

# TONBRIDGE & MALLING BOROUGH COUNCIL



## EXECUTIVE SERVICES

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**Interim Chief Executive**  
Adrian Stanfield LL.B (Hons)

Gibson Building  
Gibson Drive  
Kings Hill, West Malling  
Kent ME19 4LZ  
West Malling (01732) 844522

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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](mailto:committee.services@tmbc.gov.uk)

13 May 2024

To: MEMBERS OF THE HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE  
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the Housing and Planning Scrutiny Select Committee to be held in the Council Chamber, Gibson Drive, Kings Hill on Tuesday, 21st May, 2024 commencing at 7.30 pm.

Members of the Committee are required to attend in person. Other Members may attend in person or participate online via MS Teams.

Information on how to observe the meeting will be published on the Council's website.

Yours faithfully

ADRIAN STANFIELD

Interim Chief Executive

## A G E N D A

1. Guidance for the Conduct of Meetings

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## **PART 1 - PUBLIC**

2. Apologies for absence

3. Notification of Substitute Members

Substitute members to be appointed at Annual Council

4. Declarations of interest 9 - 10

Members are reminded of their obligation under the Council's Code of Conduct to disclose any Disclosable Pecuniary Interests and Other Significant Interests in any matter(s) to be considered or being considered at the meeting. These are explained in the Code of Conduct on the Council's website at [Code of conduct for members – Tonbridge and Malling Borough Council \(tmbc.gov.uk\)](https://www.tmbc.gov.uk/code-of-conduct-for-members).

Members in any doubt about such declarations are advised to contact Legal or Democratic Services in advance of the meeting.

5. Minutes 11 - 18

To confirm as a correct record the Notes of the meeting of the Housing and Planning Scrutiny Select Committee held on 19 March 2024

### **Matters for Corporate Monitoring**

6. Corporate Key Performance Indicators 19 - 28

This report provides data on Key Performance Indicators (KPIs) that are aligned to the Corporate Strategy 2023-2027 and monitored on a quarterly or annual basis. The data provided in this report relates to the period up to the end of March 2024.

### **Matters for Recommendation to the Cabinet**

7. Tree Enforcement Protocol and Tree Preservation Order 29 - 52

This report introduces the new Tree Enforcement Protocol and the Tree Preservation Order Protocol, provides an update on how all tree related matters are dealt with and what changes to processes and procedures are needed to facilitate necessary service improvements to address the backlog.

8. Local Plan - Duty to Co-operate Update 53 - 74

The Duty to Cooperate (DtC) is a legal requirement on local planning authorities to engage with other relevant authorities and bodies constructively, actively and on an ongoing basis in relation to strategic planning matters. This report provides an update on duty to cooperate, partnership working and reporting.

9. Transfer Incentive Scheme 75 - 80

This report recommends the approval of a new transfer incentive scheme policy to help Tonbridge & Malling B.C. make the best use of existing housing stock.

**Matters submitted for Information**

10. Work Programme 2024/25 81 - 82

The Work Programme setting out matters to be scrutinised during 2024/25 is attached for information. Members can suggest future items by liaising with the Chair of the Committee.

11. Urgent Items 83 - 84

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

**Matters for consideration in Private**

12. Exclusion of Press and Public 85 - 86

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.

**PART 2 - PRIVATE**

13. Urgent Items 87 - 88

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

## **MEMBERSHIP**

**To be appointed at Annual Council**

## **GUIDANCE ON HOW MEETINGS WILL BE CONDUCTED**

- (1) Most of the Borough Council meetings are livestreamed, unless there is exempt or confidential business being discussed, giving residents the opportunity to see decision making in action. These can be watched via our YouTube channel. When it is not possible to livestream meetings they are recorded and uploaded as soon as possible:

<https://www.youtube.com/channel/UCPp-IJISNgoF-ugSzxjAPfw/featured>

- (2) There are no fire drills planned during the time a meeting is being held. For the benefit of those in the meeting room, the fire alarm is a long continuous bell and the exits are via the doors used to enter the room. An officer on site will lead any evacuation.
- (3) Should you need this agenda or any of the reports in a different format, or have any other queries concerning the meeting, please contact Democratic Services on [committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk) in the first instance.

### **Attendance:**

- Members of the Committee are required to attend in person and be present in the meeting room. Only these Members are able to move/ second or amend motions, and vote.
- Other Members of the Council can join via MS Teams and can take part in any discussion and ask questions, when invited to do so by the Chair, but cannot move/ second or amend motions or vote on any matters. Members participating remotely are reminded that this does not count towards their formal committee attendance.
- Occasionally, Members of the Committee are unable to attend in person and may join via MS Teams in the same way as other Members. However, they are unable to move/ second or amend motions or vote on any matters if they are not present in the meeting room. As with other Members joining via MS Teams, this does not count towards their formal committee attendance.
- Officers can participate in person or online.

- Members of the public addressing an Area Planning Committee should attend in person. However, arrangements to participate online can be considered in certain circumstances. Please contact [committee.services@tmbc.gov.uk](mailto:committee.services@tmbc.gov.uk) for further information.

Before formal proceedings start there will be a sound check of Members/Officers in the room. This is done as a roll call and confirms attendance of voting Members.

### **Ground Rules:**

The meeting will operate under the following ground rules:

- Members in the Chamber should indicate to speak in the usual way and use the fixed microphones in front of them. These need to be switched on when speaking or comments will not be heard by those participating online. Please switch off microphones when not speaking.
- If there any technical issues the meeting will be adjourned to try and rectify them. If this is not possible there are a number of options that can be taken to enable the meeting to continue. These will be explained if it becomes necessary.

For those Members participating online:

- please request to speak using the 'chat or hand raised function';
- please turn off cameras and microphones when not speaking;
- please do not use the 'chat function' for other matters as comments can be seen by all;
- Members may wish to blur the background on their camera using the facility on Microsoft teams.
- Please avoid distractions and general chat if not addressing the meeting
- Please remember to turn off or silence mobile phones

### **Voting:**

Voting may be undertaken by way of a roll call and each Member should verbally respond For, Against, Abstain. The vote will be noted and announced by the Democratic Services Officer.

Alternatively, votes may be taken by general affirmation if it seems that there is agreement amongst Members. The Chairman will announce the outcome of the vote for those participating and viewing online.

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Declarations of interest

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## TONBRIDGE AND MALLING BOROUGH COUNCIL

### HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

#### MINUTES

Tuesday, 19th March, 2024

**Present:** Cllr D A S Davis (Chair), Cllr D W King (Vice-Chair), Cllr L Athwal, Cllr Mrs S Bell, Cllr G C Bridge, Cllr R W Dalton, Cllr D Harman, Cllr P M Hickmott, Cllr M A J Hood, Cllr A Mehmet, Cllr W E Palmer, Cllr R V Roud and Cllr D Thornewell

A G Bennison, Mrs A S Oakley, K B Tanner, M Taylor, M D Boughton\*, M R Rhodes\* and Mrs M Tatton\* were also present pursuant to Council Procedure Rule No 15.21.

\*Participated via MS Teams

#### **HP 24/6 NOTIFICATION OF SUBSTITUTE MEMBERS**

There were no substitute Members nominated for this meeting.

#### **HP 24/7 DECLARATIONS OF INTEREST**

There were no declarations of interest made in accordance with the Code of Conduct.

#### **HP 24/8 MINUTES**

**RESOLVED:** That the notes of the ordinary and extraordinary meetings of the Housing and Planning Scrutiny Select Committee held on 14 December 2023 and 31 January 2024 respectively be approved as a correct record and signed by the Chair.

#### **MATTERS FOR RECOMMENDATION TO THE CABINET**

#### **HP 24/9 EMPTY HOMES**

The report of the Director of Planning, Housing and Environmental Health provided an update on the current position in respect of empty homes in the borough, outlined a new Local Government Association (LGA) report on dealing with empty homes and recommended the introduction of a new Empty Homes Officer post.

Members were reminded that 'improving housing options for local people, whilst protecting outdoor areas' was a key priority for the Borough Council and bringing empty homes back into use played an important part within this priority. It was reported that as at 7 February

2024 there were 950 empty homes within the borough although it was important to note that there were two developments/sites accounting for approximately 120 of these, one of which should soon not appear on the list due to demolition.

Attention was drawn to the LGA report which aimed to inform, educate and support all councils irrespective of their current levels of resource and activity on empty homes. The key points and recommendations arising from the LGA report were detailed and summarised in 1.2.2 and 1.2.3. Due regard was also given to the recommendation that councils should consider opportunities to employ a dedicated resource where possible.

Concern was expressed at the number of empty properties within the borough and Members recognised the importance of adopting measures to get these back into use. However, it was also noted that the number of empty properties within Tonbridge and Malling was comparable to similar sized local authorities. There was also detailed discussion on the powers available to local authorities to tackle the longer-term empty properties and it was explained that legislation such as Compulsory Purchase Orders and Enforced Sale could be complex and challenging. It was recognised that there were many reasons why properties remained empty and it was hoped that the engagement of a dedicated resource would enable the Borough Council to explore a number of options to address empty homes, including incentives for tenants to downsize.

The Committee welcomed the establishment of a fixed term Empty Homes Officer post to focus attention, monitor progress and consider a longer-term approach, and supported the recommendation set out in 1.3.2. The financial and value for money considerations detailed in 1.5 were noted and Members supported the creation of a budget of £30,000 to fund work that enabled the facilitation of empty homes being brought back into use. The total cost of the Empty Homes Officer post (estimated at £91,000) and the empty homes budget was circa £121,000 which could be funded from the Housing Assistance Reserve.

Finally, Members supported the suggestion that progress in respect of empty properties should be reviewed and monitored as part of the Key Performance Indicators.

**\*RECOMMENDED:** That it be commended to Cabinet that

- (1) a two-year fixed-term post of Empty Homes Officer be established;
- (2) the cost of the post (£91,000) and empty homes budget (£30,000) be taken from the Housing Assistance Reserve; and

- (3) the Local Government Association report on empty homes be noted and that this approach be utilised as the basis for the fixed term Empty Officers' work programme.

**\*Recommended to Cabinet**

**HP 24/10 NATIONAL PLANNING POLICY LEGISLATION UPDATE**

The report of the Director of Planning, Housing and Environmental Health set out the key changes to planning policy legislation resulting from the Levelling Up and Regeneration Act (LURA) 2023 and the National Planning Policy Framework (NPPF) in December 2023 and outlined the implications for the development of the Local Plan.

Key changes to the plan-making system, planning data requirements and confirmation of the new Infrastructure Levy were introduced by the LURA. However, detailed implications for the Local Plan depended on the timing and content of secondary legislation, regulations and forthcoming best practice. Unlike the LURA, the changes introduced in the 2023 NPPF (detailed in Annex 1) applied from the date of publication and the key changes and implications were set out in 1.3 of the report.

Members noted that a duty to prepare a 'local plan timetable' replaced the existing Local Development Scheme (LDS); the requirement for the authority to set out proposals to meet requirements related to design codes and the new powers allowing the Secretary of State to prepare the timetable, make amendments and direct the authority to bring them into effect. The 'duty to co-operate' was to be replaced by a new alignment policy which was subject to further detail through secondary legislation and guidance.

With regard to the Local Plan, the policy environment had not changed as fundamentally as was previously indicated in the December 2022 consultation. The requirement to work with neighbouring authorities to deliver housing requirements remained. Whilst there was no specific requirement to review Green Belt boundaries to meet needs it was important for the purposes of good planning that 'exceptional circumstances' reasons were explored robustly now. The Local Plan had to clearly demonstrate how local housing need would be met and clear evidence had to be supplied.

In summary, whilst the government proposed to introduce new transitional arrangements to the new plan making system, the current transitional date remained and this meant that the Borough Council had to submit the Local Plan to the Secretary of State by June 2025. However, this would only be formally confirmed when further regulations had gone through the relevant parliamentary process. Therefore, delivery of the Local Plan remained a significant risk and an updated

Risk Register was attached as Annex 2. The potential risk of changing legislation following a Parliamentary Election was also recognised.

In conclusion, the Regulation 18b Local Plan would be presented to Members in May/June 2024. Evidence within the Stage 2 Green Belt Study, Housing Constraints Assessment and Housing Market Delivery Study would be utilised to develop an appropriate sustainable spatial strategy to meet as much of the objectively assessed need as possible.

**\*RECOMMENDED:** That it be commended to Cabinet that

- (1) the contents of the report be noted; and
- (2) the approach to the Local Plan preparation matters be approved as set out in the report.

**\*Recommended to Cabinet**

#### **HP 24/11 TEMPORARY ACCOMMODATION AND HOMELESSNESS CONSULTANCY REVIEW**

An update was provided on a recent consultancy review of temporary accommodation and homelessness. A copy of the consultant's report was attached at Annex 1. Agreement was also sought to implement the recommendations set out in the Action Plan, attached at Annex 2.

Members were pleased that significant progress had been made by the Housing Team since the last review and welcomed the reduction of households in temporary accommodation at a time when almost all other local authorities had seen an increase. The significant progress made on prevention work was highlighted and the Borough Councils temporary accommodation rate per 1,000 households was now below the South East and all England average.

However, it was also reported that given the continued demands on homelessness services and the need for temporary accommodation, the Borough Council would be unable to continue to manage the temporary accommodation numbers without the service working at maximum efficiency and effectiveness. Members were reassured that due regard would continue to be given to local support networks, caring and educational needs when reviewing cases.

The Action Plan (Annex 2) brought together a number of recommendations to renew focus and practice and to ensure that demand could be managed. The Committee recognised that if the recommendations detailed in the report were not fully implemented there was a risk that numbers in temporary accommodation would increase more than they would have otherwise thus having a negative impact on the authorities finances.

Finally, the Cabinet Member for Finance and Housing recorded appreciation to staff within Housing Services for the significant progress made.

**\*RECOMMENDED:** That it be commended to Cabinet that

- (1) the Temporary Accommodation and Homelessness Service Review report (attached at Annex 1) be noted; and
- (2) the Action Plan (attached at Annex 2) be approved.

**\*Recommended to Cabinet**

### **MATTERS SUBMITTED FOR INFORMATION**

#### **HP 24/12 BIODIVERSITY DUTY**

Members received and noted the Biodiversity Duty First Consideration Report (attached at Annex 1) which set out how the Borough Council complied with its statutory duty to conserve and enhance biodiversity (habitats and species).

A summary of the current work and/or action contributing to the biodiversity duty was provided in Annex 1. It was also noted that this was a corporate responsibility that was relevant to all Services, actions and decision making.

The Committee was also advised that a Green Infrastructure Strategy setting out potential for bio-diversity net gains on Borough Council owned land would be developed in due course.

#### **HP 24/13 NATIONAL PLANNING FEE INCREASE**

Members noted that the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023 came into force on 6 December 2023 and laid legislation to increase planning fees.

The regulations increased planning application fees by 35% for applications for major development and 25% for all other applications, introduced an annual indexation for planning application fees (capped at 10% from 1 April 2025), removed fee exemption for repeat applications, reduced the Planning Guarantee for non-major planning applications from 26 to 16 weeks and introduced a new prior approval fee of £120 for applications for development by the Crown on closed defence sites.

Members welcomed the introduction of an annual increase from 1 April 2025 as previously fees only rose when the regulations were amended and this was last done in 2018.

The main risks to the Borough Council following the introduction of the new Regulations, together with identified mitigation measures, were outlined in 1.4 and noted by the Committee.

#### **HP 24/14 PLANNING APPEAL COSTS**

Following a request from the Scrutiny Select Committee, information in respect of the amount spent on appeals was presented. The report focused on what awards of costs had been made against the Borough Council and how much had been paid out since 2021.

In summary, there had been 11 cost decisions awarded against the Borough Council for unreasonable behaviour during 2021. There had also been 7 cost decisions refused where it was found that Tonbridge and Malling had not acted unreasonably. To provide further context, since 1 January 2021 there had been 131 appeal decisions received with 48 allowed, 76 dismissed and 7 withdrawn.

#### **HP 24/15 HOUSING ALLOCATIONS UPDATE**

Following a request from the Scrutiny Select Committee, an update was provided on the Borough Councils new Housing Allocations Scheme which was implemented in June 2023.

The key statistics noted by Members as detailed in 1.2.3 and updated by the Director of Planning, Housing and Environmental Health were:

- 921 applications submitted where applicants had advised all actions had been completed.
- 804 households submitted applications but not completed their actions and would likely be removed if that information was not supplied.
- 162 live applications on the housing register.
- 1,131 households assessed and removed for failing to supply documents or not meeting the allocations criteria.
- 67 households submitted a pre-assessment but not completed a full housing register application.

Members noted that the number of households already removed was significantly higher than the number of live housing applications on the housing register. The revised assessment criteria had been introduced to ensure best use of limited social housing stock and had been part of engagement sessions prior to the Housing Allocations Scheme being presented for Member approval.



Concern was also expressed that many applicants appeared to be experiencing difficulties when submitting applications and associated documents. Members were assured that the software was used by many organisations and should look familiar to users. However, alternative ways of submitting applications continued to be offered with staff being available to upload documents on applicants behalf. The value of a face-to-face workshop to assist people with submitting applications could also be explored in liaison with community organisations. In the meantime, if there were any specific cases that Members were aware of, they were asked to notify the Housing Service so that assistance could be offered.

Finally, it was reported that the housing allocations position and progress was closely monitored by senior officers, in liaison with the Cabinet Member for Finance and Housing, and it was suggested that regular updates in relation to the key statistics be circulated to Members.

In closing, the Cabinet Member for Finance and Housing indicated that many applicants had successfully navigated the new system and this enabled the Service to prioritise applications appropriately.

#### **HP 24/16 CORPORATE KEY PERFORMANCE INDICATORS**

Members received a list of Key Performance Indicators (KPIs) that were aligned to the Corporate Strategy 2023-27 and monitored on a quarterly or annual basis. The data provided in the report of the Interim Chief Executive related to the period up to the end of December 2023.

#### **HP 24/17 WORK PROGRAMME 2024-25**

The Work Programme setting out matters to be scrutinised during 2024/25 was attached for information. Members were invited to suggest future matters by liaising with the Chair of the Committee.

#### **MATTERS FOR CONSIDERATION IN PRIVATE**

#### **HP 24/18 EXCLUSION OF PRESS AND PUBLIC**

There were no matters considered in private.

The meeting ended at 9.32 pm

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TONBRIDGE & MALLING BOROUGH COUNCIL  
HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

21 May 2024

Report of the Interim Chief Executive

Part 1- Public

Matters for Corporate Monitoring

1 **CORPORATE KEY PERFORMANCE INDICATORS**

This report provides data on Key Performance Indicators (KPIs) that are aligned to the Corporate Strategy 2023-2027 and monitored on a quarterly or annual basis. The data provided in this report relates to the period up to the end of March 2024. The main headlines show a number of positive trends in particular relating to Affordable Housing delivery, implementation of projects funded through Disabled Facilities Grants and improving results at planning appeals. Conversely, decisions on planning applications have seen a negative trend predominantly due to delays in getting decisions issued as a result of disruption caused by the move over to the new Agile software.

1.1 Overview of KPIs

1.1.1 The aligned KPIs are provided in **Appendix 1**, with the data for January – March 2024 representing the most up-to-date available statistics in most instances. However, due to the lag in some statistics and the very tight turnaround in this quarter, the previous quarter does still represent the most up to date figures.

1.1.2 There are some quarterly **trends** that can be identified and highlighted in this report. These include:

**Positive Trends:**

- **034:** The Number of Affordable Homes built in 2023/24 increase sharply from 30 in 2022/23 to 133.
- **038:** The number of people in temporary accommodation has decreased very slightly from 120 in October-December 2023 to 118 in January-March 2024.
- **041:** 21 disabled facilities grants were completed in the borough meaning the target of 80 during 2023/24 was exceeded.

- **104 and 105:** overall the number of planning appeals being determined was lower in Q4 than any other quarter in 2023/24, with 6 out of the 9 appeals dismissed (66.7%) which is also a slightly higher dismissal rate than previous quarters.

#### Negative Trends:

- **100:** 67% of major planning applications were decided in time, which is down from 80% in the previous quarter.
- **101:** 85% of minor planning applications were decided in time. This has crept down from 92% at the start of 2023/24.
- **102:** 84% of 'other' applications were decided in time, which is down from 87% in the previous quarter.

1.1.3 As is noted in Appendix 1, the determination of planning applications (KPIs 100-102) was impacted by the change to using the new Agile software, which resulted in delays in getting decisions issued.

1.1.4 Looking beyond the Quarter 4 trends and giving consideration to the entirety of 2023/24, Tables 1 and 2 show the more long-term trends for the Corporate KPIs and the 'other' KPIs respectively.

1.1.5 Through the use of a traffic lights system progress on each of the KPIs is set out. Where a KPI is monitored on an annual basis, the quarter within which the KPI is monitored is coloured with the other quarters in grey. Where the KPI is coloured entirely in grey, this indicates that either:

- The data has not been made available
- The data has been made available but is currently not meaningful (this is the case with KPIs 035-037)
- The data has been made available but it is not possible to put a positive or negative value on the trend, as they are predominantly responding to demand.

KPI Ref	Key Performance Indicator	Frequency	Trend over 2023/24			
			Q1	Q2	Q3	Q4
032	Housing Land Supply (years)	Annually	Grey	Grey	Green	Grey
033	Milestones achieved on delivering the T&M Local Development Scheme	Quarterly	Yellow	Yellow	Yellow	Yellow

034	Number of affordable homes built out per annum	Annually					
035	Number of people on housing register	Quarterly					
036	Number of HR applications received	Quarterly					
037	Waiting time for assessment of HR applications (days)	Quarterly					
038	Number of people in Temporary Accommodation	Quarterly					
039	Number of properties where property conditions have been improved	Quarterly					
040	Number of housing enforcement notices served	Quarterly					
041	Number of disabled facilities grants completed in the borough.	Quarterly					

**Table 1: Corporate KPIs**

1.1.6 As shown in Table 2, in Q3 and Q4 there have been some negative trends in the determination of planning applications. As stated in 1.1.3, this has been caused by the move over to a new software system (Agile).

KPI Ref	Key Performance Indicator	Frequency	Trend over 2023/24			
			Q1	Q2	Q3	Q4
100	% against Government target of 60% (for major apps)	Quarterly				
101	% against Government target of 65% (for minor apps)	Quarterly				
102	% against Government target of 80% (for 'others')	Quarterly				
103	Number of appeals received	Quarterly				
104	Number of appeals determined - allowed	Quarterly				

105	Number of appeals determined - dismissed	Quarterly				
106	Number of planning enforcement cases opened	Quarterly				
107	Number of planning enforcement cases closed	Quarterly				
108	Number of planning enforcement notices served	Quarterly				

**Table 2: Other KPIs**

## 1.2 Recent Internal Audit

- 1.2.1 In March 2024, the Corporate Performance Management Framework Internal Audit Report was completed. This report gave an audit opinion of **Substantial** based on a number of identified strengths in the framework, and identified one area for development, namely to ensure that the KPIs are used to their maximum potential and help to give direction to the Council where needed.
- 1.2.2 Despite this, the prospects for improvement were stated as **Very Good** on the basis that LGInform Plus will allow the council to assess its performance against other authorities and that previously raised issues regarding data assurance and benchmarking have already been addressed.

## 1.3 Benchmarking

- 1.3.1 Since the previous reporting round, a number of additional KPIs are now benchmarked using LGInform Plus. This helps to provide additional context when considering our performance, although it should be noted that sometimes direct comparison is not straightforward.
- 1.3.2 There are still a number of KPIs that are not benchmarked. Some of these will never be easily benchmarked either because they are difficult to compare in a meaningful way or because, even with LGInform Plus, the comparable data isn't available. However, further work will be undertaken during 2024 to further embed benchmarking into the reporting process.

## 1.4 Legal Implications

- 1.4.1 The matters set out in this briefing note are considered routine or uncontroversial and a legal opinion has not been sought.

## 1.5 Financial and Value for Money Considerations

- 1.5.1 The Corporate Key Performance Indicators are administered, analysed and reported in-house.

## **1.6 Risk Assessment**

- 1.6.1 Performance Management is identified in the Strategic Risk Register and currently assessed as a medium risk with a positive direction of travel. Within the register it is highlighted that without an effective performance management framework in place, the authority will not be able to understand any required improvements or achieve value for money.

## **1.7 Policy Considerations**

- 1.7.1 The Corporate Key Performance Indicators are aligned to the Corporate Strategy 2023-2027, and aim to provide data and analysis about the performance of the authority and support its improvement.

Background papers:

Nil

contact: Jeremy Whittaker,  
Strategic Economic  
Regeneration Manager

Adrian Stanfield  
Interim Chief Executive

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## Appendix 1 – KPIs January -March 2024

				BASELINE				SSC	2023/24				Target/ Aspiration 2023/24	TREND	Data Assurance	BENCHMARKING				Explanatory Comments
CS Priority Action	Ref. No.	Aligned KPI	Lead	Value	Date	Frequency	Source		Apr-Jun	Jul-Sept	Oct-Dec	Jan-Mar				Value	Date	Compa rator	Source	
Develop a Local Plan which will ensure the provision of new homes in appropriate locations, focusing on tackling the need to deliver a range of housing for the whole community.	032	Housing Land Supply (years)	JB	3.22	2022	Annually	HLS Study	HPSSC	N/A	N/A	3.65	3.65	5-year supply	→	Yes	2.9 (GBC) 3.9 (SDC) 4.29 (TWBC) 6.0 (MBC)	2022/23	Adjoin ing Authori ties	Publicly available on websites.	Improved situation in comparison to 2022/23 but still below the 5-year target.
	033	Milestones achieved on delivering the T&M Local Development Scheme	JB	Regulation 18 Consultation Closed	Nov-22	Quarterly	Local Development Scheme	HPSSC	Report to Cabinet on impact of NPPF on plan-making	Feedback on the Reg 18 consultation to HPSSC.	Working towards Reg 18b approval	Reg 18b to be presented to Members in May/June 2024	Reg 18B consultation approved for April 2024.	→	Yes				N/A	Very slight delay due to the need to assess the impact of the Levelling Up and Regeneration Act (LURA) 2023 on the plan making process.
Ensure a supply of affordable housing for people who would struggle to buy on the open market	034	Number of affordable homes built out per annum	GiA	30	2022/23	Annually	New Homes Bonus	HPSSC	N/A	N/A	N/A	133	75	↑		TBC	TBC	TBC	40% of annual housing target	Positive increase – 88 are homes for rent and 45 are shared ownership.
Use every power we can to support those who are most in need of housing support and at risk of becoming homeless.	035	Number of people on housing register	LH	1208	Jan-Mar 2023	Quarterly	Locata	HPSSC	N/A	N/A	85	167	1000 by end of financial year.		Yes	TBC	TBC	TBC	Kent Housing Group	A new IT system was implemented from June 2023 and all households on the housing register were asked to reapply. There is a backlog in HR assessments and so the number on the register is artificially low at the moment. We are unable to provide the waiting time for assessment of HR applications at the moment.
	036	Number of HR applications received	LH	541	Jan-Mar 2023	Quarterly	Locata	HPSSC	N/A	N/A	571	772	350 by end of financial year		Yes				N/A	
	037	Waiting time for assessment of HR applications (days)	LH	140	Jan-Mar 2023	Quarterly	Locata	HPSSC	N/A	N/A	N/A	N/A	100 by end of financial year		Yes				N/A	
	038	Number of people in Temporary Accommodation	CK	91	Jan-Mar 2023	Quarterly	Locata/T A System	HPSSC	110	113	120	118	80-100	→	Yes				N/A	Number has decreased slightly in Q4.

				BASELINE				2023/24				BENCHMARKING								
CS Priority Action	Ref. No.	Aligned KPI	Lead	Value	Date	Frequency	Source	SSC	Apr-Jun	Jul-Sept	Oct-Dec	Jan-Mar	Target/Aspiration 2023/24	TREND	Data Assurance	Value	Date	Comparator	Source	Explanatory Comments
Improving standards in rented accommodation.	039	Number of properties where property conditions have been improved	HS	10	Jan-Mar 2023	Quarterly	Uniform	HPSSC	19	14	19	23	60 for 2023/24	↑	Yes				N/A	75 properties improved during 2023/24
	040	Number of housing enforcement notices served	HS	0	Jan-Mar 2023	Quarterly	Notices Register	HPSSC	0	0	0	2	Reactive to Need						N/A	
	041	Number of disabled facilities grants completed in the borough.	TM	80	2022/23	Quarterly	Housing Improvement Team Database	HPSSC	22	20	18	21	80	↑		TBC	TBC	TBC	DFG Delta Return	81 DFGs completed, so exceeded target.

**Additional KPIs:**

Ref. No.	Aligned KPI	Lead	Value	Date	Frequency	Source	SCC	Apr-Jun	Jul-Sept	Oct-Dec	Jan-Mar	Target/Aspiration 2023/24	TREND	Data Assurance	Value	Date	Comparator	Source	Explanatory Comments
<b>Planning</b>																			
100	% against Government target of 60% (for major apps)	JB	100%	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	100%	100%	80%	67%	75%	↓	Yes	60%		Govt Targets	HMCLG - NI157a	Whilst there has been a decrease in the determination of planning applications within the government targets, this has been due to problems associated with the issuing of decisions through the Agile software.
101	% against Government target of 65% (for minor apps)	JB	85%	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	92%	88%	86%	85%	80%	→	Yes	65%		Govt Targets	HMCLG - NI157b	
102	% against Government target of 80% (for 'others')	JB	93%	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	94%	96%	87%	84%	92%	↓	Yes	80%		Govt Targets	HMCLG - NI157c	
103	Number of appeals received	JB	15	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	11	5	11	N/A								
104	Number of appeals determined - allowed	JB	3	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	8	5	5	3		↑						Fewer appeals allowed in most the recent quarter but fewer determined overall. Q4 – 33% allowed
105	Number of appeals determined - dismissed	JB	4	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	12	7	9	6		↑						Fewer appeals dismissed in the most recent quarter but fewer determined overall. Q4 – 67% dismissed
106	Number of planning enforcement cases opened	JB	80	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	66	81	N/A	54								
107	Number of planning enforcement cases closed	JB	117	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	45	64	N/A	N/A								
108	Number of planning enforcement notices served	JB	0	Jan-Mar 2023	Quarterly	PS1/2 Returns	HPSSC	0	0	1	2								

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**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE**

**21 May 2024**

**Report of the Director of Planning, Housing & Environmental Health**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non Key Decision**

**1 TREE ENFORCEMENT PROTOCOL AND TREE PRESERVATION ORDER PROTOCOL**

**Summary:**

**1.1 This report introduces the new Tree Enforcement Protocol and the Tree Preservation Order Protocol. This report seeks to provide an update to Members on how the service deals with all tree related matters and consequently what changes to processes and procedures are needed to facilitate necessary service improvements to address the backlog.**

1.1.1 The Tree Enforcement Protocol and Tree Preservation Order Protocol are amended to this document as appendix 1 and 2 respectively.

1.1.2 The Development Management Team discharges the Council's functions in respect of tree-related matters. By way of background, in each of the following calendar years the Service has dealt with the following:

Year	Applications for works to protected trees	Notifications for works to trees in Conservation Areas	Tree Preservation Orders
2022	204	228	10
2021	202	219	9
2020	227	211	8
2019	174	174	9

1.1.3 Full access to 2023 numbers is not possible, due to issues experienced with the tree module caused by the implementation of Agile. However, the numbers are expected to be similar to 2022.

- 1.1.4 The number of applications is largely consistent over this 5 year period with the overall number gradually increasing. It is acknowledged that there was a peak in 2020. This was most likely due to the increase in numbers of people at home during the pandemic.

### **Landscape officer Workload**

- 1.1.5 Added to above applications the Landscape Officer also considers condition applications for TPO trees, prior written consents, felling licences, observations for planning applications, general enquiries and officer training. They also advise on planning enforcement measures concerning trees which is why this report has brought together both protocols. Further challenges that the Tree and Landscape Officer has experienced is with the implementation of Agile. The module is currently being developed further to allow optimum functionality.
- 1.1.6 The establishment for the Council allows for one full time Landscape Officer. With one officer in place it is important that work is prioritised. How work is prioritised is outlined in the proposed protocol.

## **1.2 The Protocols**

- 1.2.1 The aims of the **Tree Preservation Order (TPO) Protocol** are as follows:

- To demonstrate principles of consistency in the assessment and decision-making process of considering whether new Tree Preservation Orders should be made and confirmed.
- To increase public confidence and understanding in the system.
- To speed up decision making by streamlining the assessment process where acceptable and making it more robust.

- 1.2.2 The aims of the **Enforcement Tree Protocol** are as follows:

- To detail the options available concerning the planning enforcement options.
- Details of the prosecution procedures concerning trees and the penalties available.
- Processes and Procedures.

The tree protocol should be read alongside the Planning Enforcement Plan

### **1.3 Backlog**

- 1.3.1 It is acknowledged that there is currently a backlog within the service, especially concerning outstanding TPOs. The backlog of TPO requests stands at 59. It should be noted that these have been triaged along the lines laid out in the proposed protocol and not identified as immediate priorities when compared to other Landscape related tasks carried out by the Landscape Officer.
- 1.3.2 An operational plan has been put in place to allow the Landscape officer the opportunity to look at least one a week to gradually reduce the numbers alongside the other duties that are required as outlined above and expanded upon below.
- 1.3.3 The backlog of TPOs should also be seen in the context of the officers existing workload. Currently the Tree and Landscape officer has case load of 73 applications excluding TPOs. Although not directly comparable it is higher than any of the planning officers and considered a substantial amount.
- 1.3.4 On top of this is the planning observations, pre application observations and advice to Councillors and general advice, which fall to the officer as detailed above.

### **1.4 Measures to tackle the backlog**

- 1.4.1 Reports have already been streamlined and shortened to allow for maximum efficiency.
- 1.4.2 Delegated authority on no objections for Section 211 Notices will be cascaded to the Landscape officer, who will be able to determine applications without the need for further checking to maximise time efficiency. Spot checks on signed reports will be undertaken monthly to ensure sound decisions are being undertaken.
- 1.4.3 A weekly tree surgery with planning case officers will also be introduced for simple observations. This will be recorded to mitigate the need for written observations to save time.
- 1.4.4 The planning validation checklist, which is currently out to agent's consultation, has introduced requirements for tree applications, which will promote faster decision making, as information will be provided up front. This also will promote better outcomes for trees on development sites. The checklist is an operational tool.
- 1.4.5 Enforcement Officers will do some of the tree visits for tree applications as they are often out on site. The Landscape officer will be providing training and advice what photos and information is needed. If the tree officer needs to visit a site themselves, this will be undertaken. The Enforcement Officers already work alongside the Landscape Officer for enforcement related tree cases and this is seen as a useful, natural extension of their collaborative working.

1.4.6 The measures above are about freeing up capacity to allow the Landscape Officer to tackle the backlog and ensure a consistent approach is taken to all elements of their wide-ranging workload. A target of reducing the backlog by at least one case every week will be implemented. The process of triaging all TPO requests will continue. Trees in immediate danger will always be prioritised.

1.4.7 These measures will be also aimed to make the tree service more efficient and more sustainable in the long run. The measures described above do not need Member approval, as they relate to operational service delivery, but have been put in the report for information and context as requested by members.

## **1.5 Legal Implications**

1.5.1 Not having a comprehensive and consistent Protocol in place could increase the risk of Council decisions being challenged both through appeal and judicial review.

## **1.6 Financial and Value for Money Considerations**

1.6.1 Having a comprehensive Protocol in place will ensure appropriate skills and expertise are utilised in an efficient and cost-effective manner and limit exposure to costs awards being made against the Council in appeal scenarios.

## **1.7 Risk Assessment**

1.7.1 Protocols are there to limit risk as they allow consistency and robustness. Not having an up-to-date protocol creates additional work as priorities and process are essential to the efficient running of a service.

## **1.8 Policy Considerations**

1.8.1 The service improvements set out within this report are in accordance with the Council's wider corporate priorities in respect of the Service Plan and the emerging Local Plan.

## **1.9 Recommendations**

1.9.1 That Members RECOMMEND to Cabinet the proposed strategy as set out in this report, namely:

- 1) Adoption of the Tree Preservation Order Protocol to help aid decision making
- 2) Adoption of the Tree Enforcement Protocol to help aid decision making

Background papers:

contact: Hannah Parker

Nil

Appendix 1 – Tree Enforcement Protocol

Appendix 2 – Tree Preservation Order Protocol including Annex 1 (TEMPO assessment)



## **Appendix 1**

### **Tree Enforcement protocol**

1. Introduction
2. Legislative Framework
3. Responding to complaints
4. Enforcement Investigations
5. Available Options for Action
6. Procedures and processes

## **1. Introduction and Context:**

- 1.1. This document is intended to provide comprehensive guidance on the framework for dealing with tree related enforcement issues in a clear, consistent and transparent manner and to ensure that enforcement investigations and decisions take place in accordance with current legislation and guidance.
- 1.2 Tree enforcement issues across the Borough fall into the following categories:
- Unauthorised removal of protected tree(s): Depending upon the size, species and prominence of the tree(s), the effect on visual amenity and the character of an area as a result will vary from case to case.
  - Unauthorised work to protected tree(s): The effect of work to tree(s) can vary from the expert removal of one minor limb to complete destruction. This can mean little or no effect on amenity or in severe cases a seriously detrimental effect and will always be dependent on the specific circumstances of the case.
  - Breach of tree protection conditions imposed on planning permissions: This can cause prejudice to the health/safety/life expectancy/appearance of the tree(s) and have consequences for the acceptability of a development in planning terms.
- 1.3 It is necessary to ensure a careful and balanced approach to the protection of valuable trees and enforcement of that protection across the Borough. It is acknowledged that to not do so could result in a serious impact on the quality of life for residents and visitors of the Borough. The overarching aim of this Protocol is therefore to ensure the appropriate enforcement of protected trees, within a clear and transparent framework in all cases. It should be read in conjunction with the Council's adopted Planning Enforcement Plan and associated guidance.

## **2. Legislative Framework**

- 2.1 Trees are protected by legislation when they are subject of Tree Preservation Orders or are within Conservation Areas (subject to certain exemptions). It is an offence to cut down, uproot, lop, top, wilfully damage or wilfully destroy a protected tree without having first obtained the necessary consent.
- 2.2 In the case of a tree protected by a Tree Preservation Order, the Council's consent is normally required prior to undertaking any works to the tree and this will require the submission of a formal application. Any consent may be subject to conditions, and there is a right of appeal to the Secretary of State against the refusal of consent or the granting of consent subject to conditions.

- 2.3 In the case of a tree in a Conservation Area, six weeks' notice must normally be served on the Council of any proposal to carry out works on the tree. If the Council takes no action within six weeks, the works may go ahead as notified.
- 2.4 Trees may also be protected by conditions imposed on planning permissions where the statutory and policy tests for doing so have been met. Such conditions typically require that new trees be planted and maintained, or that existing trees be retained as part of development, usually for a minimum of five years. An application can however be made to the Council to vary or remove a condition (such as to allow the removal of a tree). If planning conditions are not complied with, the Council has powers to serve an enforcement notice or breach of condition notice to secure compliance. There is a right of appeal to the Secretary of State against an enforcement notice.
- 2.5 There are two offences, which apply equally to trees protected by Tree Preservation Orders and those within Conservation Areas. Firstly, anyone who cuts down, uproots or wilfully destroys a tree, or who lops, tops or wilfully damages it in a way that is likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £20,000. If the person is committed for trial in the Crown Court, they are liable if convicted to an unlimited fine. The Courts have held that it is not necessary for a tree to be obliterated for it to be "destroyed" for the purposes of the legislation. It is sufficient for the tree to have been rendered useless as an amenity.
- 2.6 Secondly, anyone who carries out works to a tree that are not likely to destroy it, is liable, if convicted in the Magistrates Court, to a fine of up to £2,500. Any proceedings for offences in this category must be brought within six months of the date the offence was committed.

### **3. Responding to complaints**

- 3.1 Investigations connected to alleged breaches of planning control in respect of tree protection legislation are in most cases instigated because of complaints received by the Council by members of the public. When this happens, investigations will commence in accordance with the Council's adopted Planning Enforcement Plan. This sets out that alleged works to protected trees rank as a top priority in all circumstances, with the target for initial site inspection being 1 working day. If the Council is advised of works taking place to protected trees all efforts will be made to ensure a visit can be undertaken within a quicker timescale so as to prevent irrevocable damage wherever possible. This prioritisation reflects the perceived urgency and level of harm arising to amenity or to areas or features that benefit from special protection.
- 3.2 At this stage the complainant is informed of the case officer's name and contact details. The named Officer will act as the main point of contact and will advise all parties on progress and outcome of the case. Additionally,

Borough Council Members are informed of the receipt of allegations on a weekly basis.

#### **4. Enforcement Investigations**

4.1 Our initial investigations will always involve research to establish:

- whether the tree is protected.
- whether any consent or permission has been granted for works; and
- who is responsible for the work being undertaken (either by act or instruction)

4.2 In all cases, this will involve both a desk-based assessment of the Council's official records, along with a land registry search along with a site inspection. The investigating planning enforcement officer will inspect the site in line with the Council's scheme of prioritisation and will also request that the Tree and Landscape Officer attends the inspection. If the Tree and Landscape Officer is unable to attend the inspection within the necessary timeframe, the investigating officer will subsequently discuss the evidence collated and establish whether a further inspection is required.

4.3 At the site inspection, potential transgressors will be asked to give an account of the activity taking place (if any is identified) and provide any relevant background information.

4.4 In some cases, it may however be necessary to caution a suspect during the site inspection itself and interview later if there are questions that may be required as evidence.

#### **5. Available Options for Action**

5.1 The Council has a range of possible courses of action available to deal with cases of unauthorised works on protected trees. These include the following:

- Prosecution
- Require Tree(s) to be replanted
- Serve a Breach of Conditions Notice.
- Informal action

Prosecution through Court: Proceedings

5.2 Two tests will be applied in cases where a tree has been destroyed or works have caused significant harm and therefore a prosecution appears likely. Consideration of which will be undertaken in consultation with the Council's

Legal Team in accordance with the Crown Prosecution Service's 'Code for Crown Prosecutors 2018'

- The Evidential Test: A prosecution will not be commenced unless there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction.
- The Public Interest Test: A prosecution will only be brought where this is in the public interest. This can include using enforcement action as an effective deterrent.

- 5.3 In most cases, a prosecution will not be brought if the works would have been allowed, had they been applied for. A prosecution will not normally be brought unless the unauthorised works have resulted in a loss of public amenity. When assessing amenity, the Council will use the same criteria-based approach as set out in the Tree Preservation Order Protocol, to be applied by the Tree and Landscape Officer who will be advising the investigating enforcement officer and legal team.
- 5.4 In determining the most appropriate and proportionate course of action in any given circumstance, the Council will take into account the following:
- the size of the tree(s)
  - the prominence of the tree(s)
  - the condition of the tree(s)
  - the life expectancy of the tree(s)
  - the seriousness of the offence
  - the loss of/effect on amenity
- 5.5 If a preserved tree has been removed without consent and is a single specimen 'amenity' tree in good condition and could not be adequately replaced by planting another tree, the Council will, in all but exceptional circumstances, be likely to prosecute those responsible for its removal. The Council will also seek to ensure the immediate provision (subject to planting seasons) of another tree.
- 5.6 With respect to Conservation Area trees, the seriousness of such an offence will be judged by determining if the tree would have been made the subject of a draft Tree Preservation Order had the requisite notice been served. Where the tree would have been made the subject of an Order, the Council is likely to take the same action as indicated above.
- 5.7 Where extensive works are undertaken without consent or prior notification in the case of Conservation Areas that would not have been agreed had an application been submitted, the Council will seek to prosecute those

responsible. This generally applies where the appearance of the tree is altered to a point where there is a clear effect on visual amenity. Where these works have been undertaken to a poor standard remedial works will be required.

- 5.8 In cases where works are undertaken that would ordinarily have been acceptable, in terms of general form and extent, but to a poor standard, the Council will ensure that all necessary remedial works are undertaken as soon as possible. Where such remedial works are not undertaken in an acceptable timescale and in accordance with a specification issued by the Council, the Council will be likely to prosecute those responsible for the works.
- 5.9 In considering whether to bring a prosecution, regard will also be had to the likelihood of the offence being repeated and the degree to which a prosecution would act as an effective deterrent. Regard will also be had to any financial advantage perceived to have been gained by carrying out the unauthorised works and whether the perpetrator has been prosecuted, cautioned or warned for similar offences in the past.
- 5.10 Whilst ignorance of the law is not an excuse, all relevant issues associated with the case will be considered including, where appropriate, the attitude and circumstances of the perpetrator, any indication that he/she was acting in good faith or other relevant mitigating factors.

#### *Replanting*

- 5.11 Whenever a tree has been removed in contravention of the legislation, or because it is dead, dying or dangerous, there is an automatic legal duty on the landowner to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless that requirement is waived by the Local Planning Authority). The replacement tree is then subject to the same protection as the tree that was lost. If the landowner fails to comply with this requirement, the Council may serve a Tree Replacement Notice within a period of four years to ensure compliance.

#### *Breach of conditions*

- 5.12 If a condition on a planning application is breached with tree protection measures a breach of condition notice suitable to rectify the breach.

#### *Informal action*

- 5.13 Not all cases require formal action. Informal action such as written correspondence and site visits may be sufficient to remedy breaches, especially concerning tree related planning conditions.

## **6. Procedures and processes**

- 6.1 Tree enforcement issues will be dealt with by the Planning Enforcement Team in liaison with the Tree and Landscape Officer and the legal team.
- 6.2 In each case where it is evidenced that unauthorised works have been carried out on a protected tree (or trees), the investigating officer will compile a report containing the following information:
- Summary of the breach as alleged.
  - Description of the site, tree(s) in question and protection afforded.
  - Explanation of desk-based and site-based investigations.
  - Summary of all evidence collected.
  - Summary of all expert arboricultural and legal advice (where necessary) obtained
  - Recommendations for any further action for endorsement by the Development Manager or appropriate member of staff with delegated authority.
- 6.3 Enforcement Cases recommended for closure will appear on Members self-service enforcement Power BI report. Reasons for the closure will be reported in the same way as all other closed enforcement cases.
- 6.4 Ward Members will be updated by the investigating officer regarding any cases where recommendations for action are endorsed and a copy of the report and associated paperwork provided on a confidential and privileged basis. It is important to note that this documentation is not provided in full to complainants. In order that no prejudice arises in legal proceedings. Complainants will however be updated throughout proceedings by the investigating enforcement officer in accordance with the Council's Planning Enforcement Plan.





**Tonbridge and Malling Borough Council  
Tree Preservation Orders Protocol  
May 2024**

**Contents:**

- 1 Introduction and Context
- 2 Legislation and guidance
- 3 Overarching aims
- 4 An overview
- 5 Scheme of prioritisation
- 6 The assessment process.
- 7 Making a new Tree Preservation Order
- 8 Consideration of representations
- 9 Confirmation of a Tree Preservation Order
- 10 Review of historic Tree Preservation Orders

**Annexes:**

- 1 Tree Evaluation Method for Preservation Orders (TEMPO) – Survey Data Sheet

## **1. Introduction and Context:**

This document is intended to provide guidance on the administration, assessment, making and confirming of new Tree Preservation Orders (“TPOs”) by Tonbridge and Malling Borough Council. The Protocol seeks to demonstrate a consistent system for the service and administration of TPOs, from the prioritisation of requests for new TPOs, through the assessment of trees for possible inclusion within a new TPO, to service of an Order and confirmation (where the TPO is made permanent).

A TPO is a legal Order which provides statutory protection to specified trees, groups of trees, areas or woodlands. In accordance with the tree preservation legislation an Order prohibits the cutting down, topping, lopping, uprooting, wilful damage or wilful destruction of the specified trees without the prior formal consent of the Local Planning Authority (LPA – Tonbridge and Malling Borough Council).

## **2. Legislation and guidance:**

The law on Tree Preservation Orders is contained in Part VIII of the Town and Country Planning Act 1990 (as amended) and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 6 April 2012.

(<https://www.legislation.gov.uk/ukpga/1990/8/part/VIII>)

Section 192 of the Planning Act 2008 made further amendments to the 1990 Act which allowed for the transfer of provisions from within existing Tree Preservation Orders to regulations.

(<https://www.legislation.gov.uk/ukpga/2008/29/section/192>)

The government publishes online guidance “Tree Preservation Orders and trees in conservation areas” which explains the legislation governing Tree Preservation Orders and tree protection in conservation areas.

(<https://www.gov.uk/guidance/tree-preservation-orders-and-trees-in-conservation-areas>)

## **3. Overarching aims:**

The aims of this Protocol are as follows:

- To demonstrate principles of consistency in the assessment and decision-making process of considering whether new Tree Preservation Orders should be made and confirmed.
- To increase public confidence and understanding in the system.
- To speed up decision making by streamlining the assessment process where acceptable and making it more robust.

## **4. An overview:**

Local Planning authorities can make a Tree Preservation Order if it appears to them to be *‘expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area’*.

It is important to recognise that making TPOs is an entirely discretionary power: meaning that the Council does not have to place a TPO on any tree. Deciding whether or not to protect trees by way of TPO is a matter of judgement to be made by officers and there is no obligation for us to do so.

The government advises authorities *“to take into consideration what ‘amenity’ means in practice, what to take into account when assessing amenity value, what ‘expedient’ means in practice, what trees can be protected and how they can be identified.”*

The Town and Country Planning Act does not define 'amenity', nor does it prescribe the circumstances in which it is in the interests of amenity (expedient) to make a TPO. The government guidance provides the following advice:

***“What does ‘amenity’ mean in practice?”***

*‘Amenity’ is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order.*

*Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm an Order they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.*

***What might a local authority take into account when assessing amenity value?***

*When considering whether trees should be protected by an Order, authorities are advised to develop ways of assessing the amenity value of trees in a structured and consistent way, taking into account the following criteria:*

*Visibility*

*The extent to which the trees or woodlands can be seen by the public will inform the authority’s assessment of whether the impact on the local environment is significant. The trees, or at least part of them, should normally be visible from a public place, such as a road or footpath, or accessible by the public.*

*Individual, collective and wider impact*

*Public visibility alone will not be sufficient to warrant an Order. The authority is advised to also assess the particular importance of an individual tree, of groups of trees or of woodlands by reference to its or their characteristics including:*

- size and form;*
- future potential as an amenity;*
- rarity, cultural or historic value;*
- contribution to, and relationship with, the landscape; and*
- contribution to the character or appearance of a conservation area.*

*Other factors*

*Where relevant to an assessment of the amenity value of trees or woodlands, authorities may consider taking into account other factors, such as importance to nature conservation or response to climate change. These factors alone would not warrant making an Order.*

***What does ‘expedient’ mean in practice?***

*Although some trees or woodlands may merit protection on amenity grounds it may not be expedient to make them the subject of an Order. For example, it is unlikely to be necessary to make an Order in respect of trees which are under good arboricultural or silvicultural management.”*

When assessing what trees can be protected it is important to note that a TPO can be placed on any tree that has amenity value, and no species of tree is automatically protected. Orders can be used to protect trees that are, for example, particularly attractive, are good examples of the species, contribute significantly to the appearance and amenity of an area and/or have any special cultural or historic value. A TPO can protect anything from a single tree to all the trees within a defined area or woodland. However, only trees can be included within an Order – other plants such as managed hedges, bushes, shrubs, climbing plants or grasses cannot be protected

by a TPO (although an old hedge which has become a line of trees of a reasonable height might be possible to include within a TPO, and if a line of trees that are already included within a TPO is pruned to form a hedge the TPO protection will still apply).

Trees can be included within a TPO under one of four designations:

- **As Individually specified trees:** A tree may merit protection within an Order in its own right (for example a tree that has grown up individually and is largely unaffected by competition from nearby trees). Individually designated trees are prefixed with the letter “T” in the first schedule of an Order, which will also include details of the genus (or species) of the tree(s) - for example “T1 Oak” and are shown as individual black circles on the TPO map.

- **As Groups of trees:** Several trees that have grown close together might have a collective amenity value that exceeds the value of the individual specimens. They may have grown to become co-dependant on one another affording each other mutual shelter or might be part of a formal landscape feature such as an avenue where it is the overall impact and quality of the group as a whole that merits protection. Group designations are prefixed with the letter “G” in the first schedule of an Order, which will also include details of the numbers of each different genus (or species) of the tree(s) within the group - for example “G1 2 Oak and 1 Beech”. Group designations are shown on the TPO map surrounded by a broken black line.

- **As Areas of trees:** Area designations can be made to include, for example, all the trees of whatever species, only those of selected species, or those shown on a plan (such as a landscaping plan) within a defined area. Such designations usually include larger numbers of trees than would be included within a Group designation and can include large collections of trees which because of their situation are inappropriate for inclusion within a Woodland designation. Area designations are shown on the TPO map surrounded by a black dotted line.

- **As Woodlands:** The purpose of a Woodland designation is to protect a woodland as a whole. As such the designation protects all trees within the boundaries of the woodland as shown on the TPO map. It is expected that in a woodland trees will decline and fall and others will grow up to replace them in a continuous self-perpetuating dynamic and, in addition to the trees present at the site at the time a TPO is made Woodland designations also include trees and saplings which grow naturally or are planted within the woodland area after the Order is made. Woodland designations are shown on the TPO map surrounded by a solid black line.

[For the avoidance of any doubt, Ancient Woodlands are not necessarily protected by way of TPO. The NPPF affords ancient woodland specific policy protection and other controls may also exist – such as the Felling Licence legislation.]

## **5. Scheme of prioritisation:**

A request for a new TPO may arise from a number of different sources (for example in response to a s211 Notice of Intent, or a development application/enquiry, or from a request made by a member of the public, Council Member or Parish Council, or even from internal discussions).

Requests for a new TPO should in all circumstances be made in writing by emailing [planning.applications@tmbc.gov.uk](mailto:planning.applications@tmbc.gov.uk). The Council will not normally respond to anonymous requests, unless there is other information that indicates a very serious threat to important trees. Requests should include information that clearly identifies the location and species of the tree(s) in question, explain why the request is being made (why the proposer thinks the subject trees should be included within a new Order) and what threats to the tree(s) are present.

The Council will investigate all alleged threats to trees and all requests for trees to be made the subject of a TPO in the public interest.

However, given case volumes it is necessary to have a scheme of prioritisation for such requests. Work with statutory timescales must take precedence and as such the highest priority when dealing with requests for new TPOs will be given to those requests relating to trees which are affected by a current s211 Notice of Intent or full planning application. Assessment of the trees subject of such requests will be made within the relevant statutory decision target period for the Notice or Application.

Otherwise in assessing priority officers will take account of the perceived or real level of threat in any given circumstance. It also follows that the more urgent the threat is perceived to be, and the higher the public amenity value of the tree, then the greater weight should be given in terms of prioritisation.

The lowest priority will be given to requests where there is already a mechanism of control on the subject trees – for example if the trees are already protected by virtue of standing within a Conservation Area, or if the Council already has direct control of the trees as owner, or if a felling licence would be required.

Requests will be triaged upon receipt to clarify priority and may be assigned a higher, or lower priority if further information subsequently comes to light.

It should be noted that at this stage, the Council will not enter into discussions with the landowner to ascertain the level of real or perceived threat to the trees and we do not publish details of the requests for new TPOs that we receive. This is to avoid the potential risk arising from landowners accelerating felling programmes when alerted to the Council's interest in trees, which could lead to important trees being lost.

## **6. The assessment process:**

The Government guidance advises that Local Planning Authorities should “develop ways of assessing the amenity value of trees in a structured and consistent way” taking account of the criteria referred to in “An overview” above.

The Government's view is the TPO's should be used to protect “selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public.” It therefore follows that there must be something that sets apart trees that are appropriate for inclusion within a TPO from other trees in general.

The Council needs to be able to show that a reasonable degree of public benefit exists, or would accrue, before TPOs are made or confirmed.

Trees may be worthy of preservation for their intrinsic beauty, or for their contribution to the landscape. The value of trees may be enhanced by their scarcity. The value of a group of trees or woodland may be collective only. Other factors, such as importance as a wildlife habitat, nature conservation or response to climate change may also be taken into account but these factors alone would be unlikely to be sufficient to warrant a TPO.

In terms of wider impact, the significance of the trees in their local surroundings will also be assessed, taking into account how suitable they are to their particular setting, as well as the presence of other trees in the vicinity.

Trees are included within TPOs for their public benefit and the assessment will include an appraisal of the visibility of the subject trees from publicly accessible locations (this may include future visibility – for example when assessing trees on a potential development site).

As advised by the Government guidance just because a tree is visible from public locations does not necessarily mean that it is appropriate for inclusion within an Order and the assessment will also include an appraisal of the individual, collective and wider impact of the subject trees with reference to their

- Size and form,
- Future potential as an amenity
- Rarity, cultural or historic value
- Contribution to, and relationship with, the landscape and
- Contribution to the character or appearance of a Conservation Area

The Council's assessment will also take account of

- The condition of the tree(s) – which has implications for the future potential as an amenity.
- Previous treatment/management of the tree(s) and future management requirements – which also has implications for the future potential as an amenity.
- Proximity to the existing built form and suitability for location (which links to Contribution to, and relationship with, the landscape)

The Government guidance is clear that other factors can also be taken into account and no list of criteria could ever be exhaustive. Clearly it is not possible to predict every possible situation and there may be unusual circumstances which are of relevance in a particular case. Where there is such unusual circumstance the assessment report will detail why it is considered of relevance to the consideration of the particular tree(s).

Although a tree might warrant protection in terms of amenity value, it is also necessary to consider whether the protection of the tree by a TPO is 'expedient'. This is a test as to whether the serving of an Order in the public interest is a suitable/appropriate action in the circumstance of a particular case. For example, it is unlikely to be expedient to make a tree the subject of a TPO if it is under good proactive arboricultural or forestry/woodland management. However, if the Council consider that there is a risk of a tree being cut down, pruned or damaged in such a way that would have a significant and adverse impact on amenity, then a TPO may be appropriate.

The Council may have other reasons to believe that trees may be at risk. Circumstances such as changes in property ownership or management, general development pressure and possible development potential of a site can mean that the protection of trees by a precautionary TPO may be considered expedient. In some instances, because of a lack of accurate information, the risk may be perceived rather than actual. However, the Council has to take a precautionary approach because enquiries (regarding ownership for example) might trigger or accelerate tree removal.

There are a number of exemptions within the tree preservation legislation from the usual need to obtain the prior formal consent of the LPA for works to a tree (as set out in the Town and Country Planning (Tree Preservation) (England) Regulations 2012). For example the LPA's consent is not required for work to a tree which is dead even if it is included within a TPO and there is also an exemption for work necessary to implement a full planning permission as well as other specified exemptions. Exemption provisions can have an impact on the appropriateness or expediency of making a new TPO (there is unlikely to be public benefit in making a new TPO on a tree which could be immediately removed under exemption).

An appraisal of the expediency of making a TPO will be included in the assessment and previous planning history will also be considered.

It should be noted that there are some published evaluation methods for assessing the amenity value of trees. The Tree Evaluation Method for Preservation Orders ("TEMPO") is designed to be a structured guide and record of the assessment process for determining the value of trees

for the purposes of a TPO. A TEMPO assessment can sometimes assist in decision making and where appropriate officers will also undertake a TEMPO assessment in considering requests for new TPOs (it should be noted that TEMPO was designed for assessment of either 'Individual' or 'Group' designations and would not be appropriate for the consideration of whether to include trees within an Area or Woodland designation TPO. TEMPO assessments will also not be undertaken when assessing s211 Notices)

Any TEMPO assessment that is undertaken will be done in accordance with the published guidance - A copy of the TEMPO survey data sheet is produced at Annex 1 and published guidance notes for users can be found via the link below: <https://www.flac.uk.com/wp-content/uploads/2014/12/TEMPO-GN.pdf> (note: CBA Trees owns the copyright for TEMPO, however the method is freely available, including via internet download through the Arboricultural Information Exchange [www.aie.org.uk](http://www.aie.org.uk))

## **7. Making a new Tree Preservation Order:**

In all instances, the completed assessment report (including formal recommendation by the assessing officer), along with supporting evidence (for example, photographs) will be sent to the DPHEH, or other senior officer in the Planning Department (under responsibilities delegated via the DPHEH) for formal decision.

Having considered it appropriate to make an Order, the Council will make and then serve a copy of the TPO together with a formal Notice (the Regulation 5 Notice) to the owner or occupier of the land on which the subject tree(s) stand, and to any 'persons interested' in the land, or persons who may be entitled to carry out works to the tree affected by the TPO. The Regulations clearly defines a person interested in relation to an Order being every owner and occupier of the land affected by the order and every other person whom the authority knows to be entitled to

(a) to cut down, lop or top any of the trees to which the order relates; or

(b) to work by surface working any minerals in, on or under the land affected by the order.

Where a TPO is made in response to a s211 Notice of Intent the person(s) who served that Notice will also be served a copy of the TPO.

Land Registry search(es) will be undertaken to identify registered owners/interested parties as necessary. Dependent on the urgency assigned to the TPO, the documents will be either delivered by hand to the owner or occupier, left at the usual or last known address of the owner or occupier, or sent by recorded delivery, or 1<sup>st</sup> class post to the last known address of the owner or occupier. In the case of registered companies, the documents may be served on the company's secretary or clerk at the registered or principal office.

When the affected land is unoccupied, or when ownership of the land affected by the TPO cannot be ascertained, or when it is necessary to alert other parties who may be working on the land, the Council may also affix the documents conspicuously to some object on the land – such as the tree itself, a gatepost of the property concerned, or its fence.

It is important to note that provided the documents have been correctly or 'duly' served, it is not necessary for the owner to actually be aware of the TPO for the TPO to be in force. It is therefore advisable for anyone wishing to carry out works to trees to first check with the Council that permission is not required.

When a new TPO is served a copy will also be sent to Ward Councillors and the Parish Council(s). The person(s) who made the request(s) for the new TPO will also be notified of the



outcome of their request once the formal decision has been made (along with either a copy of the relevant new TPO, or reasoning for the decision as appropriate).

## **8. Consideration of representations:**

In accordance with the legislation statutorily defined interested parties as described above must be given the opportunity to make representations on new Tree Preservation Orders. These are considered by the Council to be “duly made” if:

- They are made in writing (to [planning.applications@tmbc.gov.uk](mailto:planning.applications@tmbc.gov.uk) or by post if email is not possible)
- delivered to, or could reasonably expected to be delivered to, the authority not later than the date specified in the Regulation 5 notice which will be a 28-day period
- specify the particular trees, groups of trees or woodlands to which they relate;
- in the case of an objection, state the reasons for the objection;

Any subsequent correspondence made by defined interested parties **cannot** be taken into account to influence the decision whether to confirm the TPO or not unless the Council believes that the 28-day period for objections could not have been reasonably met.

Furthermore, any representations received will only be taken into account in deciding whether to confirm an Order where a clear interest is demonstrated in accordance with the relevant legislation. Where wider representations are made these will not be taken into account in the final decision as to whether an Order will be confirmed or not.

Provided they fall within these specified parameters, representations about/objections to a new TPO will be formally taken into account in deciding whether to confirm or modify the Order.

## **9. Confirmation of a Tree Preservation Order**

All TPOs are made on a provisional basis, which runs for a period of six months, and the TPO must be confirmed before the six-month period expires otherwise it will lapse and cease to take effect.

Following the making of a provisional TPO the LPA may receive objections or representations about the making of the Order from the owner/other interested parties.

The LPA should not confirm a made (provisional) Order unless any objections and representations duly made about the making of the Order have first been considered

Where the LPA has received objection(s) to the making of the Order and those objection(s) have not been subsequently withdrawn, then the decision whether to confirm the Order or not will be made at the relevant Area Planning Committee.

For all other cases the decision on whether to confirm the Order will be made by the DPHEH, or other senior officer in the Planning Department (under responsibilities delegated via the DPHEH).

Prior to the decision the case officer will prepare a report for the relevant committee/senior officer which includes a summary of any representations, assessment of any issues raised and recommendation.

Provisional Orders are unlikely to be withdrawn/not confirmed because a perceived level of risk has reduced, however they may be withdrawn/not confirmed if, on further assessment, it is considered that the trees fail the test of public amenity or that, for example, it is found that the tree(s) could be removed under exemption provisions within the tree preservation legislation.

There can remain disagreements surrounding the real threat to trees. However, it is considered that once work has been prioritised and assessments made that the trees are of the required quality in the public interest for a TPO to be justified, it would be a failure not to continue to the service of a confirmed Order. Owners of trees may consider that they have no intention of carrying out any detrimental work to their trees. However, trees can have a considerable lifespan, often far in excess of land ownership and it is considered that having established that a tree is of a quality worthy of protection it would be imprudent not to carry through the work because a potential threat was not immediate.

Subject to confirmation, the TPO will remain in force until it is revoked or until all the tree(s) have been removed without statutory replacement.

The placing of a TPO on land or individual trees does not place a moratorium on works to a tree, nor does it prevent a tree being removed. It does however require a person, wishing to undertake work to a protected tree, to apply to the Council for approval for such work (subject to exemption provisions within the legislation).

When the decision is made on whether to confirm or not confirm an Order the Council will notify those persons with an interest in the trees/land of the decision in accordance with the legislation along with Ward Councillors, **Parish Council(s)**, and any persons who made a request for the specified trees to be included within a new TPO.

#### **10. Review of historic Tree Preservation Orders:**

If the Council were to review an existing TPO then the subject tree(s) would be considered in accordance with the assessment process detailed in this document.

However, it should be noted that the Council does not currently have any scheme to systematically review its existing TPO's. There are a large number of existing Orders in force within the Borough, which between them include thousands of trees, and it would take a considerable resource (not currently available) to embark on a full scale review of the Orders.

Further consideration of a program to review existing Orders will be brought forward if the necessary resource becomes available and following scoping work in liaison with Borough Councillors.

**ANNEX 1**

**TREE EVALUATION METHOD FOR PRESERVATION ORDERS – TEMPO  
SURVEY DATA SHEET AND DECISION GUIDE**

Date:	Surveyor:
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<b>Tree Details</b>	
TPO request Ref (if applicable): Species:	Tree/Group No:
Owner (if known):	
Location/Site:	

**REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS**

**Part 1: Amenity Assessment**

**a) Conditions & suitability for TPO**

- 5) Good                      Highly suitable
- 3) Fair/satisfactory      Suitable
- 1) Poor                      Unlikely to be suitable
- 0) Dead/dying/dangerous\* Unsuitable

**Score & Notes**

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*\* Relates to existing context and is intended to apply to severe irremediable defects only*

**b) Retention span (in years) & suitability for TPO**

- 5) 100+                      Highly suitable
- 4) 40-100                    Very suitable
- 2) 20-40                      Suitable
- 1) 10-20                      Just suitable
- 0) <10\*                      Unsuitable

**Score & Notes**

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*\*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality.*

**c) Relative public visibility & suitability for TPO**

Consider realistic potential for future visibility with changed land use

- 5) Very large trees with some visibility, or prominent large trees      Highly suitable
- 4) Large trees, or medium trees clearly visible to the public      Suitable
- 3) Medium trees, or large trees with limited view only      Suitable
- 2) Young, small or medium/large trees visible only with difficulty      Barely suitable
- 1) Trees not visible to the public, regardless of size      Probably unsuitable

<b>Score &amp; Notes</b>
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**d) Other factors**

*Trees must have accrued 7 or more points (with no zero score) to qualify*

- 5) Principal components of formal arboricultural features, or veteran trees
- 4) Tree groups, or principal members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particular good form, especially rare or unusual
- 1) Trees with none of the above additional redeeming features (inc. those of indifferent form)
- 1) Trees with poor form or which are generally unsuitable for their location

<b>Score &amp; Notes</b>
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**Part 2 – Expediency assessment**

*Trees must have accrued 9 or more points to qualify*

- 5) Immediate threat to tree inc. s.211 Notice
- 3) Forseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

<b>Score &amp; Notes</b>
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**Part 3 – Decision guide**

- Any 0    Do not apply TPO
- 1-6      TPO indefensible
- 7-11    Does not merit TPO
- 12-15   TPO defensible
- 16+     Definitely merits TPO

<b>Add Scores for Total:</b>
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<b>Decision guide:</b>
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## TONBRIDGE & MALLING BOROUGH COUNCIL

### HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

21 May 2024

Report of the Director of Planning, Housing and Environmental Health

#### Part 1- Public

#### Matters for Recommendation to Cabinet - Non-Key Decision

### 1 LOCAL PLAN – DUTY TO COOPERATE UPDATE

**The Duty to Cooperate (DtC) is a legal requirement on local planning authorities to engage with other relevant authorities and bodies constructively, actively and on an ongoing basis in relation to strategic planning matters. This report provides an update on duty to cooperate, partnership working and reporting.**

#### 1.1 Background

1.1.1 The National Planning Policy Framework (NPPF) 2023 states that “*Local planning authorities and county councils (in two-tier areas) are under a duty to cooperate with each other, and with other prescribed bodies, on strategic matters that cross administrative boundaries*” (paragraph 24). As such local planning authorities should collaborate to identify the relevant strategic matters which they need to address in their Local Plans.

1.1.2 The government consider that effective and on-going joint working between is integral to the production of a positively prepared and justified Local Plan spatial strategy. It is intended that joint working should help to determine where additional infrastructure is necessary, and whether development needs that cannot be met wholly within a particular plan area could be met elsewhere.

1.1.3 The Planning Advisory Service has prepared a simple guide to strategic planning and the DtC, this can be found at Annex 1.

1.1.4 The Levelling Up and Regeneration Act will facilitate the ending of the duty, to be replaced with a new alignment policy which is subject to further detail to be made available through secondary legislation and guidance. At this time no further detail has been published regarding this, until this legislation gains royal ascent the duty will remain.

#### 1.2 Duty to Cooperate Update

1.2.1 To demonstrate effective and on-going joint working, it is good practice for local authorities to keep an accurate record of meetings undertaken with neighbouring authorities and other bodies. These will inform the preparation of statements of

common ground later in the plan making process, which will document the cross-boundary matters identified and progress made in cooperating to address these. It should be noted that the duty to cooperate is not a duty to agree. Should there be differences of opinion or position between parties, these will also be recorded in the statements of common ground.

- 1.2.2 A DtC record of engagement has been prepared (Annex 2), this provides a summary of contact between TMBC and neighbouring authorities from July 2021, the point at which the council recommenced plan making. It is not intended to be an exhaustive list of all engagement and partnership work that has been undertaken. This will be extended as required to include other public bodies as the Local Plan progresses through the next stages of public consultation.
- 1.2.3 The following provides a summary of the current strategic planning position with regard to each adjacent authority highlighting any known cross-boundary matters. All neighbouring authorities and other public bodies will be invited to comment on the TMBC Local Plan Regulation 18b once published. Further DtC meetings will be arranged by officers as required.

<b>Planning Authority</b>	<b>Current Local Plan Status</b>	<b>Comments</b>
Gravesham Borough Council	Preparing a Local Plan review. The regulation 18 stage 2 consultation closed in December 2020. The regulation 19 consultation is awaited.	<p>TMBC responded to the Gravesham regulation 18 stage 2 consultation in December 2020. Based on the development needs as well as the location and distribution of potential development set out in the consultation, it was not considered that there would be significant cross-boundary impacts upon Tonbridge and Malling.</p> <p>Concern was however expressed regarding the potential expansion and infilling of villages which could contribute towards growth in traffic on local roads, particularly the A227. In addition to potential impacts upon the Kent Downs national landscape and North Downs Woodland SAC.</p> <p>Tonbridge and Malling don't share a housing market area with Gravesham, as such it is less likely to be asked to assist Gravesham should it be unable to fully meet its housing need.</p>
Maidstone Borough Council	<p>The appointed Inspector's Final Report on the new Maidstone Local Plan was delivered to the Council on 8 March 2024, this signified the formal closure of their Examination.</p> <p>The Maidstone</p>	<p>TMBC responded to the Inspector's consultation in February 2024 on some additional technical documents, including an M2 Junction 3 Transport Assessment. In doing so we expressed concern regarding the scheme of mitigation proposed by MBC for the junction, requesting that officers be included in further discussions by MBC regarding this matter.</p> <p>There are known junction capacity issues at these linked junctions which have cross-boundary significance. TMBC is supporting a</p>

	Borough Local Plan Review 2021-2038 was adopted on 20 March 2024.	more substantial scheme for Blue Bell Hill, including M2 junction upgrades that is being pursued by KCC. This is subject to a 'Large Local Major Schemes' bid to the DfT.
Medway Council	Preparing a new Local Plan. Similar timescale to TMBC, with regulation 18b consultation expected June/July 2024.	<p>DtC meeting held between officers in March 2024 to discuss the timing of forthcoming Local Plan consultations. Officers agreed to collaborate once respective details regarding draft site allocations and evidence base documents are published.</p> <p>Medway Council are using the Kent VISUM transport model to undertake scenario and sensitivity testing.</p>
Tunbridge Wells Borough Council	<p>Public consultation on Tunbridge Wells Borough Council's response to the Inspector's initial findings letter on the Examination of their new Local Plan was extended to 12 April 2024.</p> <p>Examination ongoing, Inspector's report and adoption anticipated late 2024.</p>	<p>TMBC responded to this consultation in February 2024, supporting the reduction in the scale of proposed growth east of Paddock Wood by 1000 dwellings, and the deletion of the Tudeley Village allocation from the submitted Plan.</p> <p>Notwithstanding TMBC's support for the proposed policy changes, the council remains concerned about the cross-boundary traffic impacts of growth upon the A228 north of Paddock Wood and the B2017 west of Paddock Wood, which links with the A26 at Woodgate Way, Tonbridge.</p> <p>Additional growth places further pressure upon the local road network which will be taken into consideration as officers prepare transport evidence to support the new TMBC Local Plan.</p>
Sevenoaks District Council	Preparing a new Local Plan. The regulation 18, part 2 consultation closed in January 2024. Regulation 19 consultation anticipated summer 2024.	<p>TMBC responded to the to the Sevenoaks Local Plan regulation 18 (part 2) consultation in December 2023. Support was expressed for development strategy options 2 and 3 as these either meet or exceed the projected need over the Local Plan period. Further clarity was requested regarding the spatial distribution of growth so that consideration could be given to any cross-boundary implications.</p> <p>Given the landscape constraints within Tonbridge and Malling especially within the west of the borough that is within the West Kent HMA (shared with Sevenoaks and Tunbridge Wells), it was expressed that TMBC was unlikely to be able to assist with any unmet need should this arise.</p> <p>TMBC and SDC have commissioned aligned Green Belt and transport evidence to support plan making.</p>

### 1.3 Legal Implications

1.3.1 The duty to cooperate is a legal test that is considered at the initial stage of Local Plan Examination (legal compliance). It can't be retrofitted should the appointed Inspector(s) consider that based upon the evidence submitted, the local planning authority has failed to demonstrate that it has met the duty. A failure to meet the duty would put at risk the progression of the Local Plan through the Examination process.

### 1.4 Financial and Value for Money Considerations

1.4.1 It is important that accurate DtC records are maintained to ensure that the authority is successful in meeting this legal duty. Failure to do could result in failing the duty which would put at risk the Local Plan process, resulting in expensive reworking of the timetable due to the staff time and consultant resources this would involve.

### 1.5 Equality Impact Assessment

1.5.1 The matters discussed in this report have low or no direct relevance to the substance of the Equality Act 2010. An Equalities Impact Assessment is being undertaken alongside the preparation of the next stages of the Local Plan.

### 1.6 Risk Assessment

1.6.1 As reported at the March 2024 meeting of this committee, the duty to cooperate is identified on the Local Plan risk register. The policy team will continue to take a robust approach to the recording of relevant meetings, maintain the monitoring grid and apply a legal compliance checklist/assessment in advance of submitting the Local Plan to the Secretary of State for Examination.

### 1.7 Recommendations

1.7.1 HPSSC is asked to recommend to Cabinet:

**(1) NOTE the contents of the report.**

Background papers:

Annex 1 – Planning Advisory Service, Simple Guide to Strategic Planning and the DtC  
Annex 2 - DtC Record of Engagement

contact: Bartholomew Wren  
Principal Planning Policy

Eleanor Hoyle  
Director of Planning, Housing and Environmental Health



## Simple Guide to Strategic Planning and the Duty to Cooperate

### Contents

- [1.](#) Why is strategic planning important?
- [2.](#) What is meant by the term 'strategic planning'?
- [3.](#) What happens if strategic planning issues are not properly addressed?
- [4.](#) How has strategic planning been done in the past?
- [5.](#) How will strategic planning be done in the future?
- [6.](#) What does the 'duty to cooperate' mean for councils?
- [7.](#) What does the 'duty to cooperate' mean?
- [8.](#) What new ways of working and skills may be needed to implement the 'duty to co-operate'?
- [9.](#) How will the 'duty to co-operate' be tested?
- [10.](#) What happens if a council or identified public body will not co-operate or cannot agree?

## 1. Why is strategic planning important?

The overarching priority for national planning policy (NPPF) ([link below](#)) is to deliver long term sustainable growth, ensuring that councils positively take into account the three pillars of sustainable development – economic, environmental and social - in their local plans. Many social, environmental and economic issues can only be effectively addressed over a number of local authority administrative boundaries. This is because people and businesses do not confine their activities to one council area. For example:

- employees may live in one area and work in another, sometimes travelling large distances on a daily basis
- suppliers may service many local shops from a small number of distribution centres linked to major transport hubs
- a retail development may attract customers from across a wide catchment area
- people may travel hundreds of miles to visit tourist attractions, leisure facilities or sporting venues on a regular basis
- manufacturing companies may source materials and supply goods from across the UK and beyond.

Similarly, from an environmental perspective:

- residents in some areas may consume water and power that has travelled hundreds of miles
- surface water run-off in one location may present a flooding hazard to communities further 'downstream'
- water and air pollution may have a damaging impact on environmental assets some distance away.

Local plans need to recognise these relationships and include policies to manage their impacts.

NPPF: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

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## 2. What is meant by the term 'strategic planning'?

The term 'strategic planning' refers to policies that address larger than local issues that cannot be dealt with by one local planning authority working alone and that are addressed and delivered through a local plan. For example:

- the provision for new housing across a major conurbation or wider housing market area
- the provision of major retail, leisure, industrial and other economic development across a travel to work area
- the provision of infrastructure for transport, waste treatment, energy generation, telecommunications, water supply and water quality
- requirements for minerals extraction
- the provision of health, security, and major community infrastructure facilities
- measures needed to address the causes and consequences of climate change, including managing flood risk and coastal change
- protection and enhancement of the natural and historic environment, including townscape.

The priority given to these issues will depend on local circumstances; strategic approaches may not always be needed. The sustainability appraisal scoping report should help to identify what is important for your locality.

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### 3. What happens if strategic planning issues are not properly addressed?

The NPPF (Paragraph 179 – link below) requires councils to work together to address strategic priorities across boundaries and development requirements which cannot be wholly met within their own areas.

Failure to do this will:

- lead to less sustainable plans
- reduce the ability to deliver infrastructure and inward investment
- undermine confidence in the ability of councils generally to make difficult political decisions and deliver on newly won freedoms.

Ultimately, if strategic planning matters are not properly addressed in a local plan, the plan will be found unsound at examination, significantly reducing the local authority's ability to manage development.

NPPF paragraph 179: <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

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### 4. How has strategic planning been done in the past?

From 2004 Regional Assemblies and Leaders Boards (from 2009) were responsible for strategic planning which was done through regional strategies. In November 2011, the Localism Act (link below) signalled the end of regional strategies which were officially revoked in 2013. Between 2011 and 2013, regional strategies still formed part of the statutory development plan and therefore continued to influence the strategic policies in local plans adopted before 2013.

In London the Mayor has been responsible for strategic planning through the London Plan since 1999 (link below). This sets the strategic framework for the borough local plans.

From 2008, the decisions on 'infrastructure of national importance' fell within the remit of the 'Infrastructure Planning Commission' (IPC) with decisions guided by a series of national policy statements (NPS) prepared by Government. In April 2012 the work of the IPC was absorbed into the Planning Inspectorate (link below).

Localism Act: <http://www.legislation.gov.uk/ukpga/2011/20/section/109/enacted>

London Plan: <http://www.london.gov.uk/priorities/planning/london-plan>

Planning Inspectorate: <http://infrastructure.planningportal.gov.uk/>

### 5. How is strategic planning done now?

Following revocation of the regional strategies in England (outside London), strategic planning is now the responsibility of unitary, district or borough councils. Authorities are expected to address strategic issues in local plans and demonstrate how this has been managed through the '**duty to co-operate**' set out in Section 110 of the Localism Act (link below) and amplified in Paragraphs 178-181 of the National Planning Policy Framework (NPPF) (link below) and in the National Planning Practice Guidance (NPPG) (link below).

The Mayor's London Plan (link below) continues to provide the strategic context for local plans produced by the boroughs. However both the Mayor and individual boroughs will be required to work with surrounding councils to address strategic issues and demonstrate that they have met the requirements of the duty to cooperate.

Decisions on 'infrastructure of national importance' continue to be made by the Secretary of State on the advice of the Planning Inspectorate (link below) and within the policy framework set by the National Policy Statements for major infrastructure.

Section 110 of the Localism Act: <http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted>

178-181 of the National Planning Policy Framework

(NPPF): <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

NPPG: <http://planningguidance.planningportal.gov.uk/blog/guidance/duty-to-cooperate/>

The Mayor's London Plan: <http://www.london.gov.uk/priorities/planning/london-plan>

Planning Inspectorate: <http://infrastructure.planningportal.gov.uk/>

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## 6. What does the 'duty to cooperate' mean for councils?

Section 110 of the Localism Act (link below) sets out the '**duty to co-operate**'. This applies to all local planning authorities, national park authorities and county councils in England – and to a number of other public bodies (see Question 7). The duty:

- relates to sustainable development or use of land that would have a significant impact on at least two local planning areas or on a planning matter that falls within the remit of a county council
- requires that councils set out planning policies to address such issues
- requires that councils and public bodies 'engage constructively, actively and on an ongoing basis' to develop strategic policies
- requires councils to consider joint approaches to plan making.

The NPPF (Paragraph 156) (link below) sets out the strategic issues where co-operation might be appropriate. Paragraphs 178-181 give further guidance on 'planning strategically across local boundaries', and highlight the importance of joint working to meet development requirements that cannot be wholly met within a single local planning area, through either joint planning policies or informal strategies such as infrastructure and investment plans. Further guidance on how the **duty to co-operate** should be applied in local planning is included in the National Planning Practice Guidance (NPPG) (link below).

Section 110 of the Localism Act: <http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted>

The NPPF (Paragraph 156): <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

National Planning Practice Guidance (NPPG): <http://planningguidance.planningportal.gov.uk/blog/guidance/duty-to-cooperate/>

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## 7. What does the 'duty to cooperate' mean for:

### Other public bodies?

- The 'duty to co-operate' also covers a number of public bodies in addition to councils. These bodies are set out in Part 2 of the Town & Country Planning (Local Planning) (England) Regulations 2012 (link below) and comprise:
- Environment Agency
- Historic Buildings and Monuments Commission for England (English Heritage)
- Natural England
- Mayor of London
- Civil Aviation Authority
- Homes and Communities Agency
- Clinical Commissioning Groups
- National Health Service Commissioning Board
- Office of the Rail Regulator
- Highways Agency
- Transport for London
- Integrated Transport Authorities
- Highway Authorities
- Marine Management Organisation

These bodies are required to co-operate with councils on issues of common concern to develop sound local plans.

### Local Enterprise Partnerships?

As LEPs are not defined by statute, they are **not** covered by the '**duty to cooperate**'. However, LEPs are identified in the regulations as bodies that those covered by duty 'should have regard to' when preparing local plans and other related activities. Their role in supporting local authorities in plan preparation, particularly in developing the evidence base, is also highlighted in NPPF (Paragraph 160).

LEPs are playing an increasingly important role in the funding of infrastructure and other development to support long term sustainable growth. They are already responsible for **Regional Growth Fund** (link below) and **Growing Places Fund** (link below) but from 2014 will have significantly more responsibility for strategic investment priorities through **Growth Deals** delivered through **Strategic Economic Plans** (link below). From 2014 LEPs will also have responsibility for managing the **European Structure and Investment Funds Growth Programme** (link below) which brings together a number of European funding streams focusing on innovation, supports for SMEs, low carbon, skills, employment and social inclusion.

Regional Growth Fund: <https://www.gov.uk/understanding-the-regional-growth-fund>

Growing Places Fund: <https://www.gov.uk/government/publications/the-growing-places-fund-investing-in-infrastructure>

Strategic Economic Plans: <https://www.gov.uk/government/publications/growth-deals-initial-guidance-for-local-enterprise-partnerships>

European Structure and Investment Funds Growth

Programme: <https://www.gov.uk/government/publications/european-structural-and-investment-funds-strategies-supplementary-guidance-to-local-enterprise-partnerships>

## Local Nature Partnerships?

Local Nature Partnerships (LNPs) (link below) are also prescribed in the regulations as bodies which local authorities 'should have regard to' given their role in the management of natural environmental assets, supporting biodiversity and, in particular, identifying Nature Improvement Areas. They are relatively new partnerships and have evolved from recommendations in the Natural Environment White Paper (link below).

The NPPF (Paragraph 165) (link below) encourages local planning authorities to work with LNPs, recognising the valuable input they can make to, for example, assessments of ecological networks and Sustainable Environmental Assessments (SEA) of the local plan.

LNPs: <https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/local-nature-partnerships>

Natural Environment White Paper: <http://sd.defra.gov.uk/2011/06/the-natural-choice-securing-the-value-of-nature/>

The NPPF (Paragraph 165): <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

## Private sector utility providers?

Private sector utility providers are **not** covered by the **duty to co-operate**. However it is their interests and those of councils to be involved in planning. LEPs may provide a forum through which this dialogue can take place.

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## 8. What ways of working and skills may be needed to implement the 'duty to co-operate'?

Co-operation on strategic issues is not new. Councils have a history of working together and with other bodies to address planning issues of common concern and new practice is emerging. Some examples of joint arrangements are set out below.

- Commissioning of **joint evidence** to inform individual core strategies on key issues.
- Development of **'aligned' plans** across several local planning areas that include complementary policies on key issues: for example the 'aligned' local plans in Greater Nottingham (link below)
- **Joint local plans** providing a single plan across several local planning areas, overseen by each authority separately or by a joint committee: for example the Black Country's Joint Core Strategy (link below).

However, until 2011 this kind of joint working has been done mainly to deliver policy objectives set out in structure or regional plans. The scope of such arrangements is now the responsibility of individual local authorities and will have to be agreed locally, with partners, to meet local circumstances.

New approaches, such as non-statutory local investment plans or local strategic statements (setting out broader strategic objectives) are not required but are proving to be useful to local authorities when demonstrating that they have properly addressed strategic planning matters in the local plan and have complied with the duty to cooperate. Two examples of this are the Coastal West Sussex and Greater Brighton Local Strategic Statement (link below) and the Cambridgeshire and Peterborough Memorandum of Cooperation (link below). Some

authorities are also developing new strategic planning frameworks as part of the LEP's Strategic Economic Plans, such as the Greater Birmingham and Solihull Spatial Plan for Recovery and Growth (link below).

All councils will need to further develop partnership working skills at officer and member levels for effective co-operation to work. Strong leadership by councillors and senior officers will be particularly important.

PAS has produced further details on joint working 'good practice' that has emerged under the new strategic planning arrangements: [http://www.pas.gov.uk/strategicplanning/-/journal\\_content/56/332612/4077356/](http://www.pas.gov.uk/strategicplanning/-/journal_content/56/332612/4077356/)

Greater Nottingham: <http://www.nottinghamcity.gov.uk/article/5770/Local-Plan>

Black Country's Joint Core Strategy <http://blackcountrycorestrategy.dudley.gov.uk/>

Coastal West Sussex and Greater Brighton Local Strategic Statement: <http://www.coastalwestsussex.org.uk/cws-in-partnership/cws-strategic-planning-board/>

Cambridgeshire and Peterborough Memorandum of Cooperation: (PDF 21 pages 1.11MB): <https://www.scams.gov.uk/sites/www.scams.gov.uk/files/documents/Memorandum%20of%20Co-operation.pdf>

Greater Birmingham and Solihull Spatial Plan for Recovery and Growth: <http://centrefenterprise.com/strategic-spatial-framework-plan/>

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## 9. How will the 'duty to co-operate' be tested?

The 'duty to co-operate' is a legal requirement of the plan preparation process (link below). It is the first thing that the Planning Inspectorate (PINS) will look at before considering whether a plan is sound. PINs will need to see sufficient evidence to demonstrate that the 'duty to co-operate' has been undertaken appropriately for the plan being examined.

There is no fixed format for how this evidence should be presented, nor what it should comprise, but it should be:

- flow from the issues that have been addressed jointly
- highlight the practical policy outcomes that have resulted from the joint work.
- succinct, using weblinks to evidence where possible

A 'tick box' approach or a collection of correspondence will not be sufficient. Councils will also need to show how they have considered joint plan-making arrangements, what decisions were reached and why. Councils need to report how the **duty** is being taken forward on an ongoing basis – effective cooperation does not end at adoption – it should continue through plan implementation and its effectiveness should be monitored through the Annual Monitoring Report to help flag up where a review of policy is needed.

Just because a local plan passes the legal test of the **duty**, it does not mean it will be found 'sound' in dealing with strategic matters. The policy outcomes of co-operation will need to be tested against the evidence at examination in the normal way as set out in Paragraph 182 of the NPPF.

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Duty to co-operate: <http://www.legislation.gov.uk/ukpga/2011/20/section/110/enacted>

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## 10. What happens if a council or identified public body will not co-operate or cannot agree?

Co-operation works two ways. Situations may arise where an invitation to co-operate is not accepted, or agreement on shared policy outcomes cannot be reached.

Where co-operation is not forthcoming, PINs are likely to consider the extent to which the request to co-operate is 'reasonable' based on the evidence. If the deliverability of the plan is dependent on a reasonable request for co-operation by the plan-making body that is not forthcoming, the plan may still be found unsound unless some form of working arrangement can be brokered.

If PINS consider that the legal requirement to co-operate has been met through joint working but there is disagreement about the policy outcome (for example the proposed level of housing provision), then this will need to be resolved through the examination process based on the evidence.

All of these scenarios will cause delay and uncertainty and should be avoided if possible. Councils and other public bodies covered by the **duty** should make every effort to ensure that strategic issues are properly addressed at the formative stages of the plan preparation process, and that any major disagreements are resolved well before the examination.

Further information:

PAS Making Strategic Planning Happen - [http://www.pas.gov.uk/strategicplanning/-/journal\\_content/56/332612/3603478/ARTICLE](http://www.pas.gov.uk/strategicplanning/-/journal_content/56/332612/3603478/ARTICLE)



## Duty to Cooperate Record of Engagement

Duty to Cooperate record of meetings and engagement between Tonbridge and Malling Borough Council, other local authorities and public bodies regarding Local Plan matters. This record begins from July 2021 when the council recommenced plan making and is not intended to be an exhaustive list of all of the engagement and partnership work that has been undertaken. Specific Duty to Cooperate meetings are held with neighbouring authorities, these are identified in bold in the schedule below.

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
Wealden District Council	10.05.24	Response to request from Wealden District Council dated 25.04.24 for assistance with unmet housing and employment needs.	Written response submitted advising that TMBC was not able to assist with unmet needs.
Medway Council	25.03.24	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	TMBC and Medway officers agreed to share and discuss evidence base studies once these were published.
Tunbridge Wells Borough Council	26.02.24	Consultation on proposed changes to the Tunbridge Wells Borough Local Plan (2020 - 2038) response to Examination Inspector's initial findings	Written response submitted. This supported the reduced scale of growth at Paddock Wood and deletion of Tudeley Village allocation from the submitted Plan. Ongoing concerns regarding cross boundary traffic arising from growth at Paddock Wood were outlined.
Maidstone Borough Council	12.02.24	Examination of the Maidstone Local Plan Review – Inspector additional consultation on technical documents 2024.	Written response submitted outlining concerns regarding proposed mitigation for M2 Junction 2.
Kent County Council and JBA consulting	09.01.24	Meeting to discuss TMBC's Strategic Flood Risk Assessment.	To discuss KCC response to the draft SFRA.
Kent County Council	04.01.24	Meeting to discuss SuDS and emerging policy in new Local Plan.	Discussed various aspects of the draft SFRA and surface water flooding, including new draft SuDS policy.
Sevenoaks District Council	13.12.23	<b>DtC meeting</b> (including portfolio holders) - To share Local Plan updates	The Sevenoaks Local Plan (Regulation 18) consultation was discussed, including growth options. TMBC

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
		and discuss any cross-boundary matters.	agreed to provide a response to the consultation.
Gravesham Borough Council	08.12.23	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Officers agreed to keep each other informed of evidence and cross-boundary matters, including landscape, highways and the impacts of Lower Thames Crossing.
Maidstone Borough Council	16.11.23	<b>DtC meeting</b> – To share Local Plan updates and discuss and cross-boundary-matters.	Gypsy and Traveller issues were a focus. Maidstone was progressing separate Gypsy and Traveller DPD. TMBC Gypsy and Traveller Accommodation Assessment preparation was ongoing.
Tunbridge Wells Borough Council	07.11.23	<b>DtC meeting</b> – To share Local Plan updates and discuss any cross-boundary matters.	TWBC provided an update on revised draft Tudeley and Paddock Wood strategic allocations, and cross-boundary implications upon Tonbridge and other communities.
Medway Council	16.10.23	<b>DtC meeting</b> – To share Local Plan updates and discuss any cross-boundary matters.	No actions agreed.
Sevenoaks District Council	12.10.23	<b>DtC meeting</b> – To share Local Plan updates and discuss any cross-boundary matters.	Emerging spatial strategies and evidence base work discussed, including Green Belt and transport modelling which were aligned.
Gravesham Borough Council	15.09.23	<b>DtC meeting</b> – To share Local Plan updates and discuss any cross-boundary matters.	No actions agreed.
Kent County Council	13.09.23	District liaison meeting with various service leads to discuss growth and emerging Local Plan infrastructure requirements.	Local Plan update shared by TMBC officers. Infrastructure and Service capacity issues were discussed covering, highways, education, flood risk and heritage.

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
Sevenoaks District Council, Tunbridge Wells Borough Council and JBA consulting	06.09.23	Meeting with West Kent districts to discuss TMBC's Strategic Flood Risk Assessment modelling.	Agreed with JBA to share, flood zone 2 and 3b modelling outputs as these become available.
Tunbridge Wells Borough Council	24.08.23	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	TWBC officers provided update on work that was ongoing to address their Inspector's concerns re Tudeley and Paddock Wood allocations.
Maidstone Borough Council	02.08.23	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Progress on Local Plans was discussed including preparation of evidence with specific focus upon Gypsy & Traveller accommodation needs, highways and minerals and waste.
Kent County Council	20.07.23	Minerals Site Plan Regulation 18 consultation.	Written response submitted. Concerns outlined regarding the proposed new hard rock site at Oaken Wood and the impact upon the ancient woodland, ecology and biodiversity.
Maidstone Borough Council	17.07.23	To discuss the Kent Minerals Sites Plan Regulation 18 consultation.	A new hard rock site was proposed at Oaken Wood that straddles the borough boundary. Agreed that both authorities had significant concerns over the potential impacts and their respective responses would reflect this.
Maidstone Borough Council	30.6.23	Meeting to discuss Maidstone's Design and Sustainability DPD.	Local Plan updates shared including timings of DPD Regulation 19 consultation. Integration of Local Plan policies with DPD discussed as well as TMBC's previous consultation comments.
Gravesham Borough Council	14.6.23	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Updates were provided regarding respective Local Plan timetables and evidence preparation. Timetable. Officers agreed

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
			to provide future updates regarding key evidence and potential cross-boundary matters, including transport modelling, Lower Thames Crossing, Green Belt and AONB impacts as well as Gypsy and Traveller needs.
Medway Council	12.6.23	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Updates shared on Local Plan progress, timetables, and evidence. Potential cross-boundary site discussed. Officers agreed to continue to liaise in regarding matters including transport modelling and Lower Thames Crossing.
Maidstone Borough Council	26.5.23	Response to the Maidstone Borough Council, Design and Sustainability DPD – Regulation 18b preferred approach.	Written response submitted.
West Kent including Sevenoaks District Council, Tunbridge Wells Borough Council	18.05.23	<b>Joint DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	A joint West Kent officer update meeting follow the May elections, covering Local Plan progress updates, evidence and infrastructure matters as well as changes to political representation.
Tunbridge Wells Borough Council	28.04.23	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	TWBC officers updated on work responding to their Examination Inspector’s initial findings, this was ongoing including preparation of a Bus Study. TMBC Local Plan evidence preparation was ongoing, including transport modelling.
Tunbridge Wells Borough Council	27.04.23	Meeting to discuss TMBC’s Strategic Flood Risk Assessment modelling.	Agreed to share the JBA SFRA fluvial flood risk modelling to Tunbridge Wells BC – for areas around Paddock Wood.

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
Maidstone Borough Council	17.04.23	Response to Regulation 18a Gypsy, Traveller & Travelling Show people consultation.	Written response submitted. This advised that TMBC were unlikely to be able to assist with unmet need.
Tunbridge Wells Borough Council	23.03.23	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	TWBC Local Plan update on work progressing to respond to Examination Inspector's initial findings, including transport modelling. Statement of Common Ground reviewed.
Maidstone Borough Council	07.03.23	Response to Maidstone's Local Plan Examination Inspectors Matters Issues and Question's.	Written response submitted. This covered the Inspectors matters, issues and questions on Matter 8 (Housing Delivery), Issue 3 (Provision for Gypsies, Travellers, Travelling Showpersons and households not seeking bricks and mortar homes)
Sevenoaks District Council	11.01.23	Response to The Sevenoaks District Council Local Plan Regulation 18 consultation & request for help with unmet need.	Written response provided. Advised SDC that TMBC was not able to assist owing to similar environmental constraints and market absorption rates.
Kent County Council, Tunbridge Wells Borough Council	16.12.22	<b>DtC meeting</b> - To share Local Plan updates and discuss cross-boundary matters specifically relating to Tudeley Village.	Local Plan and evidence updates shared, relating to Tunbridge Wells Bus Study, transport modelling and active travel work.
Maidstone Borough Council	12.12.22	Response to the Maidstone Reg 18 Design and Sustainability DPD consultation.	Written response submitted.
Maidstone Borough Council	08.12.22	Meeting to introduce Maidstone's Regulation 18 consultations on their Design and Sustainability and Gypsy and Traveller	TMBC agreed to review and respond to the forthcoming consultations.

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
		Development Plan Documents.	
Sevenoaks District Council	08.12.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	SDC to write to TMBC requesting a response to the consultation and highlighting unmet need.
Tunbridge Wells Borough Council	06.12.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Update provided on TWBC Local Plan Examination and Inspector's initial findings, primarily in respect of Tudeley Village.
Kent County Council	30.11.22	KCC Minerals and Waste Local Plan Regulation 18 II consultation	Written response submitted covering - Local Plan timeline, vision, objectives, policies, sustainability appraisal, strategic flood risk assessment and safeguarding map.
West Kent including Sevenoaks District Council, Tunbridge Wells Borough Council	22.11.22	<b>Joint DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Short presentation provided on Sevenoaks Local Plan Regulation 18 consultation, with updated provided on key sites and evidence preparation.
Maidstone Borough Council	04.11.22	<b>DtC meeting</b> (including portfolio holders) - To share Local Plan updates and discuss any cross-boundary matters.	Short presentation shared on TMBC Local Plan Regulation 18 Consultation.  Update provided on Maidstone Local Plan Examination.
Sevenoaks District Council	02.11.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Ongoing Local Plan evidence work discussed, including viability, Green Belt, landscape, biodiversity, open space & play space, air quality, Habitats Regulations Assessment, Equality Impact Assessment.
Kent County Council	20.10.22	District liaison meeting with various service leads to discuss growth and emerging Local Plan infrastructure requirements.	Local Plan update shared by TMBC officers. Infrastructure and Service capacity issues were discussed covering,

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
			highways, education, flood risk and heritage.
Medway Council	10.10.22	<b>DtC meeting</b> (with members) this followed the officer meeting below.	Short presentation on TMBC Reg 18 Consultation.
Medway Council	10.10.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Short presentation shared on TMBC Reg 18 consultation.  Update and timescales for Medway Council Local Plan work.  Lower Thames Crossing DCO discussed.
Maidstone Borough Council	06.10.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Short presentation on TMBC Reg 18 Consultation.  Maidstone Local Plan Examination update.  Maidstone advised on preparation of DPD's on Design and Sustainability and Gypsy and Travellers  Flood Risk and water cycle matters discussed.
West Kent including Sevenoaks District Council, Tunbridge Wells Borough Council	04.10.22	<b>Joint DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	TMBC to share list of their Local Plan evidence to be commissioned, in consideration of opportunity to joint commissioning.  SDC identified that they will have a potential circa 6000 dwelling shortfall, however varying scenarios were being considered.
Gravesham Borough Council	29.09.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Short presentation on TMBC Reg 18 consultation shared.  Gravesham informed that TMBC would be engaged on their gypsy and traveller work when this is progressed.
West Kent including Sevenoaks District Council,	07.09.22	<b>Joint DtC meeting</b> - To share Local Plan updates	Local Plan updates shared.

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
Tunbridge Wells Borough Council		and discuss any cross-boundary matters.	Matters discussed – housing, Green Belt, transport, gypsy and traveller needs and TMBC Reg 18 Local Plan Consultation.
West Kent including Sevenoaks District Council, Tunbridge Wells Borough Council	21.07.22	<b>Joint DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Local Plan updates shared. Strategic matters discussed including – Green Belt, transport, gypsies and travellers and development in protected landscapes.
Maidstone Borough Council	18.05.22	Meeting with Maidstone to discuss TMBC’s representations to their Local Plan Regulation 19 re Gypsies and Travellers.	No actions agreed.
West Kent including Sevenoaks District Council, Tunbridge Wells Borough Council	11.05.22	<b>Joint DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Local Plan updates shared. Other matter discussed included requests for assistance with unmet need from other authorities, ability of authorities to meet their own needs and ensuring a consistent approach to exceptional circumstances for Greenbelt release and major development in national landscapes.
Medway Council	03.05.22	<b>DtC meeting</b> (including portfolio holders) - To share Local Plan updates and discuss any cross-boundary matters.	Discussed the following strategic issues, gypsy and traveller needs, economic development, infrastructure including Lower Thames Crossing, flood risk, air quality and future engagement.
Medway Council (meeting cut short and rearranged for 03.5.22).	19.04.22	<b>DtC meeting</b> (including portfolio holders) - To share Local Plan updates and discuss any cross-boundary matters.	Discussed strategic and cross boundary matters including housing sites and transport.



Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
Maidstone Borough Council	29.03.22	<b>DtC meeting</b> (including portfolio holders) - To share Local Plan updates and discuss any cross-boundary matters.	Updates shared on matters including – housing, employment including retail, protected landscapes, biodiversity, air quality, flooding, highways, education and gypsy and traveller needs.
Maidstone Borough Council	28.03.22	Final agreement of Statement of Common Ground	SoCG signed 28.03.
Tunbridge Wells Borough Council	22.03.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Update on TWBC Local Plan and potential for unmet housing need in the West Kent Housing Market Area.  Cross-boundary working on highways and flooding matters in relation to strategic sites.
Gravesham Borough Council	09.03.22	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Updates shared on matters including – housing and objectively assessed needs, development strategy and strategic sites, gypsies and travellers, employment including retail, gypsy and traveller needs, highways, flood risk and protected landscapes.
West Kent including Sevenoaks District Council, Tunbridge Wells Borough Council	21.02.22	<b>Joint DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Local Plan updates shared on matters including – housing, employment including retail, Infrastructure, opportunities for commissioning joint evidence.
Kent County Council	09.02.22	Response to the Kent County Council Minerals and Waste Plan Reg 18 Consultation.	Written response submitted. Comments related to, vision, objectives, policies and text, and the Sustainability Appraisal scoping report.
Sevenoaks District Council	08.02.22	<b>DtC meeting</b> (including portfolio holders) - To share Local Plan updates	Updates shared on matters including – housing, gypsy and traveller needs, economic development,

Other Local Authorities or Public Bodies Involved	Date	Purpose of Meeting or Engagement	Summary of Key Actions and/or Outcomes
		and discuss any cross-boundary matters.	infrastructure, flood risk, environment, air quality and future engagement.
Maidstone Borough Council	12.12.21	Response to Regulation 19 Local Plan consultation.	Written response submitted.
Tunbridge Wells Borough Council	28.10.21	Tunbridge Wells Local Plan Examination Statement of Common Ground.	Signed Statement of Common Ground submitted.
Medway Council	13.10.21	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Updates shared on matters including – housing, economic development, transport, environment, and unmet needs requests from other areas.
Maidstone Borough Council	27.09.21	<b>DtC meeting</b> (including portfolio holders) - To share Local Plan updates and discuss any cross-boundary matters.	Members were introduced to the DtC engagement process. Updates shared on draft SoCG, highways infrastructure at Hermitage Lane, housing and gypsy and traveller needs.
Maidstone Borough Council	04.08.21	<b>DtC meeting</b> - To share Local Plan updates and discuss any cross-boundary matters.	Updates shared on matters including – Maidstone Local Plan timetable key dates, draft Statement of Common Ground, cross boundary transport issues, housing delivery including proposed garden communities, employment, gypsies and travellers, biodiversity and environment.
Tunbridge Wells Borough Council	03.06.21	Response to Regulation 19 Local Plan consultation.	Written response submitted.

## TONBRIDGE & MALLING BOROUGH COUNCIL

### HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

21 May 2024

Report of the Director of Planning, Housing and Environmental Health

#### Part 1- Public

#### Matters for Recommendation to Cabinet - Non-Key Decision

### 1 TRANSFER INCENTIVE SCHEME

#### Summary

**This report recommends the approval of a new transfer incentive scheme policy to help Tonbridge & Malling B.C. make the best use of existing housing stock.**

#### 1.1 Background

- 1.1.1 Tonbridge & Malling B.C. (TMBC) needs to ensure that the most effective use of the housing stock in its borough is being made. Where properties are under-occupied or where adapted properties are occupied by those who do not require adaptations, those in need of larger properties or those with disabilities are less likely to be rehoused. A transfer incentive scheme policy is intended to help ensure that properties are being matched to housing need and contributes to other approaches to manage under occupancy taken by both TMBC and housing providers.
- 1.1.2 An action to investigate a pilot project to address under occupation formed part of the Housing Strategy Action plan for year 2 2023-24.
- 1.1.3 A Transfer Incentive Scheme is attached at **Annex 1**. This provides incentive payments ranging from £1,500 to £3,500 depending on the size of the property freed up with an additional £2,000 for the freeing up of an adapted property.
- 1.1.4 It is recognised that a financial incentive may not be the only factor or indeed the most important factor in encouraging a tenant to downsize. We will work with the relevant housing provider to provide support where required in terms of easing any move and we will link in where appropriate with other agencies who could offer practical help e.g. support with new fixtures and fittings etc.

#### 1.2 Legal Implications

- 1.2.1 Ensuring the best use of the housing stock contributes towards the legal housing duties we have under Part 6 and 7 of the Housing Act 1996.

### **1.3 Financial and Value for Money Considerations**

- 1.3.1 The funding for this scheme will come from existing budgets. For applicants in receipt of a relevant means tested benefit this will be from the Discretionary Housing Payments (DHP) budget and for others it will be from the Housing Assistance reserve.
- 1.3.2 The scheme will be closely monitored for take up and applications managed with the existing budget available. Where it is determined there is no available funding in year, applications may be deferred to the following year.

### **1.4 Risk Assessment**

- 1.4.1 There are no perceived risks with the adoption of this policy.

### **1.5 Recommendations**

- 1.5.1 That Members **RECOMMEND** to Cabinet the approval of the transfer incentive scheme as detailed at Annex 1.

Background papers:

Nil

contact: Linda Hibbs, Head of  
Housing and Health/ Gillian  
Aylett, Housing Strategy and  
Enabling Manager

Eleanor Hoyle  
Director of Planning, Housing and Environmental Health

# Transfer Incentive Scheme

Version: 1

Approved: [date]

## 1.0 Introduction

- 1.1 Tonbridge and Malling Borough Council is committed to working with its Registered Provider partners to make best use of social housing stock in the borough. There is a limited supply of rented social housing and adapted social housing in the borough. This Transfer Incentive Scheme (the scheme) is aimed at social housing tenants under-occupying their homes or who no longer need an adapted home.
- 1.2 The scheme outlines the Council's approach to enabling tenants to move to smaller homes if they are under-occupying their current home. The Scheme is for Registered Provider tenants who are living in family size accommodation, have one or more bedrooms they no longer need and are interested in downsizing or ending their tenancy. Tenants have the option of transferring to another social housing property or moving to the private sector.
- 1.3 The scheme is also available for tenants living in an adapted property who no longer require those adaptations and could move to another home without adaptations (even with the same number of bedrooms), freeing up an adapted property for someone who needs it.
- 1.4 The scheme relates to tenants of social or affordable rent properties. It does not apply to intermediate affordable housing tenures such as shared owners, leaseholders or intermediate rent or any accommodation occupied on unsecure terms such as temporary accommodation or licence agreement.

## 2.0 Scope and criteria

- 2.1 The scheme is available to social housing tenants living in the Tonbridge and Malling Borough who:
  - Hold a Secure tenancy agreement (Assured or Secure) – starter or introductory tenancies are not eligible
  - Have been assessed and accepted onto the housing register for a transfer move. You can find more information on applying to the housing register [here](#)
  - Occupy a general needs or adapted property
  - Agree to transfer to a smaller property that meets their assessed housing need and/or a non-adapted property and provide vacant possession of their current

home. Housing need is assessed through the Housing Allocations Scheme, with one spare room allowed for households who are downsizing or moving home under this scheme.

- Are under-occupying or living in an adapted home and relinquish their home and tenancy, moving out of their social housing home into another tenure such as private rental or home ownership. Once the tenant has formally ended their tenancy and given vacant possession of the home to the Registered Provider payments can be released.

2.2 There are circumstances that will exclude tenants from being eligible for the Transfer incentive scheme as follows:

- Any form of legal or possession action; possession orders, Notice of Seeking Possession, demotion notice
- Where the tenant has previously received a Transfer Incentive Scheme payment or similar incentive from their Registered Provider landlord.
- Where a Registered Provider will not accept the creation of a new tenancy following any policies they have in place on allocations and tenancies.

2.3 As well as moving through a transfer to another social home via the Housing Register, tenants who may choose to move by buying a home or renting privately, are also eligible for the incentive scheme as they will be relinquishing a social home.

2.4 An adapted property is a home with major adaptations for example a through floor lift, level access to the property in the form of a permanent ramp or similar or accessible bathroom such as wet room.

## 3.0 Incentive payments

3.1 Incentive payments under this scheme to qualifying tenants are:

- £1,500 if the property freed up is a two bedroom home
- £2,500 if the property freed up is a three bedroom home
- £3,000 if the property freed up is a four bedroom home
- £3,500 if the property freed up is a five or more bedroom home
- £2,000 if the property freed up is an adapted property, even if the property moved to is a home with the same number of bedrooms. This can be in addition to the amounts above.

3.2 The amounts above for downsizing moves are by the number of bedrooms at the home being downsized from and freeing up to the housing stock.

3.3 The size of the property a qualifying tenant is able to move to will be assessed and agreed through a Housing Register application in line with the Council's Housing

[Allocations Scheme](#) with an additional 'spare' room allowed for transfer moves under this scheme.

- 3.4 Payment is made once the Registered Provider confirms the tenancy for the new home has been signed. For a move to the private sector, proof of the new tenancy or home ownership will be needed before any payment is issued. Payment will be made by BACS transfer only.
- 3.5 Incentive payments under this scheme are subject to budget limits, meaning:
- Once the annual budget for the scheme is met no further payments will be made through the scheme unless further budget provision can be identified. We may need to assist with a transfer in the following financial year.
  - While the offer is operating with budget available during a financial year, priority will be given to those moving from accommodation that is most needed; i.e. larger family homes with 4 or more bedrooms or adapted properties.

## 4.0 Approach to transfers - application and assessment

- 4.1 Tenants who believe they are eligible for the transfer incentive scheme will need to be accepted onto and have a live application on the Housing register. The homes that can be bid on through the Kent HomeChoice choice based lettings system online will be confirmed through a housing register application.
- 4.2 Tenants accepted onto the Housing Register are given priority linked to the extent they are under-occupying their current home.
- 4.3 The Council may make direct offers of accommodation for transfer households downsizing or moving from a wheelchair adapted home.
- 4.4 If a tenant is under-occupying an adapted property (which has been funded through a disabled facilities grant) the Council will work with the Registered Provider to try and find a suitable smaller property that is already adapted to meet the households needs. Where this is not possible, a smaller property that needs adaptations will be considered with suitability and extent of works needed to be informed by an occupational therapist assessment.
- 4.5 To apply for the scheme if you are moving into the private sector, whether renting or buying, you'll need to complete the transfer incentive form at least a month before the move. Proof of the new tenancy or home ownership will be needed before any payment is issued.

## 5.0 Reviews

- 5.1 If an applicant for this scheme is not happy with how this scheme has been applied or believe the council has not followed this scheme as set out in this document they can request a review.
- 5.2 Review requests need to be made within 21 calendar days of receiving the original decision stating why the applicant is not happy with how the scheme has been applied or why the scheme has not been followed.
- 5.3 You can request a review by email to [housing.services@tmbc.gov.uk](mailto:housing.services@tmbc.gov.uk) or by post to: Housing Services, Tonbridge and Malling Borough Council, Gibson Building, Gibson Drive, Kings Hill, West Malling. ME19 4LZ.

## 6.0 Monitoring and review

- 6.1 This scheme offer will be reviewed annually, or sooner if required by changes due to budget, legislation or relevant case law.
- 6.2 Minor changes, which make no significant difference to service provision, will be made to the document under delegated authority by the Director of Planning, Housing and Environmental Health in consultation with the Cabinet Member for Finance and Housing.



**HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE – UPCOMING MATTERS**

**2024-25**

C=Council; CAB = Cabinet; DEL = Delegated to Committee; INFO = matters for information. Cabinet are responsible for ALL Key Decisions (KD). Some Non-Key Decisions (NKD) can be taken by Cabinet Members outside of/following the meeting. Cabinet member DN Y/N, seeks indication whether the decision is anticipated to be taken by the relevant Cabinet Member following the HPSSC meeting, or whether it is anticipated to go to the next Cabinet meeting for a decision to be taken by the Cabinet as a whole.

<b>DECISION (TITLE)</b>	<b>DESCRIPTION</b>	<b>C/CAB/ DEL/INFO</b>	<b>KD/NKD</b>	<b>CAB MEMBER DN Y/N</b>	<b>PART 1 OR 2</b>	<b>MEETING DATE</b>	<b>OFFICER IN PERSON ATTENDANCE Y/N</b>
Local Plan	Update on current position	CAB	NKD	N	1	18 June 2024 (Extra)	
Housing Strategy Update & Year 3 Action Plan (deferred from March meeting)	To provide an update on progress to date against the Housing Strategy and draft action plan for year 3	CAB	NKD	N	1	16 July 2024	Y
Key Performance Indicators Work Programme							
						24 September 2024	
Key Performance Indicators Work Programme							
						10 December 2024	
Key Performance Indicators Work Programme							

DECISION (TITLE)	DESCRIPTION	C/CAB/ DEL/INFO	KD/NKD	CAB MEMBER DN Y/N	PART 1 OR 2	MEETING DATE	OFFICER IN PERSON ATTENDANCE Y/N
						18 March 2025	
Key Performance Indicators							
Work Programme							

# Agenda Item 11

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 12

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 13

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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