

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

28 July 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Information

1 DEVELOPMENT MANAGEMENT – PROCESSES AND PROCEDURES

Summary

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

1.1 Introduction

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

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

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

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

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

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

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

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

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

1.2 Engagement Undertaken

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

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

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

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

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

1.3 Next steps

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

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

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

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

1.4 Legal Implications

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

1.5 Financial and Value for Money Considerations

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

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

1.6 Risk Assessment

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

1.7 Policy Considerations

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

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

1.8 Equality Impact Assessment

1.8.1 No issues raised.

1.9 Recommendations

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

Background papers:

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Nil

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