities exist for improvement. In all likelihood, there will be some modifications to the protocol along with possible options for amending and expanding upon the fee charging schedule for pre-application advice. A further report to this Board will be brought in November, specifically setting out that work.
- 1.2.10 As part of this, it is recognised that some applicants/agents seek to overcome technical objections raised during the consultation process by entering into dialogue directly with statutory consultees. This is not appropriate and contradicts the means by which we are seeking to improve and focus customer interaction. However, the obvious difficulty being that by the time officers learn that this is

happening it is almost too late by default as the negotiations have taken place. Consideration is being given to how this might be improved and the first step will likely be a separate period of engagement with statutory consultees in which the changes are set out. There are also possible options for changing the way in which we display representations received from statutory consultees which are being investigated presently.

1.3 Next steps

1.3.1 There are a number of steps to be undertaken in order to facilitate the proposed changes by 01 September in a manner reflective of the engagement exercise and other feedback already received, as follows:

- Comprehensive review of the engagement exercise;
- Completion of improvements to the weekly list, to be informed by engagement exercise, and also including a review of formatting and content to ensure it is a practical electronic tool;
- Formulation of a training schedule for Parish Councils, to be informed by the engagement exercise, exploring opportunities for virtual workshops, supported by online and written material wherever possible and necessary;
- Explore opportunities to create a virtual developer/agent forum;
- Comprehensive review of the planning website pages to advertise changes to how planning applications will be dealt with and promoting the use of the pre-application service and use of PPAs;
- Review letter templates to ensure messaging around how the public engage with us and the consequences of making late representations;
- Engagement with statutory consultees to ensure appropriate ways of working designed to minimise opportunities for applicants to communicate with them directly in amending schemes contrary to our processes;
- Linked to the above, investigation into the different ways representations received by statutory consultees might be published;
- Wherever possible enshrining the role of the relevant statutory consultees within PPAs;
- Review the functionality of the Public Access as a tool for displaying representations received;
- Review of the pre-application advice service and associated fee charging schedule, to be informed by the engagement exercise, and compile a

report to this Board in November with any necessary improvements designed to promote the use of this service;

- Development of internal procedure notes (linked to all of the above) which support officers in implementing the changes in an unambiguous way that are legally sound.

1.4 Legal Implications

1.4.1 The ongoing work set out above will ensure that the practices in place will continue to meet all statutory duties and requirements.

1.5 Financial and Value for Money Considerations

1.5.1 Implementation of the processes set out above will ensure that the service continues to provide a high quality service to customers, consequently minimising the risk of potentially costly appeals against non-determination being taken forward and being required to refund application fees.

1.5.2 Applications can be resubmitted once free of charge if an applicant is invited to withdraw. Given that the resubmission would be on the basis of the work to date, there is an additional resource implication around managing a new consultation process, however this is not considered to be significant.

1.6 Risk Assessment

1.6.1 Not making the recommended changes to processes and practices may result in risks around not meeting national targets for decision making, an increase in non-determination appeals and repayment of application fees.

1.7 Policy Considerations

1.7.1 The recommendations align with both the emerging Climate Change Strategy and the Digital Transformation Strategy.

1.7.2 In seeking to look at service efficiencies, the recommendations support the Council's Savings and Transformation Strategy.

1.8 Equality Impact Assessment

1.8.1 No issues raised.

1.9 Recommendations

1.9.1 That the contents of the report be **NOTED**.

Background papers:

contact: Emma Keefe

Nil

Eleanor Hoyle

Director of Planning, Housing and Environmental Health

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TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Information

1 SECTION 106 PROTOCOL AND MONITORING REPORT

Summary

This report provides an overview of planning obligations for the period 2018-2020 and provides an update on upcoming changes to how future monitoring of obligations will take place. It also seeks approval for the adoption of a Planning Obligations Protocol which is intended to provide a clear and transparent framework in respect of how the Service will negotiate and secure planning obligations under section 106 of the Town and Country Planning Act 1990 in order to mitigate the impacts of development taking place across the Borough. Successful negotiation of planning obligations requires effective management and monitoring to ensure timely and appropriate use of collected obligations.

1.1 Introduction

- 1.1.1 Matters relating to Section 106 monitoring were last reported to this Board in November 2018 following an internal audit having taken place. The report at that time undertook to provide the Board with regular updates on monitoring and that was predicated on structural changes across the service allowing for dedicated monitoring resources to be put in place. Those anticipated changes have yet to be implemented and in the interim period the government has introduced new legislation that will require all Local Planning Authorities to publish their monitoring statistics in a prescribed format by the end of the year.
- 1.1.2 Aligned with this, significant obligations and financial contributions are being secured through the grant of planning permissions for developments across the Borough and this trend will undoubtedly continue once the new Local Plan is adopted, particularly in connection with the strategic site allocations.
- 1.1.3 With these factors collectively in mind, this report intends to;
- Outline the nature of the obligations secured, received and used for applications received 2018 – June 2020 (predominately covering the period since the matter was last reported to the Board) and provide a synopsis of

some key obligations currently being sought through the Development Management process;

- Update Members on the upcoming national requirements relating to the publication of monitoring statistics and how it is intended to action these requirements going forward; and
- Introduce a new Protocol to be adopted seeking to provide a clear and concise framework setting out how officers will negotiate planning obligations, what expectations will be placed upon developers, including the introduction of a monitoring fee.

1.2 Relevant statutory and policy framework:

1.2.1 Section 106 agreements, also known as planning obligations or developer contributions, are typically undertakings by developers or agreements between a local planning authority and a developer in the context of granting planning permission. Their function is to make acceptable development which would otherwise be unacceptable in planning terms and they typically involve commitment to provide something in-kind on site in a particular form (e.g. affordable housing, community facilities) or money for the authority to undertake necessary work. Section 106 monies, by their nature, are mostly for capital works as they are for the provision of infrastructure necessary to mitigate the impact of the development (e.g. junction modifications, school extensions).

1.2.2 Planning obligations effectively are used for three main purposes:

- Prescribe the nature of development (for example, requiring a given portion of housing is affordable);
- Compensate for loss or damage created by a development;
- Mitigate the impact of a development.

1.2.3 As part of the planning process, a developer may be required to enter into a legal agreement to provide infrastructure and services on or off the development site, acting as a delivery mechanism for the matters that are necessary to make the development acceptable in planning terms.

1.2.4 Examples of types of infrastructure or services that planning obligations can include are:

- Transport infrastructure or services, including new or improvements to existing footpaths, cycle ways, roads and bus services and their associated infrastructure, to link development to surrounding areas and ensure it is accessible by all modes of travel;
- Affordable and specialist housing (where there is a proven local need);

- Education facilities to meet any expected demand in school places arising from the development;
- Community facilities, including buildings and play or open space, where existing provision is inadequate to provide for the new development;
- Environmental improvements where necessary to mitigate the impact of a development or integrate it with surrounding areas;
- Restrictions and obligations on the use of land.

1.2.5 The Community Infrastructure Regulations 2010 (CIL) that came in to force on 06 April 2010 set out the statutory tests on what can reasonably be sought under section 106 of the Act, replacing the circular 05/2005 guidance for all developments. Regulation 122 requires that a planning obligation cannot be taken into account in a decision on a planning application unless it is:

- (i) necessary to make the development acceptable in planning terms;
- (ii) directly related to the development; and
- (iii) fairly and reasonably related in scale and kind to the development.

1.2.6 Members should note that since section 106 obligations were last reported to this Board, the pooling restrictions previously enshrined within Regulation 123 of the CIL Regulations have been removed. This means that subject to meeting the three tests above, local authorities can use funds secured by obligations to pay towards the same piece of infrastructure regardless of how many planning obligations have already contributed towards that item, whereas previously this had been limited to a total of five obligations towards any one project.

1.3 Summary of section 106 obligations:

1.3.1 Planning obligations sought and secured will inevitably vary from year to year depending on the sites that are granted planning permission and necessitate mitigation in accordance with relevant policies. Furthermore, it should also be remembered that not all obligations/contributions secured via planning permissions will ultimately be received by the Council. For example, in cases where the developer chooses (for whatever reason) not to progress with the development. As such, Councils should not “rely” on developer contributions coming forward within a particular timeframe, or indeed at all, to fund projects they wish to progress. This is particularly important to remember given that obligations/contributions should only be sought where the statutory tests are met.

1.3.2 **[Annex 1]** provides a summary of all obligations secured for applications covering the period 2018 – June 2020, including details of the site, relevant planning application and nature of the obligation itself. Clearly, Members will have knowledge of other, individual schemes that are in the process of undergoing

assessment and negotiation to secure obligations by way of agreement and at the point of the decision, these will be inputted into the spreadsheet. Members should acknowledge that the data has been directly lifted from the monitoring spreadsheet which is a working tool used by officers to record obligations secured and activity to ensure compliance with the terms of legal agreements. Equally, it should be noted that this will necessarily change once the standardised means of publishing our statistics comes into effect. This is discussed in more detail at Section 1.4 below.

1.4 Changes to monitoring and standardised means of publication

- 1.4.1 The Planning Practice Guidance (the “PPG”) recognises that reporting on developer contributions helps local communities and developers see how contributions have been spent and understand what future funds will be spent on, ensuring a transparent and accountable system.
- 1.4.2 As such, the PPG sets out that, in accordance with the Community Infrastructure Levy Regulations, any authority that receives a contribution from development through the levy or section 106 planning obligations must prepare an infrastructure funding statement. This is a requirement on Borough, County and Parish Councils (separate advice is contained within the PPG pertaining to Parishes in particular).
- 1.4.3 Where authorities pass funds to other bodies, this should be on the condition that the other body will provide information back to the authority on how contributions have been spent that reported year, and how they intend to spend future contributions, to inform infrastructure funding statements.
- 1.4.4 Local planning authorities are already required to keep a copy of any planning obligation together with details of any modification or discharge of the planning obligation and make these publicly available on their planning register. Any local authority that has received developer contributions is required to publish an infrastructure funding statement at least annually. To collect data for the infrastructure funding statement, it is recommended that local authorities monitor data on section 106 planning obligations and the levy in line with the government’s prescribed data format. Advice to local authorities on how to record the data is set out within the PPG, an extract of which is provided at **[Annex 2]** for Members further information. This data should include details of the development and site, what infrastructure is to be provided including any information on affordable housing, and any trigger points or deadlines for contributions. Local authorities should also record when developer contributions are received and when contributions have been spent or transferred to other parties.
- 1.4.5 The PPG highlights that local planning authorities are expected to use all of the funding they receive through planning obligations in accordance with the terms of the individual planning obligation agreement. This will ensure that new

developments are acceptable in planning terms; benefit local communities and support the provision of local infrastructure.

- 1.4.6 For the financial year 2019/2020 onwards, any local authority that has received developer contributions (section 106 planning obligations or Community Infrastructure Levy) must publish online an infrastructure funding statement by 31 December 2020 and by the 31 December each year thereafter. Infrastructure funding statements must cover the previous financial year from 1 April to 31 March (note this is different to the tax year which runs from 6 April to 5 April).
- 1.4.7 In terms of resourcing, authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. Monitoring fees should not be sought retrospectively for historic agreements. The PPG advises that fees could be a fixed percentage of the total value of the section 106 agreement or individual obligation; or could be a fixed monetary amount per agreement obligation (for example, for in-kind contributions). However, in all cases, monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring. Authorities could consider setting a cap to ensure that any fees are not excessive. Authorities must report on monitoring fees in their infrastructure funding statements.
- 1.4.8 Officers are presently working to prepare for this requirement coming into force by taking part in training events with IT to establish how our existing systems can best be utilised to record and report the necessary data. Consideration is also being given to how this work is best resourced going forward in order that the work is undertaken in a structured, consistent and regular manner. In all likelihood, the role will sit within the technical team of Development Management and part of the consideration as to how that is best resourced will be linked to necessary benchmarking, effective time monitoring and the ability of the Council to charge secure monitoring fees.

1.5 Key themes of the Protocol

- 1.5.1 Officers have been developing a Section 106 protocol which is intended to provide best practice guidance on managing Section 106 Planning Obligations related to development taking place in the Borough. It is intended to amplify adopted local and national requirements whilst looking towards a collaborative approach to the provision of affordable housing, infrastructure projects and public services. It is essential that the means of securing such obligations takes place in a fair, open, transparent and reasonable in order to retain public confidence in the system and to provide greater clarity to all those involved.
- 1.5.2 The Protocol is intended to sit alongside the pre-application advice service the Council currently provides (which is subject to ongoing review and likely to be reported to this Board in November) and the use of Planning Performance

Agreements, which are being actively promoted following the adoption of a similar protocol and fee charging schedule earlier this year.

- 1.5.3 The Protocol recognises that it is important that the negotiation of planning obligations does not unnecessarily delay the planning process, thereby holding up development delivery. It is therefore essential that all parties proceed as quickly as possible towards the resolution of meaningful and enforceable obligations in parallel to planning applications (including through pre-application discussions where appropriate) and in a spirit of early engagement and co-operation, with deadlines and working practices agreed in advance as far as possible (via formal planning performance agreements wherever possible to do so) in order to shape better quality schemes and improve the outcomes of a proposed development. It is considered that a protocol will embed within it the roles and responsibilities of each party in order to achieve this in practical terms.
- 1.5.4 Linked to the earlier sections of this report, it is recognised that key part of the Protocol must address implementation and monitoring of agreements once they have been secured via the Development Management process. It is necessary to embark upon a period of time recording and benchmarking to establish what any monitoring fee schedule should be, particularly as we look to update our systems to reflect national requirements for publishing data and consider resourcing implications for this.
- 1.5.5 The Protocol itself is set out in draft form at **[Annex 3]** to this report and a series of examples of monitoring fees adopted by a range of other Local Planning Authorities is contained at **[Annex 4]**. This information is not provided with the intention to replicate or endorse any one given approach but rather to provide Members with an understanding that there are a number of ways by which fees can be categorised and structured. The final Protocol along with the schedule of monitoring fees will be reported again to this Board in November for approval.
- 1.5.6 Members will also note that the Protocol seeks to address how Parish and Town Councils can engage with the process in order to identify projects within their communities to which contributions should be directed. In the recent past, contributions have been passed to Parish Councils where projects have been identified as falling within the scope of formal obligations secured, as follows:
- Addington PC: £18,755 towards new play equipment in the vicinity of a new development;
 - Hadlow PC: £18,125 towards facilities at Williams Field in the vicinity of a new development.
- 1.5.7 Presently, liaison is taking place with colleagues in Leisure Services with a view to compiling information to assist Parish and Town Councils in evidencing where need may arise from developments in the vicinity of their facilities at an earlier stage of the process. The key in all instances will be identifying that any such projects meet the statutory and policy tests in the same way the Borough and

County Councils are required to do. It is likely that the most helpful way to provide this guidance will be as an Annex to the main Protocol.

1.6 Legal Implications

- 1.6.1 There is a statutory requirement for local planning authorities to use all of the funding received by way of planning obligations, as set out in individual agreements, in order to make development acceptable in planning terms. Agreements should normally include clauses stating when and how the funds will be used by and allow for their return, after an agreed period of time, where they are not. Similarly, there is a need to adhere to the new requirement to publish our data in the prescribed format within the periods set out in the PPG.

1.7 Financial and Value for Money Considerations

- 1.7.1 Failure to effectively secure planning obligations that successfully mitigate the impact of new development could give rise to unacceptable planning harm arising on an individual or cumulative basis across the Borough.
- 1.7.2 Failure to effectively monitor how and where those planning obligations are secured could necessitate the repayment of financial obligations received. Both scenarios would compromise our ability to mitigate impacts in a positive way.
- 1.7.3 Failure to introduce a monitoring fees that fully reflect the actual cost of monitoring agreements would have potential resourcing implications.

1.8 Risk Assessment

- 1.8.1 It should be recognised that if individual planning permissions are not implemented, then the obligations secured as part of the permission do not come forward. As such, and particularly when linked to the statutory tests that we are required to apply, it is important to understand that planning obligations cannot be seen as a mechanism to fix pre-existing problems or as an opportunity to use developers as an additional revenue stream.
- 1.8.2 Additionally, it should be understood that even once an obligation has been secured through a planning agreement and tied to a permission there is provision within the Act for parties to the agreement to seek formal variations. Commonly this would occur in situations where developers wish to demonstrate that the viability of a scheme has altered over time and we have some limited experience of that happening in certain cases. However, it is equally relevant that in such cases, there would still be a requirement to assess the scheme afresh without the secured obligations and mitigation in place. If it is consequently considered that the impact would be harmful and there was no alternative means of ensuring effective mitigation that could be a justification to refuse to agree a variation.

1.9 Recommendations

- 1.9.1 That the contents of the report, in particular the intention to report back to this Board in November with the finalised Planning Obligations Protocol and associated monitoring fee charging schedule along with a further update on progress on changes to the recording and monitoring of new agreements in accordance with government requirements be **NOTED**.

Background papers:

contact: Emma Keefe

Annex 1: Section 106 monitoring data

Annex 2: Planning Practice Guidance Extract

Annex 3: Draft Planning Obligations Protocol

Annex 4: Examples of monitoring fee schedules

Eleanor Hoyle

Director of Planning, Housing and Environmental Health

Monitoring Spreadsheet 2019

| Planning reference number | Date of Decision | Site address | Summary of obligation | Purpose of obligation | Trigger points for compliance | Status of development | Details of on-site provision | Date payment received | Amount received after indexation | Time limit for payment | 3rd party transfer of funds (where applicable) | Payment Spend | Capital Plan Scheme / Other | Commentary/Actions |
|---------------------------|------------------|---|---|---|---|-----------------------|---|------------------------|----------------------------------|------------------------|--|---------------|-----------------------------|-----------------------------|
| 19/02047/FL | 13.02.2020 | Quarry House 81 Quarry Hill Road Borough Green Sevenoaks Kent TN15 8RW | £40,815.00 for Primary education • £37,035.00 for Secondary education • £293.14 towards community learning • £589.50 towards local youth services • £499.05 for local library book stock • £1321.92 towards social care/extra care • £2137.86 for improved waste services | Platt Primary School; Judd School; Borough Green Library; new HWRC in Borough | 50% prior to first occupation, the rest prior to occupation of 5th dwelling | Under Construction | N/A | | | | | | | |
| 19/00287/FL | 19.11.2019 | 2-12 Avebury Avenue Tonbridge | POS £51,258; Affordable housing £229, 959; Library £1104.36; NHS £14,832 | POS in vicinity; Provision of AH within the Borough; Library stock Tonbridge North; Warders Medical Centre or Hildenborough Medical Group | 50% to be paid prior to the occupation of any dwelling and balance to be paid prior to occupation of the 12th dwelling | Not commenced | N/A | | | 5 years from receipt | | | | |
| 19/01890/FL | 20.01.2020 | Primrose Inn Tonbridge Road Tonbridge | Open space - £22,321 already paid £15,756 under application 18/02488 | Improvement of existing open space in locality | Prior to 1st commencement | Under Construction | | 18-Jul-19 12-Mar-20 | £15,756 £6,565 | None (UU) | | | | see 2018 linked record also |
| 19/01979/FL | 21.05.2020 | 80 Rochester Road Aylesford | £2,296 - children play area; £9,529 - parks and gardens; £17,482 - outdoor sports | Enhancement of Forstal Road play area; Leybourne Lakes or Cobtree Park; Forstal Recreation Ground | Prior to 1st commencement | Not Commenced | N/A | | | 5 years from receipt | | | | |
| 19/00162/FL | 14.07.2020 | Tonbridge Chambers Pembury Road Tonbridge Kent TN9 2HZ | AH : 9 Units POS: £47,459 | To mitigate impacts of development upon open spaces in the locality and provide policy compliant AH | AH- 50% by 8 occupied units, all by 12 occupied units Open Space- 50% prior to occupation of any dwelling 50% prior to occupation of 12th dwelling | | 8 AH units- 6 social rent, 3 shared ownership | | | 5 years from receipt | | | | |
| 19/02743/FL | 18.03.2020 | Development Site Cemetery Road Snodland Kent | POS - £26.648 | Improvement of existing open space in locality | Prior to 1st commencement | Not Commenced | N/A | | | 5 years of receipt | | | | |
| | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | |

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Guidance

Publish your developer contributions data

When publishing your developer contributions data, follow this guidance on how to format, label and publish the data.

Published 1 September 2019

From:

[Ministry of Housing, Communities & Local Government](#)

Contents

1. [Publish your data](#)
2. [Step 1: Create your CSV files](#)
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6. [Step 2: Update your developer contributions web page](#)
7. [Step 3: Submit the URLs you created in Step 2 to the national register of developer contributions](#)

Publish your data

The Community Infrastructure Levy (CIL) regulations and National Planning Policy Framework require all local planning authorities to [publish their developer contributions data](#) on a regular basis and in an agreed format.

Local planning authorities that have received developer contributions must publish, at least annually, an infrastructure funding statement summarising their developer contributions data. This guidance sets out the data format and approach that you should follow when publishing your data and infrastructure funding statements.

The data format and infrastructure funding statements will give policy makers better insights into how developer contributions are supporting new development and local infrastructure. We have designed the data format to cause as little disruption as possible to existing processes.

Please share your feedback on this guidance by filling out a [feedback form](#) or by emailing DigitalLand@communities.gov.uk.

Make your data findable, useable and trustworthy

Developer contributions include section 106 planning obligations, CIL, section 278 agreements and any agreements that either secure funding towards new development, or provide infrastructure as part of any new development. The data on these has a wide range of current and potential uses, including:

- planning land and housing development
- creating new digital services
- giving community members insight into local development and how they can influence it

But for data to be useful it must be easy to find, use, understand and trust. Local planning authorities should ensure that their developer contributions data is all of these by following this specification for how to format, label and publish it. The following guidance gives a high-level overview of the data format and the publication process.

Local authorities should continue to publish section 106 agreements on the planning register. Publishing your developer contributions data in this format will help you fill out your infrastructure funding statement, but does not replace that requirement.

The Digital Land team at the Ministry of Housing, Communities & Local Government (MHCLG) are working to support the process of producing an infrastructure funding statement, using the data published in accordance with this guidance. They will update the [Digital Land website](#) with progress on this.

The Digital Land team have also built a test version of a [developer contributions dashboard](#). This is not a live service, but simply a prototype to explore ways the data could be used.

Publishing developer contributions: 3 steps

Planning authorities must publish their developer contributions data once a year but are encouraged to do so as frequently as they can so that datasets are up to date. (Those publishing with third-party software that can semi-automate the process might be able to publish in near real-time, while those publishing manually might choose to only publish quarterly.)

This guidance applies to the publication of developer contributions data going forward – you are not required to republish historical data so that it complies with this guidance.

Publishing is a 3 step process:

1. Create 3 developer contribution CSV files to store the data
2. Upload each of these files to your organisation's website and give them a persistent URL, then clearly link to them from your developer contributions web page
3. Submit the URLs you created in Step 2 to the national register of developer contributions

Step 1: Create your CSV files

To complete step 1 you must be able to create or amend CSV files, for example by using spreadsheet software.

If you are a planning authority using third-party software to manage your developer contributions, ask your vendor if the software can export the data to CSV files as defined in this guidance. Otherwise, use the following instructions.

Developer contributions data must be entered in 3 separate CSV files. A CSV file (or comma separated value file) is a universally recognised file format for storing tabular data in plain text. Storing the data in 3 separate files rather than 1 file reduces duplication and makes the data easier to use and maintain.

We've created a CSV template for each of the 3 files:

- [CSV 1: developer agreements](#)
- [CSV 2: developer agreement contributions](#)
- [CSV 3: developer agreement transactions](#)

If it helps, you can use the above example files and enter your developer contributions data. You must follow the guidelines below, then 'save as .csv file'. You can use software such as Microsoft Excel, Google Sheets or Apple Numbers, as long as they meet the requirements of this guidance.

Each of the CSV files must:

- be named using the convention specified in each section below
- contain certain column headers (written exactly as shown, in lowercase)
- include 1 row of data for each agreement, contribution or transaction (as relevant)
- only contain entries that conform to the constraints described below

[Find out more about creating a CSV file.](#)

Step 2: Update your developer contributions web page

To complete step 2 you must be able to upload the files created in step 1 to your local planning authority's website and edit (or create) your developer contributions web page. If you are not able or authorised to do this, speak to someone who is (this might be the person who updates your local planning authority's brownfield site register or planning application web pages).

Upload each CSV file to your local planning authority's website. Make sure the URL for each CSV file is [persistent](#) (a web address that will not change over time). As an example, Norfolk's local planning authority might use the following persistent addresses (note that these are examples, not live data):

<https://www.norfolk.gov.uk/developer-agreement>

<https://www.norfolk.gov.uk/developer-agreement-contribution>

<https://www.norfolk.gov.uk/developer-agreement-transaction>

When you upload the files you should keep any older files online – it's important to retain a history of all developer contribution files.

You should then update your local planning authority's developer contributions web page to make the CSV files publicly available. If your website does not have a page on developer contributions, you or someone in the web team will need to create one. We recommend publishing your developer contributions on the same web page as your authority's infrastructure funding statement.

The page must list the persistent URLs as defined above. The URLs must be written out in full. (The URLs should not change. However, if they do, you must tell us.)

Licensing

You must state on your web page that the data is provided under the [Open Government License](#).

Step 3: Submit the URLs you created in Step 2 to the national register of developer contributions

MHCLG will maintain a national register of developer contributions.

Email the persistent URL for each CSV file to DigitalLand@communities.gov.uk and we will add them to the national register. You must tell us if these URLs ever change.

You will soon be able to submit the URLs through an online tool the Digital Land team are developing. When this is ready, the team will make an announcement on their [blog](#) and this guidance will be updated.

If have any questions or feedback, please fill out this [feedback form](#) or email DigitalLand@communities.gov.uk

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1. Introduction and Context:

- 1.1 This document is intended to provide best practice guidance on managing Section 106 Planning Obligations related to development taking place in the Borough of Tonbridge and Malling. It is intended to amplify adopted local and national requirements whilst looking towards a collaborative approach to the provision of affordable housing, infrastructure projects and public services across the Borough. The Council believes it is essential that the means of securing such obligations takes place in a fair, open, transparent and reasonable in order to retain public confidence in the system and to provide greater clarity to all those involved.
- 1.2 The Council does not operate a Community Infrastructure Level (CIL) charging schedule. It was decided at the meeting of the Community Infrastructure Levy Panel on 19 December 2011 to not move forward with production of such a schedule although this position is continually kept under review. In determining planning applications for new development, the Council therefore relies on the provisions of the Town and Country Planning Act 1990 to ensure appropriate and successful mitigation of development takes place in all instances.
- 1.3 Under Section 106 of the Act any person interested in land in the area of a Local Planning Authority may, by agreement or unilaterally, enter into a planning obligation –
 - (a) restricting the development or use of land in any specified way;
 - (b) requiring specified operations or activities to be carried out on the land;
 - (c) requiring the land to be used in any specific way;
 - (d) requiring a sum or sums to be paid to the authority on a specified date for an agreed purpose.
- 1.4 Such agreements are effectively a mechanism design to ensure a development proposal acceptable in planning terms where it would not otherwise be acceptable. The statutory tests for such agreements are that the obligations must be:
 - necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 1.5 This is further supported in policy through the National Planning Policy Framework 2019 (NPPF) at paragraph 55.

1.6 Common examples of what may be sought as planning obligations in order to make development acceptable in this Borough are as follows:

- Affordable housing;
- Provision of public open space and public realm enhancements;
- Highways, transport and travel schemes including cycle and public transport improvements, highway infrastructure works, pedestrian links and facilities;
- Educational facilities;
- Libraries;
- Healthcare facilities;
- Provision of community facilities;
- Local environmental improvements including enhancement of designated nature conservation areas;
- Flood defence;
- Securing an acceptable mix of uses on development sites;
- Securing affordable business space;
- Archaeology and conservation schemes;
- Pollution mitigation;
- Fire and rescue facilities;
- Crime and disorder prevention activities;
- Town centre improvements; and
- Employment and training.

1.7 However, the above list is not exhaustive and the precise details of what will be sought by way of a planning obligation will be dependent on the scale and nature of the application and will be governed by relevant development plan policies in force in the area and any other material considerations. As such, prospective developers and applicants are advised to read this Protocol in conjunction with all relevant adopted development plan policies and are encouraged to enter into early pre-application discussions with the Council (as set out in more detail at Section 2).

1.8 In addition, the IDP identifies critical infrastructure and for strategic allocations the IDP identifies what, where, when and how critical new infrastructure will be provided. For strategic locations the IDP identifies likely infrastructure requirements and the measures needed to ensure their future delivery. As the process for bringing forward the sites progresses, this information will be updated and may identify other more minor infrastructure that is required.

2. Practice

- 2.1 It is important that the negotiation of planning obligations does not unnecessarily delay the planning process, thereby holding up development delivery. It is therefore essential that all parties proceed as quickly as possible towards the resolution of meaningful and enforceable obligations in parallel to planning applications (including through pre-application discussions wherever appropriate) and in a spirit of early engagement and co-operation, with deadlines and working practices agreed in advance as far as possible (via formal planning performance agreements wherever possible to do so) in order to shape better quality schemes and improve the outcomes of a proposed development.
- 2.2 The Council will advise developers and applicants as early as possible if a planning obligation is required in connection with their development proposal as well as the reasons for this. Ideally this will form part of the pre-application discussions and further advice on this is provided in the pre-application protocol which is available on the Council's website. In addition, applicants will be informed as soon as possible if it is likely that there is a potential reason for refusal which could be overcome through a planning obligation arising from engagement and consultation with the relevant infrastructure delivery bodies (both internal to the Council and external).
- 2.3 The need for and calculation of financial contributions will be applied consistently by the Council but may, occasionally, be subject to negotiation with the Development Management case officer dealing with the application in consultation with relevant colleagues both within and outside the Council, Where any departure from adopted policy is being proposed this will be made explicit and fully justified and in full accordance with the planning practice guidance.
- 2.4 The planning officer in their report (whether delegated or committee) will include a section referring to the section 106 agreement detailing why it is necessary to make the development acceptable in planning terms, stating how the requirements are directly related to the development being proposed and demonstrating how they are fairly and reasonably related in scale and kind. This section of the officer report can then be referred to in any future enquiries or planning appeals. Applications will not be reported to the relevant Planning Committee until such time as the legal agreement has either

- a) been signed by all necessary parties; or
 - b) detailed drafting of the legal agreement has been agreed and execution of the agreement is imminent.
- 2.5 In terms of the latter, when a Planning Committee determines an application for planning permission subject to the completion of the legal agreement, the permission will not be issued until the legal agreement has been completed and signed. Officer reports will, in all cases, make recommendations as to the length of time reasonable to ensure the agreement is completed and signed with recourse to either allow for further time to be built into the process if negotiations are continuing proactively, or to allow for delegated authority to refuse planning permission if it becomes clear that the obligations are not going to be met and there is a clear and justified reason for doing so.

3. Role of developers and applicants

- 3.1 Detailed Heads of Terms or fully drafted agreements should be submitted on all planning applications where policy triggers are met in accordance with adopted development plan policy or where pre-application advice has indicated that obligations will be required from external providers (including the County Council). Failure to provide either of these at the submission stage will result in the planning application being made invalid and possibly returned to the applicant. This is in accordance with the Council's published Local Validation Requirements.
- 3.2 Once a valid application has been received, in all instances, the Development Management case officer will be responsible for leading on and coordinating all negotiations pertaining to planning obligations. At this point, applicants and agents should not directly contact individual service providers but rather allow the case officer to collate, consider and coordinate any requests for obligations to ensure an effective and consistent approach.
- 3.3 In the event that the development is considered unviable by the applicant because of the level of contributions being requested then the Council will always seek detailed evidence from the applicant in accordance with the national Planning Practice Guidance (the "PPG"). Ideally, this should be provided at the submission stage because the applicant would have understood all policy requirements as part of effective pre-application discussions. In the event that no such evidence is provided and the application is not subject to a Planning Performance Agreement (PPA), the applicant will be given one opportunity to withdraw the application within a prescribed time period after which the Council will refuse planning permission.
- 3.4 In circumstances where viability evidence is put forward, the applicant must provide a full financial appraisal of the scheme and allow the appraisal to be verified, at their expense, by an independent agent chosen by the Council. In

these instances, such a process should wherever possible be enshrined within an agreed PPA.

4. Involvement of Borough Councillors, Town and Parish Councils

- 4.1 Developers promoting larger and strategic schemes are often keen to meet with local Councillors to discuss local needs and the issue of wider community benefits that may come forward as planning obligations. There is an opportunity for Councillors to do this without pre-determining the outcome of the application process through structured and organised Member briefings. Presentations by prospective developers are also possible but officers should also be in attendance at these.
- 4.2 The need for such Member briefings is a matter best addressed through developers and applicants entering into a formal PPA where parameters and timeframes can be agreed between the parties. However, in all instances Council officers would take the lead in providing such briefings, utilising where necessary material provided by the developer.
- 4.3 Similarly, it is recognised that Town and Parish Councils can positively engage in this process in order to identify projects within their communities that may be funded through contributions. Such contributions may only be spent on new facilities or improvements to facilities where the new development has been identified as contributing to the need for that facility or will have an impact on the existing facilities. It should however be remembered that costs related to revenue expenditure or costs which primarily relate to the maintenance of existing facilities such as minor repairs, replacement or redecoration will be will not meet the necessary tests.
- 4.4 The Council would expect the Town and Parish Councils to clearly identify and robustly evidence any such projects at the time they make their representations on a planning application to enable the Council to make an assessment of the project and take it forward as part of the negotiations with the developer. Submitting this evidence in this manner will in no way prejudice any objections raised within the wider representations made. Where such projects are taken forward, the terms of the obligations will be shared with the Town/Parish Council so they understand the relative requirements prior to the agreement being finalised. Similarly, if it is not considered that the project can be taken forward, an explanation as to the reasons will be provided within the officer's report.
- 4.5 It should be remembered that Town and Parish Councils must prepare a report for any financial year in which it receives levy receipts. The information that parish councils should report on is prescribed in Regulation 121B of the Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019. The report must be published online. A copy of the report should be sent to the charging authority from which it received levy receipts (the Borough or

County Council), no later than 31 December following the reported financial year, unless the report is, or is to be, published on the charging authority's website.

5. Unilateral Undertakings

- 5.1 The submission of unilateral undertakings on behalf of applicants may be acceptable. If this approach is being considered on behalf of the applicant then it is important that it is discussed with the relevant case officer before any work is done on the proposed undertaking. A unilateral undertaking must comply with the same statutory and policy requirements as a bilateral agreement. Where a unilateral undertaking is submitted and it meets the relevant tests then it will be taken into account as a material consideration when determining the application. However, if the obligation does not meet those tests and the proposed development is unacceptable without it, then the planning application will be recommended for refusal. If an alteration to the undertaking would overcome the reason for refusal then the Council will advise the developer prior to determining the application.

6. Execution of the Agreement

- 6.1 If the Council has resolved to grant planning permission subject to the execution of a planning obligation, the planning permission will only be issued once the agreement has been executed by all parties and dated by the Council. The Council will ask for evidence that the owner has capacity to enter into the agreement and that any persons signing the agreement on behalf of the owner are authorised to do so.
- 6.2 All obligations and conditions contained within the agreement will become legally binding once the agreement has been signed. The obligations and conditions contained within the agreement cannot subsequently be changed unless the consent of the owner is obtained together with further approval by Planning Committee or the Director of Planning, Housing and Environmental Housing as deemed appropriate. If any such variation is subsequently sought, the developer will be expected to provide a full, reasoned and evidenced justification for such a variation.

7. Legal costs

- 7.1 The Council will require the developer to pay the Council's legal fees of preparing the planning obligation or checking any draft agreement or unilateral undertaking. These costs vary according to the type of agreement or unilateral undertaking and the scale or complexity of the associated development. The Council's Legal Department will be able to advise on the cost of dealing with the agreement once they have received instructions from the Planning Department.

8. Implementation and Monitoring

- 8.1 Once planning obligations have been agreed it is important that they are implemented, monitored and, where necessary, enforced in an efficient and transparent way. This is to ensure that contributions are spent on their intended purpose and that the associated development contributes to the sustainability of the area. This will require monitoring which, in turn, may involve joint-working by different parts of the Council.
- 8.2 Following the finalisation of a planning obligation there are a range of different activities that need to be undertaken by a variety of different parties, to different timetables, sometimes extending over a number of years. Some of these tasks include:
- ensuring the delivery of on-site obligations by the developer to the required standard and timetable;
 - ensuring that the necessary infrastructure that the Council or another public body has agreed to provide (wholly or in part, funded by contributions) is delivered;
 - ensuring receipt of financial contributions at appropriate times;
 - monitoring adherence to restrictions on all parties, including the Council, imposed through planning obligations;
 - managing applications for the modification or discharge of agreements; and
 - any necessary enforcement action.
- 8.3 If the Council's monitoring work indicates that contributions from developers have not been spent for their specified purpose within an agreed timeframe, which will be set out in the obligation and depend on the level of the contribution and its proposed end use, they will be returned to the developer. The time periods during which financial contributions are to be spent will run from the date the contribution is received by the Council once the trigger point is reached as opposed to the date of the agreement or obligation.
- 8.4 If the contribution cannot be spent for the originally specified purpose within the timescale set out in the agreement the Council will first seek to negotiate with the developer, or their successor in title, an alternative purpose for the financial contribution.
- 8.5 In order that the enforcement and monitoring of planning obligations is carried out efficiently and effectively for the benefit of communities affected by development, the Council will levy a monitoring fee on each planning obligation. An assessment will be made on every section 106 agreement and Unilateral Undertaking to determine the monitoring fee to ensure it is fairly and reasonably

related to scale of development. This monitoring fee will be identified in the planning obligation and must be paid by the developer or other parties as may be specified in the obligation on signing the section106 agreement. The fee will be applied to all obligations whether these are by agreement or submitted as unilateral undertakings.

- 8.6 The monitoring fee will be based on the scale of the proposed development, as follows, and it will be enshrined within the legal agreement itself.

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Examples of Monitoring Fee Schedules [extracts from websites where information is available]

Tunbridge Wells BC:

Agreements with non-financial obligations - £500 fixed fee. These may include planning obligations such as occupancy restrictions, affordable housing, non-fragmentation clause, parking restrictions, landscape management or travel plan.

Agreements with financial contributions 5% of the total cost of the financial contributions payable by the applicant

APPENDIX A

Types of Planning Obligation and their suitability

| | Section 106 Agreement | Unilateral Undertaking | Up Front Payment |
|---|---|--|-------------------------|
| Has to be completed before 8/13 week deadline. | Yes | Yes | Yes |
| Secures financial planning obligations | Yes | Yes | Yes |
| Secures non financial obligations and/or any restrictions that are NOT binding on the Council | Yes | Yes | No |
| Secures non financial planning obligations (i.e. affordable housing) and/or any restrictions on use that are binding on the Council | Yes | No | No |
| Defers payment of financial obligations until prior to commencement of development | Yes | Yes | No |
| Council Solicitors draft the agreement | Yes (preferred) | No | N/A |
| Legal Costs | Hourly rate currently £195 | A minimum charge of £195 then hourly rate | £195 per hour |
| Monitoring /Administration Fee | Non financial obligations £500 (Financial obligations at 5% of total cost of financial contributions | Non financial obligations £500 Financial obligations at 5% of total cost of financial contributions | £60 |

Maidstone BC:

1. For residential developments of under 40 units, the monitoring fee for s106 legal agreements with one planning obligation (for example, the provision of affordable housing) is £1000 and then £500 for each additional planning obligation.

2. For residential development of 40 or more units, there will be a fee of £1500 for a s106 agreement incorporating one obligation and £750 for each additional planning obligation.

Payment shall be upon completion of the s106 legal agreement

Sevenoaks DC:

The Council charges a monitoring fee of £300 for each requirement in an agreement to enable it to effectively undertake its monitoring and compliance role.

Plymouth:

Standard rate

Part 1: Number of financial obligations x number of trigger points x £667

Part 2: Number of non-financial obligations x £667

Instalments

First £1,000 to be paid on completion of the agreement. Payment should be made at signing. The remainder is normally due on commencement of works, however further trigger points may be agreed.

South Oxfordshire:

Monitoring of District Financial Contributions and On-Site Infrastructure:

| Administration / Monitoring Fee Required | Site Size | | |
|---|---------------------------|--|------------------------|
| | Under 40 dwellings | 40-399 dwellings / non-residential developments | 400 dwellings + |
| Recording (per agreement) | £78 | £157 | £392 |
| Reporting (per agreement) | £392 | £1,177 | £3,140 |
| Financial Monitoring (per financial obligation) | £157 | £275 | £628 |

Affordable Housing:

| Administration/ Monitoring fee | Up to 20 dwellings | 21 – 50 dwellings | 51 – 100 dwellings | 101 and more dwellings |
|---------------------------------------|---------------------------|--------------------------|---------------------------|-------------------------------|
| Affordable housing | £61 | £90 | £147 | £2 per unit |

Public Open Space and On-site Infrastructure:

| Administration / Monitoring Fee Required | Site Size | | |
|---|--|--|-------------------------------------|
| | Under 40 dwellings | 40-399 dwellings / non-residential developments | 400 dwellings + |
| On-site provision of open space per hectare (incl. play / allotments) | £400 | £800 | £800 plus £800 per additional visit |
| On-site provision of MUGA/Sports Pitches/ Allotments | To be determined by the relevant service area in consultation with the Planning Service and Developer on a case by case basis. Fees to include the procurement and cost of an agronomist (in the case of pitches) and procurement and management of a relevant expert in the case of MUGAs to check specifications and construction of facilities being provided by the developer. | | |
| On-site provision (building) | To be determined by the relevant service area in consultation with the Planning Service and Developer on a case by case basis. Fees to include the procurement and cost of a surveyor or relevant experts to check specifications and construction of buildings being provided by the developer. | | |
| Fee for remedial inspections for on-site provisions | £500 | | |
| Transfer of on-site infrastructure to the council (per land transfer) | £1,000 | | |

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Information

1 LOCAL PLAN UPDATE

This report provides an update of the progress of preparing the Local Plan including new provisional dates for the first phase of Examination Hearings that were postponed due to the Coronavirus restrictions in March.

1.1 Progress since the last Board meeting on 3rd March 2020

- 1.1.1 Members will recall that at the last Board meeting dates for the first phase of the Local Plan Examination hearings had recently been confirmed by our Local Plan Inspectors starting on the 19th May for 5 sitting days ending on 25th June. The Local Plan timetable had been revised to reflect this and recommended for approval at the same meeting.
- 1.1.2 On the 18th March the Planning Policy Team started working from home following the Prime Minister's advice that people should work from home if they could due to the advance of the Coronavirus pandemic. On the 23rd March the Government introduced even more restrictions, reiterating the working from home message, prohibiting unnecessary journeys and gatherings of people beyond individual households.
- 1.1.3 The Inspectors contacted the Council on the 25th March to formally postpone the hearing sessions in May and June due the restrictions. The deadlines for submitting statements were also postponed. Officers then made arrangements to update the Local Plan Examination webpages and to contact all of those wishing to be kept informed about the Local Plan. All members were also sent an update of the situation by email.
- 1.1.4 Officers have maintained regular contact with the Inspectors via the Programme Officer while the Government and Planning Inspectorate have been assessing the situation. On the 13th May the Secretary of State made a Ministerial Written Statement about virtual working and planning, which encouraged the use of virtual technology to restart those planning processes that had been put on hold due to the restrictions in March.

1.1.5 The Statement noted that:

“Local planning authorities and the Planning Inspectorate... should ensure that it continues to operate effectively to support economic recovery. Moving to digital events and processes will be critical. This means adapting to working virtually, including virtual hearings and events (such as using video-conferencing and/or telephone) and making documents available for inspection online. The Government expects everyone involved in the planning process to engage proactively.

The Government considers that the current legislative framework allows for virtual hearings. It is confident that processes can be put in place in the vast majority of cases to allow for the participation of all parties. The Government recognises that the method by which hearings and events are conducted is a matter for the Inspectorate, operating in accordance with their legal obligations, and it expects these arrangements to be made as the default method of operation in the vast majority of cases. The Government recognises that in exceptional circumstances it may not be fair to proceed virtually and that alternative arrangements may be needed. These alternative arrangements should be taken forward speedily, where possible, taking into account the Government’s guidance on social distancing.

The Government expects opportunities for virtual hearings and processes to be maximised. It will draw from current and emerging practice to inform policy and process in the longer term.”

- 1.1.6 In response the Inspectors considered whether the hearings could proceed either virtually or as a more traditional arrangement in a venue with social distancing and live streaming. In June, they requested that the website be updated once more with provisional dates for the rearranged phase one hearing sessions starting on 6th October and reissued the Matter Issues and Questions and some guidance notes.
- 1.1.7 The webpages were duly updated on the 25th June, although the guidance notes were not finalised until 29th reflecting the fact that Government guidance is constantly changing in managing the coronavirus restrictions. Once again, emails and letters were sent to all contacts on the mailing list and all members advised accordingly.
- 1.1.8 Currently the arrangements are that a final decision on the format of the hearings will be taken nearer the opening session in October taking into consideration the latest guidance on social distancing and the responses of those confirming that they wish to participate, which will be the subject of a questionnaire from the Programme Officer later this month. The Inspectors may also take into consideration other examples of virtual hearings, such as the South Oxfordshire District Council Local Plan Hearing due to start on 14th July for 4 weeks.

- 1.1.9 In the meantime progress has been made in preparing the Council's statements for the first phase of the examination, responding to the 70 questions that will form the basis of the discussion at the hearing sessions in October and November. These are still being finalised and will be submitted by the new deadlines confirmed in June as 10th September for the October sessions and 12th October for the November sessions.
- 1.1.10 To confirm the new provisional dates for the phase one hearings are:
- Tuesday 6th to Thursday 8th October;
- Tuesday 13th to Wednesday 14th October;
- Tuesday 3rd to Thursday 5th November; and
- Tuesday 10th to Wednesday 11th November.
- 1.1.11 Assuming there are no further postponements and the Inspectors are satisfied with the Council's responses to the first phase hearings, the next stage will be to prepare for the second phase of hearings, likely to take place early in 2021. These sessions will focus on the site allocations and other policies in the draft Plan. As with the first phase, the Inspectors will prepare Matter Issues and Questions prior to the next round of hearing sessions.
- 1.1.12 The revised Local Plan timetable recommended by the Board on 3rd March showed the phase one hearings starting in May, which had just been confirmed at the time. The impact of the coronavirus pandemic, which is beyond anyone's control, has so far resulted in a delay of 5 months. There may be an opportunity to make up some time during 2021, but a simple rolling forward of the estimated adoption date by 5 months from November 2021 would push this to April 2022.
- 1.1.13 It is clear from this update covering the last 4 months that there are many unforeseen factors at play that have delayed and continue to affect the Local Plan timetable. This has been recognised in the Addendum to the Council's Corporate Plan prepared in response to the coronavirus restrictions and recently agreed by Cabinet. It may be prudent therefore to review this again and if necessary update the timetable at the next scheduled Board meeting in November.

1.2 Next Steps

- 1.2.1 Officers will continue to liaise with the Inspectors in their consideration of the options for holding the phase one hearings either as a fully virtual option or a more traditional format with social distancing and livestreaming. Members and those wishing to be kept informed of the Local Plan's progress will be updated as appropriate.

- 1.2.2 The Council will continue to prepare and update if necessary its statements and submit these to the Examination by the new deadlines of 10th September and 12th October.

1.3 Local Plan Progress in Neighbouring Authorities

1.3.1 Sevenoaks

- 1.3.2 At the Board meeting in March it was reported that Sevenoaks District Council was awaiting the final report of their Inspector. This was received on 6th March and can be found on the District Council's website here:

https://www.sevenoaks.gov.uk/downloads/download/789/sevenoaks_final_report

- 1.3.3 This confirmed that the Inspector found that the duty to cooperate had not been met and that the Local Plan as submitted was not sound and should be withdrawn.
- 1.3.4 Sevenoaks District Council then challenged the Inspector's decision and on 2nd June the High Court ruled that there were sufficient grounds for the Judicial Review to be heard. At the time of writing this report no date had been published for the case to be heard. The timetable for the Sevenoaks Local Plan is effectively on hold while this process is carried out.

1.3.5 Tunbridge Wells

- 1.3.6 The timetable for the Tunbridge Wells Local Plan has been revised since the March update. At that time the Borough Council anticipated being at Regulation 19 consultations in August this year, but a revised Local Development Scheme agreed in June now puts this stage at March 2021 with submission to the Secretary of State in July and Examination in November. The anticipated adoption date has slipped 6 months from December 2021 to June 2022.
- 1.3.7 The proposed design charrette for the Tudeley strategic site allocation, which was due to take place in March, was postponed on 10th March. Hadlow Estates are considering how the same exercise could be conducted virtually later this year, but no dates or details have been made available yet.

1.3.8 Maidstone

- 1.3.9 The Maidstone Local Plan timetable was due to be revised in March and a resolution was agreed by the Strategic Planning Infrastructure Committee on 10th March, but this was deferred when the meeting of the Full Council was postponed due the coronavirus pandemic.
- 1.3.10 The revised timetable proposed two further rounds of Regulation 18 consultations, one in October this year on future strategies for growth and one in February 2021 on more detailed policies. Regulation 19 was expected to take place in December 2021 with examination in June/July 2022 and adoption in October 2022.

1.3.11 It is understood that the Regulation 18b consultation anticipated for October 2020 is still expected to go ahead.

1.3.12 The London Plan

1.3.13 The last update to the Board reported that the Mayor had issued an intent to publish the London Plan and that a deadline for a response from the Secretary of State had been extended to 16th March.

1.3.14 The Secretary of State responded on the 13th March, criticising the Plan for, among other things, the lack of anticipated housing delivery. The Secretary of State also exercised his right to issue a Direction for changes to the Plan addressing the issues raised. The Mayor responded on the 24th April seeking further discussions and proposing further amendments to the Direction. The Plan is effectively on hold while the Secretary of State and the Mayor agree a form of wording.

1.3.15 Gravesham and Medway Local Plans and the Kent Minerals and Waste Local Plan

1.3.16 Progress on these plans was also reported to the Board in March, but there has been no change to the timetables or status of these Plans based on their website. If further information becomes available before the Board meets on the 28th July a verbal update will be provided.

1.4 Legal Implications

1.4.1 The Inspectors are aware of the requirement to allow those wishing to participate in the Local Plan hearings to be heard and their decision on the format will take this into account. This will be informed in part by the responses to the questionnaire referred to in paragraph 1.1.8 of this report.

1.4.2 Any arrangements for a fully virtual hearing will be made in accordance with the requirements of the General Data Protection Regulations (GDPR) 2018.

1.5 Financial and Value for Money Considerations

1.5.1 There may be additional costs for the hearings depending on the final arrangements. For example, a traditional face to face hearing with social distancing may require extra sessions to be held to ensure that all those wishing to participate on a particular session have the opportunity to do so. There may also be costs associated with any live streaming equipment to compensate for the lack of a public gallery.

1.5.2 Conversely, a fully virtual hearing may represent a cost saving, for example, for the hire of a suitable venue.

1.6 Risk Assessment

- 1.6.1 Any delay in the Local Plan process carries the risk of the Council's adopted policies becoming more out of date. It also extends the period of time before the Council can re-establish a 5 year housing land supply.

Background papers:

Nil

contact: Ian Bailey
Planning Policy Manager

Eleanor Hoyle
Director of Planning, Housing and Environmental Health

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Information

1 PLANNING FOR THE FUTURE WHITE PAPER

This report summarises the main topics set out in the recently published White Paper ‘Planning for the Future’ and highlights specifically those matters which may potentially have significant implications for the operation of the Development Management function.

1.1 Introduction

- 1.1.1 The Government published the White Paper ‘Planning for the Future’ in March 2020. It follows on from the Budget on 11 March which announced an extension of the affordable homes programme along with over £1 billion of allocations from the Housing Infrastructure Fund to build nearly 70,000 new homes in high demand areas across the country and nearly £650 million of funding to help rough sleepers into permanent accommodation.
- 1.1.2 The White Paper itself runs to a total of 11 pages in which the Government seeks to set out plans for achieving these aims in more detail, based around three core themes of home ownership, faster decision making and beautiful design and formulated of five sections, as follows:
- i. More homes for local people
 - ii. Helping first time buyers
 - iii. Creating beautiful, sustainable places
 - iv. Affordable, safe and secure
 - v. Laying the foundations
- 1.1.3 One key criticism rooted at the heart of the paper is that the planning process is *“complex, out-of-date and fails to deliver enough homes where they are needed”*.
- 1.1.4 It is a prelude to the Planning White Paper, which will look to modernise the planning system, speed decision making and *“make it easier for communities to engage and play a role in decisions which affect them”*. The White Paper was due

by June, but this date and likely all dates referred to must be in question given current Coronavirus-related events. Any update on this can be provided verbally by Officers as it becomes available.

- 1.1.5 There are a number of direct implications for the function of Development Management as a consequence of these changes, dependant on the specific detail which is expected later in the year. These implications are the specific focus of the discussion that follows:

1.2 Faster decision making

- 1.2.1 As part of the focus surrounding the delivery of new homes as a continued and overriding aim, the Paper emphasises the need to speed up the planning system and sets out an intention to publish “a bold and ambitious Planning White Paper” which will:

Reform planning fees

- 1.2.2 The paper heralds a new framework for the planning fees charged by local authorities, with the aim being to ensure planning authorities are ‘properly resourced’ and therefore able to improve the speed and quality of decisions. The Government suggests the new fees framework will be linked to a new performance framework to ensure “improvements across the planning service for all users”.
- 1.2.3 There are potential drawbacks to developing such an approach, particularly given the planning system operates within a context of finite human resources with many authorities seeking to attract a small pool of planners. Similarly, such an approach could call into question how authorities are able to use Planning Performance Agreements (PPAs) under which applicants can already pay an additional fee for entering into an agreement surrounding the timescales for determining applications.

Introduction of automatic rebates where planning applications are successful at appeal:

- 1.2.4 This is probably the most controversial element of the Government’s plans contained within the paper. It is purported to be designed to promote “proper” consideration of applications by planning committees. Where applications are refused, applicants will be entitled to an automatic rebate of their application fee if they are successful at appeal. The inference within this statement being that the refund would only apply to planning refusals made by planning committees, but given its policy intention, it might only apply where Councillors overturn officers’ recommendations.
- 1.2.5 A refund based approach would be markedly different from the current system whereby an appellant must demonstrate that the LPA has acted unreasonably in refusing to grant planning permission for a development, regardless of whether

that decision was made by Planning Committee or by powers delegated to officers. This high-bar would effectively be removed and an appeal lost on perhaps a small point would still incur a requirement to refund the fee.

- 1.2.6 Given the wider emphasis of the White Paper is centred on the delivery of new homes, there has been a suggestion amongst the profession that the refund could even be limited to schemes that include a residential element, further limiting the scope.
- 1.2.7 As intimated in the preceding section, the purpose of the planning application fee is to appropriately resource the LPA to enable to allow them to make effective decisions. It is worth mentioning that the refunding of a fee would come after the LPA had done precisely the same amount of resource hungry work in determining an application and defending its position at appeal. The rebates, which councils will find hard to recover from other sources, could be substantial as particularly on large scale schemes, the fee income is significant.
- 1.2.8 In addition, Members will no doubt recognise that it would be wrong to assume that a successful appeal means that the authority concerned has irresponsibly or wilfully made an unfounded decision.

Ensure land for housing is built out:

- 1.2.9 The document says Government will act to make it clearer who owns land by requiring greater transparency on land options – agreements between a developer and a landowner giving the former the right to buy the latter’s land at a specified point in the future. It says the Government will explore “wider options to encourage planning permissions to be built out more quickly”.
- 1.2.10 Delivery is, of course, key to us and given the current situation, will become increasingly fundamental. Officers remain of the view that it is not for want of planning permissions being granted (in the right place for the right purposes) meaning that any focus in this respect must be on the development industry. Moreover, where developments are coming forward across the Borough that will contribute to our five year housing land supply and outline planning permissions are granted, Officers are seeking to impose shorter time frames for submission of reserved matters and subsequent implementation. This is an approach that has also been recently endorsed by the Planning Inspectorate and one we will continue to promote where possible to do so, albeit being mindful that other challenges do now exist.

Expand the use of zoning tools such as Local Development Orders

- 1.2.11 The intention in this respect being to simplify the process of granting planning permission for residential and commercial development through zoning tools, such as Local Development Orders. The plans in fact relate specifically to Local Development Orders which are an existing mechanism.

- 1.2.12 Members should note that Neighbourhood Development Orders are absent from the announcement, but there is no indication that it is beginning of the end for Neighbourhood Planning; neighbourhood forums were mentioned in the context of promoting community and self-build housing.
- 1.2.13 It should be recognised that in reality there has been somewhat limited uptake of LDOs and where they have been adopted it has been primarily for commercial and infrastructure uses, such as business parks and renewable energy projects, rather than creating new residential neighbourhoods. It may be simply that the amount of work and resource that goes into an LDO from inception through to adoption is such that accounts for this relative lack of uptake.
- 1.2.14 Members will no doubt be aware that since the White Paper was published there has been much in the press around the use of zoning in planning. What form that might take in practical terms has yet to be explained but in all likelihood it will expand upon LDOs in some way. As further information becomes available, officers will update Members and will use any opportunity to respond to consultations as robustly as possible, with the agreement of the Board.

Improve the effectiveness, take up and role of Compulsory Purchase Orders:

- 1.2.15 Planning for the Future says the Government will consult on legislative reforms to speed up the decision-making process for compulsory purchase orders (CPOs) “to help facilitate land assembly and infrastructure delivery”. Among the proposals are: statutory timescales for decisions, ending the automatic right to a public inquiry, encouraging early agreements on compensations, and exploring the scope to remit more decisions back to local authorities. In addition, the paper says MHCLG will introduce further support and expertise, to bolster authorities’ confidence in deploying CPOs. Again, further detail on what form these measures might take in practical terms remains to be seen.

1.3 Building “Beautiful”

- 1.3.1 The White Paper sets out that we need to “remember how” to build beautiful homes and create beautiful places. The government states that it will take action to encourage more beautiful design and to ensure local authorities have the support they need to demand higher standards. In this respect, the government intends to do the following:
- **Revise the National Planning Policy Framework (NPPF) to embed the principles of good design and place making** – this will make clear that high-quality buildings and places must be considered throughout the planning process. The framework will expand on the fundamental principles of good design to define what is expected of local authorities and developers to support the creation of beautiful places.
 - **Respond to the Building Better, Building Beautiful Commission’s report** – we will look to take forward many of the Commission’s

recommendations, which include calling for urban tree planting and giving communities a greater opportunity to influence design standards in their area. This will put tree lined streets at the centre of future plans, so that they become the norm not the exception.

- **Give local authorities the ability to ensure that new homes conform to local residents' ideas of beauty through the planning system** – using the National Model Design Code the intention is to set out clear parameters for promoting the design and style of homes and neighbourhoods local people want to see.

1.4 Creation of new permitted development rights

- 1.4.1 As part of the promotion around more, well-planned development where homes are needed, the White Paper reiterates that there is an intention to introduce new rules to encourage building upwards, increasing density in line with local character and make the most of local infrastructure through the introduction of new permitted development rights for building upwards on existing buildings by Summer 2020, including to extend residential blocks by up to two storeys and to deliver new and bigger homes.
- 1.4.2 There is also an intention to consult on the detail of a new permitted development right to allow vacant commercial buildings, industrial buildings and residential blocks to be demolished and replaced with well-designed new residential units which meet natural light standards.
- 1.4.3 The precise detail setting out how these additional permitted development rights will come forward has yet to be announced but there is concern that those we have already seen introduced, particularly the office to residential conversions pay no regard to the resultant quality of the new homes and do not build in the necessary infrastructure provision that would normally be secured by planning obligation. Moreover, the ability to construct additional floors without the ability to undertake a robust and detailed assessment of all impacts may lead to poor quality developments thus diluting what the government is striving to achieve via the “Building Beautiful” agenda.
- 1.4.4 It may be that the permitted development rights have conditions to satisfy in respect of design quality alongside various technical matters that currently feed into the prior approval process in many cases. However, to include an assessment into design as part of this process adds an additional layer an effectively renders the prior approval process tantamount to a planning application in terms of the level of administration and consideration required on the part of the LPA but with none of the associated abilities to ensure proper place making in the same way such as securing obligations towards affordable housing and infrastructure.
- 1.4.5 In this respect, and given the current challenges we face, this could have marked implications particularly for Tonbridge Town Centre and district centres across the

Borough. Officers from DM, Policy and Economic Regeneration will be monitoring this closely going forward and make recommendations to this Board concerning any consultation responses it may be necessary to make in due course.

1.5 Conclusions

1.5.1 Members will be acutely aware that the White Paper was published against a markedly different national backdrop to that which we are now facing and inevitably this will have implications for the timescales for carrying some of these measures forward and other national imperatives coming to the forefront. That said, it is equally inevitable that the planning system will be identified as a key player in ensuring economic revival and thus the importance of the home building agenda and fast decision making will continue to have much traction. In addition, it is likely that other matters will be promoted further including:

- Work to get hearings and inquiries moving again;
- Framework to ensure that planning permissions do not expire;
- Even greater focus on digitalising the system.

1.5.2 Already, we have seen the publication of the Business and Planning Bill intended to make provision relating to the promotion of economic recovery and growth. Part 3 sets out a number of planning provisions including the modification of conditions relating to construction working hours and the automatic extension of certain permissions.

1.6 Legal Implications

1.6.1 While there are no direct legal implications arising from this Government White Paper, the detail of each of the proposals will have to be taken into consideration as they are finalised.

1.7 Financial and Value for Money Considerations

1.7.1 Some of the proposed changes set out in the White Paper will have financial implications both in terms of the resources necessary and also in respect of more specific recommendations such as the changes to application fees and the automatic rebates for allowed planning appeals. Further analysis will be necessary as and when these proposals are finalised.

1.8 Risk Assessment

1.8.1 It is clear that there are intended to be changes to the system in the short term nationally but clear timescales and what those changes might be remain relatively unknown quantities at this stage. There will therefore be a need to be ready to implement any changes quickly and to ensure that we have the ongoing ability to do that effectively.

1.9 Recommendations

- 1.9.1 That the summary of the Planning for the Future White Paper in respect of potential implications for Development Management be **NOTED**.

Background papers:

contact: Emma Keefe

Nil

Eleanor Hoyle

Director of Planning Housing and Environmental Health

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TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Information

1 TRANSPORTATION UPDATE

1.1 Summary: This report reviews the outcomes of the TMBC Cycling Strategy, considers options for an updated strategy framework for Cycling and Walking, and provides an update on the South Eastern rail franchise and Lower Thames Crossing.

1.2 Transport Strategy - Cycling and Walking

1.2.1 The adopted Cycling Strategy 2014-2019 was prepared by Sustrans on behalf of KCC and TMBC, the document can be found online - https://www.kent.gov.uk/_data/assets/pdf_file/0009/7866/Tonbridge-malling-cycling-strategy.pdf. Whilst Kent County Council has responsibility for highways and public rights of way networks, the adopted Strategy was jointly supported by both authorities, recognising the need for local buy in and the role of the borough council as Local Planning Authority. The strategy sets out principles and proposals to improve cycle routes across the borough. These are summarised as follows;

- **Principle 1:** A network of high quality routes will be completed in the urban areas of Tonbridge and the Medway Gap providing convenient and safe access throughout those areas.
- **Principle 2:** Wherever possible measures will be provided which give cyclists priority over motorised traffic in terms of accessibility and journey time.
- **Principle 3:** Cycle parking will be provided in all employment and residential developments (both new build and change of use).
- **Principle 4:** KCC will work with partners to ensure the regular maintenance of all cycle tracks within the borough.
- **Principle 5:** The provision of cycle training for young people and adults.

- **Principle 6:** Ensure cycle routes are fully advertised and signposted, and that cycle maps are available for all routes.
- **Principle 7:** Automatic counters will be installed throughout the cycle network to enable a detailed analysis of usage.

- 1.2.2 It was intended that together these measures would encourage more people to choose cycling for local journeys, especially in urban areas. In response to Principle 1, some route improvements have been delivered during the timeframe of the strategy. Tonbridge town centre has seen significant public realm improvements in recent years, which also include River Walk which leads from the High Street, this is a shared use route that links to River Lawn Road. These improvements have been of benefit to pedestrians and cyclists.
- 1.2.3 Elsewhere the non-motorised user's route has been delivered alongside the A21 dualling between North Farm and Vauxhall junctions, and cycle lane improvements have also been implemented on the Shipbourne Road. It is however recognised that many of the route proposals in the strategy remain unimplemented, and that the cycle route network remains inconsistent and incomplete.
- 1.2.4 In practice delivering cycle route improvements is very challenging due to the availability of funding, and competing design considerations which often have to be taken into account, especially where seeking to retrofit existing streets and upgrade existing public rights of way. It is therefore not always possible to provide dedicated cycling infrastructure within our constrained highway network, the details of which are often only clarified at a detailed design stage for specific schemes.
- 1.2.5 In response to Principle 3, a new cycle hub is shortly to be opened at Tonbridge Station. Accessed from Barden Road, this will be a substantial enhancement to facilities within the town - <https://turvec.com/turvec-news/southeastern-cycle-hubs-secured/>.
- 1.2.6 KCC through their Explore Kent website, also maintain up to date information regarding cycling and walking routes across the county. Responding to Principle 6, the route map for Tonbridge has been recently updated, and can be found online - <https://explorekent.org/activities/explore-tonbridge-walking-cycling-routes/>. Other prominent routes are also promoted, including the River Medway towpath cycle route at Aylesford.
- 1.2.7 The Cycling Strategy has supported the current development and has been helpful in confirming shared priorities, in supporting negotiations on individual planning applications and funding bids as opportunities have allowed. The strategy now needs to be updated to reflect the policies and allocations in the submitted Local Plan. As a recognised approach it is considered that the development of a Local Cycling and Walking Infrastructure Plan (LCWIP) will further assist TMBC and its partners in achieving these outcomes.

1.2.8 The practice of preparing a Cycling Strategy was not previously prescribed by government, this has however progressed. In 2017 the DfT published guidance for local authorities who wished to prepare LCWIPs - <https://www.gov.uk/government/publications/local-cycling-and-walking-infrastructure-plans-technical-guidance-and-tools>. This was in recognition of the national ambition for sustained investment in walking and cycling, to support an increase in these transport modes, with the aim to double the rate of cycling nationally by 2025. This practice is now embedded in the 2019 NPPF which states that;

“Planning policies should:

...provide for high quality walking and cycling networks and support facilities such as cycle parking (drawing on Local Cycling and Walking Infrastructure Plans)” (para 104, d).

1.2.9 In the context of the emerging Local Plan with its strategic site allocations, officers have commenced the preparation of an infrastructure plan, which will be utilised to inform future strategies. This provides an opportunity to review and update the principles and cycle route proposals in the adopted cycling strategy, as well as consider opportunities to improve facilities for pedestrians. It is often the case that cycling schemes are most successful where they also include measures for pedestrians too.

1.2.10 Utilising funding from KCC, Consultants DHA Transport have been appointed to provide advice regarding future cycling and walking networks in the borough, including assessment of routes and the provision of recommendations for improvement. This corresponds to stages 3 and 4 of the technical guidance. Due to the coronavirus lockdown, the progression of this work has been delayed but is expected to continue over the summer months. These assessments should assist in the preparation of more robust and deliverable route proposals.

1.2.11 It is anticipated that a draft infrastructure plan will be finalised for public consultation following the conclusion of the Local Plan examination hearings, to ensure that route proposals remain relevant to the delivery of strategic and other development allocations, as well as to support existing communities. The draft strategy will be submitted to PTAB and subsequently the Tonbridge & Malling JTB for consideration, and to confirm support to progress the document for a period of public consultation.

1.2.12 Local Authorities are taking differing approaches in embedding LCWIPs alongside their other policies and frameworks, in response to the specifics of their local circumstances. LCWIPs can sit alongside and support the implementation of other corporate plans, climate change strategies, infrastructure plans and transport strategies for example. The latter can set out on a more detailed basis, agreed corporate aspirations for sustainable transport matters including bus and rail, which are not otherwise included in the Kent Local Transport Plan -

<https://www.kent.gov.uk/about-the-council/strategies-and-policies/transport-and-highways-policies/local-transport-plan>.

1.2.13 At present Tonbridge & Malling does not have a transport strategy, which like the LCWIP this is not a statutory requirement. Members are asked to informally consider if they would support the preparation of a transport strategy. There is no nationally prescribed approach, however any transport strategy would require the support of KCC and where possible other transport partners, so that it could be an effective policy tool.

1.3 South Eastern Rail Franchise – Update

1.3.1 On 23 May the government suspended the normal financial mechanisms of rail franchise agreements, transferring all revenue and cost risk to the government. Operators continue to run day-to-day services for a small, pre-determined management fee. Companies entering into these agreements will see a temporary suspension of their existing franchise agreement's financial mechanisms for an initial period of 6 months, with options for further extension or earlier cancellation as agreed. Further information can be found in the press release - <https://www.gov.uk/government/speeches/rail-emergency-measures-during-the-covid-19-pandemic>.

1.3.2 The South Eastern Franchise itself has been further extended by direct award. The new contract commenced on 1 April 2020 and will run until 16 October 2021, with the option to extend at the DfT's discretion until 31 March 2022 - <https://newsroom.southeasternrailway.co.uk/news/southeastern-direct-award-contract>. There is currently no further information regarding the overdue review of the franchise and related improvements including smart and flexible ticketing.

1.4 Lower Thames Crossing Consultation

1.4.1 Highways England have published a design refinement consultation for the Lower Thames Crossing, this runs from 14 July to 12 August. Following earlier stages of consultation, Highways England are proposing a number of changes to the design of the project following feedback received, discussions with local stakeholders, ongoing design development and new technical data. These include;

- minor changes to elements of the highways design;
- updated paths for walkers, cyclists and horse riders;
- proposals for redirecting and upgrading utilities;
- more detailed landscaping proposals;
- further developed ecological mitigation measures.

- 1.4.2 The feedback from this consultation will help Highways England develop its application for a Development Consent Order (DCO) planned for submission later this year.
- 1.4.3 Whilst further consideration of the detailed design is welcomed, none of the proposed revisions will have any direct implications for Tonbridge & Malling. The borough council has responded to the previous consultations expressing support for the Lower Thames Crossing, recognising the operational issues at the Dartford Crossing and economic benefits that the infrastructure could bring.
- 1.4.4 The borough council remains concerned about the impacts of the project on other parts of the strategic and local road networks. In responding to the consultation support for the Lower Thames Crossing will be reiterated, in addition to our request that investment in the project should be complemented by a phased programme of other investments, that help to build in the resilience required to ensure that the LTC doesn't solve one problem, but create others elsewhere.

Background papers:

Nil

contact: Bartholomew Wren
Principal Planning Officer (Policy)

Eleanor Hoyle
Director of Planning Housing and Environmental Health

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Agenda Item 10

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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Agenda Item 11

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**ANY REPORTS APPEARING AFTER THIS PAGE CONTAIN EXEMPT
INFORMATION**

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Agenda Item 12

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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