

**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**PLANNING and TRANSPORTATION ADVISORY BOARD**

**12 January 2016**

**Report of the Director of Planning, Housing and Environmental Health Services**

**Part 1- Public**

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

**1 PLANNING REFORMS**

**This report updates Members of the Board on the ongoing programme of Government Planning Reforms and seeks endorsement of a suggested response to a Department for Communities and Local Government (DCLG) consultation on proposed changes to national planning policy published in December.**

**1.1 Introduction**

1.1.1 Since the last update to the Board in September there have been a significant number of proposals for further reforms to the planning system including the Housing and Planning Bill, which is summarised in this report for information. In addition, responses have been sought by the DCLG to a consultation on proposed changes to national planning policy for which the deadline is the 25<sup>th</sup> January. **[ANNEX 1]** to this report sets out the 22 questions with proposed responses for endorsement.

**1.2 A Summary of Recent Planning Reforms**

**1.2.1 The Housing and Planning Bill**

1.2.2 At the time of writing, the Housing and Planning Bill (previously described as the Housing Bill in the Queen's Speech in May 2015) had reached the Committee stage in the House of Commons. The Bill contains a number of significant legislative changes for the planning system including:

**1.2.3 Planning Permission in Principle (PPIP)**

1.2.4 PPIP is a new form of automatic consent intended to offer developers more certainty. The Government proposes that PPIP be granted in one of two ways, the first is on adoption of a qualifying document that allocates specified kinds of sites, the second route is by application from a developer to the Local Planning Authority (effectively an outline planning consent).

- 1.2.5 In future, Local or Neighbourhood Plans or new Brownfield Registers (also proposed in the Bill) may have land allocations, which effectively already have outline planning permission (initially only for housing, but other uses may be added). Detailed matters would be addressed as part of a 'Technical Details Consent' and proposals may still be refused in the light of these, but the principle of development would be established.
- 1.2.6 Register of Brownfield Land
- 1.2.7 The Bill introduces a new requirement on Local Planning Authorities to compile and keep up to date a new Brownfield Register of previously developed land suitable for housing. The Secretary of State will set out criteria for including land on the Register (for example, sites should have a reasonable expectation for delivering 5 or more dwellings in the near future) and national and local planning policies will also have to be taken into consideration, so if, for example, a site is designated in a Local Plan for employment uses, it would not have to be included on the Register as being suitable for housing.
- 1.2.8 Starter Homes
- 1.2.9 Two new duties are proposed for local authorities in the Bill specifically in relation to Starter Homes, the government initiative whereby new-build houses will be available to first-time buyers under the age of 40 at a discount from the market rate. The first is a general duty to promote the supply of Starter Homes when planning functions are being carried out - for example, when preparing local plans and determining applications - and the second is a specific duty in relation to decisions on planning applications.
- 1.2.10 The specific duty will be a requirement to ensure that Starter Homes are delivered "on all reasonably sized sites", the Government says. Secondary legislation will set out the percentage of Starter Homes that will be required on different sizes of site and in different areas. Local Authorities will be able to exercise discretion where it is clear that the requirement would make sites unviable. If a council is failing to comply with its Starter Homes duties and a policy in its Local Plan is incompatible with these duties, the Secretary of State may prevent the application of that policy when certain planning decisions are taken.
- 1.2.11 Enhanced powers for the Secretary of State to intervene in plan-making and examinations
- 1.2.12 The Government argues that the Secretary of State's current powers of intervention are unhelpful because they only allow plan-making to be taken over in its entirety. Instead, it wants to enable "more targeted and proportionate intervention".
- 1.2.13 It is proposed that the Secretary of State will, in future, be able to instruct a Local Planning Authority to undertake the following specific tasks:

- Prepare or revise a Local Plan;
- Submit the Plan to independent examination;
- Publish the recommendations of the inspector; and consider whether or not to adopt.

1.2.14 The Secretary of State will also be able to:

- Direct that a Plan is submitted to him or her for approval;
- Set out what is to happen following an intervention; and
- Issue a "holding direction" to a Local Planning Authority, preventing it taking any step in connection with the adoption of a Plan while the Secretary of State decides whether or not to intervene.

1.2.15 This expansion of ministerial powers will also extend to the examination process. Under the Bill, the Secretary of State will be able to:

- Direct inspectors to suspend the examination;
- Consider specified matters; hear from specified persons; or
- Take other, as yet unspecified, procedural steps.

1.2.16 Enhanced powers for the Secretary of State to intervene in the neighbourhood plan process

1.2.17 As with Local Plans, the Bill enhances the role of the Secretary of State in neighbourhood planning, paving the way for a range of new powers.

1.2.18 In relation to applications to delineate a neighbourhood area, the Secretary of State will be able to order local authorities to designate the entire area applied for if the application fulfils certain criteria or has not been determined within a prescribed period, subject to specific exceptions. This is an alteration to existing law, under which local authorities only have to designate "at least some of the area applied for", and will enable subsequent regulations to introduce automatic designations for neighbourhood area applications in certain circumstances.

1.2.19 The Secretary of State will also be able to set time limits for local authorities to decide whether to hold a neighbourhood plan referendum, and to set a date by which a local authority must make a neighbourhood plan that has been approved at referendum, except where the council thinks this would breach international obligations or rights. Currently, local authorities only have to do this "as soon as reasonably practicable after the referendum is held".

#### 1.2.20 Extension of areas of poor performance

1.2.21 Under the Bill, developers will be able to submit planning applications for non-major developments to the Planning Inspectorate in cases where the local authority has a track record of very poor performance in the speed or quality of its decision-making. Currently, local authorities may be designated for poor performance in relation to major developments only.

#### 1.2.22 Information about financial benefits

1.2.23 A new duty will be placed on local authorities to set out publicly the potential financial benefits of certain development proposals when considering whether to grant planning permission. Under this measure, officers' reports on non-delegated applications will be required to include a list of financial benefits that are likely to be obtained by the local authority as a result of the proposed development if it is carried out, "so far as is reasonably possible".

1.2.24 A financial benefit will have to be recorded regardless of whether it is material to an authority's decision on a planning application, but the officer will need to indicate their opinion as to whether the benefit is material or not.

#### 1.2.25 Nationally Significant Infrastructure Projects (NSIPs)

1.2.26 Housing schemes are currently excluded from consideration in NSIP applications, but the Bill will enable development consent for homes to be granted under this regime, provided they are linked in some way to a qualifying infrastructure project. Further guidance will set out details of this provision, but the Government states that it will include housing that is "functionally linked" to the infrastructure project, such as homes required for workers during the construction phase of such a project or key workers during operation. It will also apply where there is no functional link but there is a "close geographical link" between the housing and infrastructure project. Developers of such projects will still have the option of applying for the housing element of the scheme via the conventional planning application route.

#### 1.2.27 Self-build and custom housebuilding

1.2.28 The Bill introduces a new duty on local authorities to grant planning permission for serviced plots sufficient to meet the demand for self-build and custom housebuilding in their areas. This demand will be evidenced by the number of people on the registers that are to be created and maintained by local authorities under the Self-Build and Custom Housebuilding Act 2015.

#### 1.2.29 Assessment of housing needs revised.

1.2.30 The Bill removes the duty on local authorities to assess the accommodation needs of Gypsies and Travellers in their area as a distinct category. Instead, it instructs

local authorities to consider the needs of all people residing in or resorting to their area regardless of status.

### 1.2.31 **General Observations on the Bill**

1.2.32 The general thrust of the reforms proposed in the Housing and Planning Bill are aimed at increasing the delivery of housing by reducing planning requirements and controls. There are additional proposals to encourage home ownership through the delivery of starter homes and further measures designed to speed up the Local plan and neighbourhood plan making processes. As is often the case with emerging legislation, much of the detail will be reserved for accompanying regulations, planning guidance and Ministerial statements, but the recently launched consultation, which is the subject of the rest of this report, provides some indication of what that detail might look like.

1.2.33 At the heart of the Government's reform agenda is the objective to increase the supply of housing and in particular 'affordable' home ownership for the under 40s through the starter homes initiative. The relentless reform agenda suggests that the planning system is still seen as part of the problem rather than the solution as evidenced by the continuing relaxation of controls and the proposals to speed up the process.

1.2.34 Ironically the reforms are not helping with the plan-making process as the constant changes have to be carefully considered and taken on board. The Planning magazine has reported that the Bill represents '*..possibly the most radical and wide-ranging piece of planning legislation for a generation*'. In contrast paragraph 58 of the consultation on proposed changes to national planning policy states:

*'We do not intend that these policy proposals should slow down the preparation of existing Local Plans.'*

### 1.2.35 **Consultation on Proposed Changes to National Planning Policy**

1.2.36 The Government published a consultation document on the 7<sup>th</sup> December with responses sought by 25<sup>th</sup> January 2016. The proposals are summarised below and the suggested responses can be found at **[ANNEX 1]**.

1.2.37 Views are invited to the proposed changes to the following areas of national planning policy:

- The definition of affordable housing;
- Making better use of land around commuter hubs by increasing densities;
- Supporting sustainable new settlements, development on brownfield and small sites through Local Plans; and

- Supporting the delivery of starter homes.

#### 1.2.38 Changes to the definition of affordable housing

1.2.39 The current definition of affordable housing for planning purposes is set out in **[ANNEX 2]** to the National Planning Policy Framework and includes social rented, affordable rented and intermediate housing for sale (including shared equity and shared ownership models), provided to eligible households whose needs are not met by the market. The definition includes a requirement that the housing should remain affordable or for the subsidy to be recycled for alternative affordable housing provision.

1.2.40 The Government wishes to change the definition so that it encompasses a fuller range of products that can support people to access home ownership. The definition would still include options for rent, but some products would no longer be subject to in perpetuity restrictions or have recycled subsidy. This effectively paves the way to include starter homes as part of the definition of affordable housing (see section 1.2.8 above). The provision of Starter Homes will very likely be to the detriment of the supply of Affordable Rented and Shared Ownership homes. It is unclear to what degree Starter Homes can address our most urgent housing need, and they are absent as a tenure from our SHMA.

1.2.41 Views are sought on proposed transitional arrangements to review existing and introduce new policy to reflect the changes to the affordable housing definition. Six to twelve months is suggested.

#### 1.2.42 Increasing residential density around commuter hubs.

1.2.43 Local Planning Authorities would be expected in future to require higher densities around commuter hubs where feasible. No minimum density is proposed – that would be for the Local Planning Authority to determine, although in assessing how many extra homes could be delivered in this way the Government has looked at increasing average densities around existing hubs from 34 dwellings per hectare to 40. Commuter hubs are described as a public transport interchange and has or is likely to have a frequent service (at least every 15 minutes during normal commuting hours). This would include Tonbridge for example.

#### 1.2.44 Supporting new settlements, development on brownfield and small sites through Local Plans

1.2.45 Proposals under this heading include strengthening national planning policy to provide a more supportive approach for new settlements within Local Plans (i.e. new, larger scale developments or urban extensions to meet housing needs).

1.2.46 Amendments to national planning policy are also proposed to support the measures emerging in the Housing and Planning Bill to prioritise the use of brownfield land in meeting future housing needs. This would in effect be a

presumption in favour of using brownfield land for housing, unless there are overriding conflicts with the Local Plan or national planning policy.

- 1.2.47 This presumption in favour would be extended to small sites of less than 10 dwellings provided that they are within existing settlement boundaries and well designed. Garden developments would not be included in this presumption. Sites adjacent to settlement boundaries would also be carefully considered and supported if they are sustainable.
- 1.2.48 Ensuring housing is delivered on land allocated in Local Plans
- 1.2.49 This proposal is aimed at improving delivery of sites already allocated in Local Plans. A new housing delivery test is proposed, which would measure the number of new homes actually delivered against Local Plan targets over a two year period to overcome peaks and troughs. If a pattern of significant under delivery is identified over a sustained period action would need to be taken to address this, possibly in the form of identifying a range of additional, sustainable sites, possibly including new settlements as proposed in 1.2.40 above.
- 1.2.50 Supporting the delivery of starter homes
- 1.2.51 A range of proposed changes are suggested to promote the delivery of starter homes. These include amending paragraph 22 of the NPPF, which seeks to ensure that employment land is not safeguarded unless there is a reasonable expectation of it coming forward for those uses over the plan period. The amendment would have the effect of requiring that underused or unviable employment land be released for starter homes unless there is significant and compelling evidence to justify why such land should be retained for employment use.
- 1.2.52 One approach that the Government is considering is a policy with a clear limit on the length of time that unused commercial or employment land should be protected (3 years is proposed) and there is not significant and compelling evidence of market interest for it coming forward within a two year timeframe.
- 1.2.53 The current exception site policy to release land specifically for starter homes on unviable or underused commercial or industrial brownfield land not currently allocated for housing, is proposed to be extended to include land previously in use for retail, leisure and non-residential institutional uses. The exception site policy will also be amended to make it clearer that planning applications for starter homes will only be rejected if there are overriding design, infrastructure and local environmental considerations that cannot be mitigated.
- 1.2.54 Further changes are proposed to encourage starter homes within mixed used commercial developments and rural areas. The former would apply to town centre sites and the latter to rural settlements via the existing rural exceptions site policy.

- 1.2.55 Further changes to national planning policy are proposed to encourage starter homes in Green Belt areas. This would apply to neighbourhood plans for communities located in the Green Belt and also brownfield land located in the Green Belt.
- 1.2.56 It is proposed that neighbourhood plans would be able to allocate small scale sites in the Green Belt specifically for starter homes to increase affordable home ownership opportunities to young people and young families. Further changes are also proposed to provide more flexibility and enable suitable, sensitively designed redevelopment for starter homes to come forward on brownfield sites in the Green Belt where there is no substantial harm to openness.

### 1.2.57 **General Observations**

- 1.2.58 The focus on increasing opportunities for lower cost home ownership through redefining affordable housing, promoting starter homes and (through the Welfare Bill) extending the Right to Buy could have important implications for the majority of those in housing need as only a relatively small proportion will be able to access the 80 per cent of market value/rent models and the Right to Buy will erode the social rented housing stock at the other end of the scale. Local Authorities' ability to address those in housing need will also be compromised if the emphasis in future is on the delivery of starter homes, which currently have no proposed eligibility requirements to prove a local connection. This means that there is a risk that future 'affordable' housing built as starter homes in T&M does not address local housing needs.
- 1.2.59 The relaxation of planning controls and the reduction of the ability of Local Planning Authorities to secure developer contributions for infrastructure, for example, by extending permitted development rights and exemptions for starter homes, could also have adverse impacts on existing communities.
- 1.2.60 The ability for Local Plans to identify and safeguard land for employment uses in future may also be diminished as a result of these proposals.

## 1.3 **Conclusions**

- 1.3.1 This report has summarised the main planning reforms that have been proposed since the last meeting of the Board and made some general observations. **[ANNEX 1]** sets out more detailed responses to the questions posed by the current consultation for approval.

## 1.4 **Legal Implications**

- 1.4.1 There are no direct legal implications arising from this report.



## 1.5 Financial and Value for Money Considerations

- 1.5.1 There are no direct financial or value for money implications arising from this report although once implemented some of the proposed reforms will have resource implications.

## 1.6 Risk Assessment

- 1.6.1 Failure to respond to the consultation carries the risk of not expressing the views of the Council and potentially influencing the outcomes.

## 1.7 Equality Impact Assessment

- 1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users as this is a response to a Government consultation rather than implementing the changes.

## 1.8 Recommendations

- 1.8.1 That the content of the report be **NOTED** and that **[Annex 1]** be **ENDORSED** as this Council's response to the DCLG's consultation on proposed changes to national planning policy.

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

Background papers:

Nil

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