

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

03 March 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

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

1 DEVELOPMENT MANAGEMENT – PROCESSES AND PROCEDURES

Summary

This report seeks to provide an update on Development Management following feedback from consultees on engagement processes, with a view to ensuring parity. The proposals in this report would, if agreed, result in some savings to support the Council's medium term financial strategy and service efficiencies.

1.1 Introduction

- 1.1.1 Following feedback from various parties to the planning process including Parish Councils, officers have taken the opportunity to review certain current processes, procedures and actions in order to improve efficiency and effectiveness. This feedback included concerns about late amendments to planning applications, the need to move to determination of applications in a timely fashion and simplifying processes to ensure that consultees can have time to consider applications and liaise where appropriate with their borough Members. This will inevitably be an ongoing process but some key aspects of our working practices have already been identified and improvements and innovation efforts are being made in order to have a demonstrable and measureable impact on the efficiency, quality and delivery of the development management function.
- 1.1.2 The national planning practice guidance sets out that once a planning application has been validated, the Local Planning Authority (the "LPA") should make a decision on the proposal **as quickly as possible**, and in any event within the statutory time limit unless a longer period is agreed in writing with the applicant. The statutory time limits are usually 13 weeks for applications for major development and 8 weeks for all other types of development (unless an application is subject to an Environmental Impact Assessment, in which case a 16 week limit applies). Members will be aware that applications which are accompanied by a Planning Performance Agreement are not subject to these timeframes and the Council has a published protocol dealing with these specifically. All local authorities are required to submit data indicating percentages of decisions that are made within these deadlines and there are

specific targets to be met. Officers continually work to ensure these targets are met each month but in a number of circumstances it is necessary to formally agree “extensions of time” with applicants to account for delays that have arisen which does not make for efficient decision making.

- 1.1.3 There are mechanisms in place in an attempt to combat delays in decision making, including the ability for applicants to appeal to the Secretary of State via his Planning Inspectorate against “non-determination” in the event that a decision is not made within the statutory time periods. Furthermore, there is provision that application fees become repayable if a decision is not made within 26 weeks of validation taking place.
- 1.1.4 This provides a clear indication that government emphasis is focused on LPAs issuing planning decisions in a timely way.
- 1.1.5 There will, of course, always be a balance to be struck between this and the fact that we are also encouraged to work in a positive manner with all stakeholders to ensure the best and most appropriate developments come forward in the interests of proper place making.
- 1.1.6 According to the National Planning Policy Framework (NPPF), the ultimate objective of any planning service is to deliver sustainable development. Beyond meeting this objective, the extent to which a Development Management service can be considered ‘good’ by customers and stakeholders is subjective, although of course the context provided above is key. The Planning Advisory Service (PAS) recognises that efficiency, quality and delivery broadly define whether a Development Management service can be considered good or not.

1.2 Public Consultation and Engagement

- 1.2.1 Members will be aware that after the Council receives a planning application, it undertakes a period of consultation where views on the proposed development can be expressed. There are statutory provisions setting out how such consultation must be undertaken (Town and Country Planning (Development Management Procedure) Order 2015 (as amended)).
- 1.2.2 The Order places a statutory duty on LPAs to publicise planning applications either
 - 1) by site display in at least one place on or near the land to which the application relates for not less than 21 days; **or**
 - 2) by serving the notice on any adjoining owner or occupier.

The application must **also** 3) be published on the Council’s website.

- 1.2.3 Presently, the Council exceeds these statutory requirements by undertaking a combination of those notification processes and whilst presently it is not intending

to implement a wholesale change this approach, there are ways to ensure it is undertaken in a proportionate and efficient manner.

- 1.2.4 In terms of engagement with Parish Councils specifically, the Council has a duty to notify them upon receipt of planning applications. There is no subsequent duty upon them to respond to that notification, or indeed, for the Council to attribute any prescribed amount of weight or significance to any representations the PC might choose to make in reaching a decision. This is an important distinction to the way case law instructs we must treat the responses of statutory consultees such as Historic England, the Environment Agency or Highways England, for example.
- 1.2.5 What the Order does make clear however is that when Parish Councils do wish to make representations, in order for them to be considered as such they must be made within 21 days of notification. Where a PC has been notified, under paragraph 8 of Schedule 1, this triggers the 21 day representation period for the PC under paragraph 25 of the Order. The Order actually states that the PC ***“must make any representations to [the LPA] within 21 days of the notification to them of the application”***.
- 1.2.6 The Order also sets out how representations received must be taken into account and the requisite period for allowing for representations to be made. In other words, that a final decision on whether or not to grant planning permission cannot be made until the expiration of the 21 day period from the notification being made. Historically however, the service has continued to accept representations after this time period up to the point of determination, although there is no statutory or constitutional basis requiring this to happen. In all respects, the planning practice guidance advises LPAs that they may, at their discretion, take into account comments that are made after the closing date (but they have no obligation to do so).
- 1.2.7 Conversely, provision is contained within the Order that allows for statutory (technical) consultees to notify the Council within the 21 day period should they consider further information is required from the applicant to enable them to make a substantive response. Habitually, this will relate to technical data and associated information. This is because they are, in fact, required to provide us with a representation when we consult them. The same ability is not expressly provided for in the case of other consultees because they are not required to respond in the same way.
- 1.2.8 There are occasions where late representations from non-statutory consultees have been received (over the prescribed period) which, in the case of decisions to be made under delegated powers causes a delay to determination or subsequent to committee reports being published.
- 1.2.9 Consideration has been given to how to avoid scenarios which cause such delays to decision making and it is considered that the way to overcome this is to propose that the Council will not accept representations on applications received

after the relevant 21 day period from any party not included in the statutory (technical) consultees definition.

- 1.2.10 This does not necessarily mean that late representations will completely cease. In the event that any are received, there will still be a need to ensure that any information they contain do not raise any fundamental matters that could leave the authority open to legal challenge or raise new, previously unconsidered, material considerations. Beyond this, any such representations received after the relevant deadline date will not be taken into account.
- 1.2.11 Similarly, officers understand that some confusion can arise when Parish Councils are effectively working to a different deadline to that of borough Members in terms of the timeframe within which to call applications in to the relevant Area Planning Committee. Operationally this is because Parishes are sent an individual notification along with the entire planning application submission in hard copy whereas the Borough Councillors are notified of the receipt of planning applications via the published weekly list (commonly referred to as "List B").
- 1.2.12 To overcome this, Parishes would now be notified via the weekly list as per the approach with borough Members and will have 21 days from then within which to make representations. As part of this, the Council will no longer be providing the Parish Councils with hard copies of all planning applications and instead they will be required to view them online through the Public Access pages on the Council's website as with other consultees.
- 1.2.13 It is appreciated that this will represent a change in the way we have approached such matters, and Parish Councils in particular will have to adapt their current practices to accommodate this change. It is therefore recognised that there will need a suitable lead in period whereby our notification letters and the website clearly set this out to avoid any misunderstanding or confusion. Similarly, officers would wish to engage with Parish Councils to establish what particular needs they might have that the Borough Council might reasonably assist with to ensure they are not disengaged from the process. As part of this, should Members agree these proposals, we intend to hold training sessions, working in partnership with KALC and the Parish Partnership Panel, to support Parish Councils in using digital tools such as the Public Access portal and My Account to keep informed of planning applications in their area. Officers would therefore be engaging with all Parish Councils over the coming weeks to establish if they require any assistance in preparing for the change to our processes and will be targeting an implementation date of 1 September 2020 with a transitional period from 1 June 2020 during which the approach will be tested and there will be discussions between planning officers and parish councils to work through any issues. In addition, Members will be offered an opportunity for a briefing session.
- 1.2.14 Moreover, it should be recognised that in addition to better alignment in notification processes arising from this change, there will be further benefits arising, not least the considerable amount of paper that will be saved (around

245,000 sheets per annum) and the financial saving in printing costs, plus associated costs attributed to physically posting the documents and use of courier services in some circumstances. In addition, the officer time saved in undertaking this task could be considered as part of the overarching aim of increased efficiency within the service. It is proposed that the c.£7,500 printing costs and associated postage costs be a saving to support the Council's Medium Term Financial Strategy.

1.3 Engagement with Developers and Applicants

- 1.3.1 Following consultation and assessment of any application, there may be occasions where schemes require amendment in order to ensure they are acceptable. However, this should be done as an agreed outcome of clear and structured negotiations where, for example, Officers have identified that an objection can be readily overcome by such an amendment.
- 1.3.2 It is always at the discretion of the LPA whether to accept amendments and then to subsequently determine if the changes need to be reconsulted upon, or if the proposed changes are so significant as to materially alter the proposal such that a new application should be submitted.
- 1.3.3 In terms of the need for re-consultation, it is up to the LPA to decide whether further publicity and consultation is necessary in the interests of fairness, and there is case law governing such matters (*R (Broad) v Rochford DC* [2019] EWHC 628 (Admin)). In deciding what further steps may be necessary we are required to consider whether, without re-consultation, any of those who were entitled to be consulted on the application would be deprived of the opportunity to make any representations that they may have wanted to make on the application as amended.
- 1.3.4 There have been recent experiences of unsolicited amendments to planning applications being submitted without negotiations having taken place in a response to objections published or after the publication of committee reports in order, for example, to overcome particular objections raised within assessments and/or recommendations of refusal.
- 1.3.5 Whilst there is a need to positively engage with applicants and developers in order to achieve well designed, acceptable schemes, this must be balanced against the need for timely and efficient decision making in addition to ensuring fairness of information provision through public consultation, as set out above. Again, there is nothing contained within legislation or the Constitution that *requires* the Council to accept unsolicited amendments to planning applications.
- 1.3.6 In practical terms, the correct time for constructive negotiations to take place on proposed schemes is via the pre-application process, and through the use of Planning Performance Agreements where necessary. Officers will continue to stress the importance of these to applicants and developments.

1.3.7 In order to ensure effective and efficient decision making combined with the importance of their being a fairness in approach, it is considered that there needs to be a marked change in the way amendments to live planning applications are dealt with. This is summarised as follows:

- Amendments to schemes which are due to be considered by the relevant Area Planning Committee where reports have been published will not be accepted. The applicant has the choice to have the application determined by the Committee or to formally withdraw the application and resubmit on an amended basis to allow for consultation and subsequent assessment to take place.
- Amendments to schemes that amount to anything more than “*de-minimis*” changes or changes that are required to correct discrepancies or errors uncovered through officer assessment/investigation will not be accepted on any live application.
- If officers having made a full assessment of a scheme determine that amendments are required in order to make a scheme acceptable in planning terms, they will firstly consider whether the harm identified can be obviated by imposition of condition. If this is not possible, the applicant will be invited to withdraw the application within a given timeframe or their application will be recommended for refusal of planning permission.
- Negotiations on substantive amendments to schemes that will require further consultation to take place will only take place on applications where a Planning Performance Agreement in accordance with the Council’s protocol is already in place. Planning Performance Agreements will have been considered at the pre-application stage.

1.3.8 Again, it is appreciated that this will represent a change in our working practices, and if agreed, agents and developers should be advised of such a change in approach to avoid confusion. This will be done via the relevant pages of the Council’s website and via ongoing officer liaison with them, particularly as part of pre-application discussions.

1.4 Legal Implications

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

1.5 Financial and Value for Money Considerations

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

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

1.6 Risk Assessment

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

1.7 Policy Considerations

- 1.7.1 The recommendations align with both the emerging Climate Change Strategy and the Digital Transformation Strategy.
- 1.7.2 In seeking to look at service efficiencies, the recommendations support the Council's Savings and Transformation Strategy.

1.8 Equality Impact Assessment

- 1.8.1 No issues raised.

1.9 Recommendations

- 1.9.1 That Members **AGREE** the proposed changes to process as set out in this report, namely:
- 1) From 1 September 2020, the Council will not accept representations on applications received after the relevant 21 day period from any party not included in the statutory (technical) consultees definition (as set out at paragraph 1.2.9 of the report).
 - 2) From 1 September 2020 the Council will notify Parishes via the weekly list B and they will have 21 days from then within which to make representations. Additionally, the provision of hard copies to the Parish Councils will cease and they will be required to view them online (as set out at paragraph 1.2.12 of the report).
 - 3) The savings derived from changes to how Parish Council's will be notified, will make a contribution to support both the Savings and Transformation Strategy and Council's Medium Term Financial Strategy (as set out at paragraph 1.2.14 of the report).
 - 4) From 1 September 2020, amendments will not be accepted to planning applications other than either where the changes sought are considered to be "de-minimis", correct errors or discrepancies identified by officers or where there is a Planning Performance Agreement in place that provides for such amendments to be negotiated between the parties (as set out in paragraph 1.3.7 of the report).

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

Background papers:

Nil

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