

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

11 November 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 UPDATE

Summary:

This report seeks to provide an update on matters pertaining to the Development Management function over the course of the year.

1.1 Introduction

1.1.1 As Members are aware, the Development Management team comprises a total of 12 officers which is responsible for the assessment and determination of all applications made under the Town and Country Planning Acts and ensuring compliance with all statutory requirements in making such decisions. The team also deals with planning appeals through written representations, attendance at informal hearing and giving evidence at inquiry, post decision matters such as discharging conditions and reviewing scheme amendments in addition to providing pre-application advice to prospective applicants.

1.1.2 The planning enforcement team comprises a total of 3 officers and they are responsible for investigating breaches of planning control, taking necessary remedial action and progressing prosecutions where necessary to do so, including giving evidence in court.

1.2 Decision Making

1.2.1 For the period April – September 2020, a total of 1005 planning and allied applications were submitted to the Authority for determination, compared to a total of 998 for the same period in 2019.

1.2.2 The Planning Practice Guidance sets out that once a planning application has been validated, the local planning authority 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).

- 1.2.3 Where a valid application has not been determined within the relevant statutory period (or such other period as has been agreed in writing between the local planning authority and the applicant), the applicant has a right to appeal to the Secretary of State against non-determination.
- 1.2.4 If the applicant has not exercised this right of appeal, and the application remains undetermined after 26 weeks, then the fee paid by the applicant can be refunded to them (unless a longer period for the decision has been agreed).
- 1.2.5 Furthermore, Section 62B of the Town and Country Planning Act 1990 (as amended) allows the Secretary of State to designate local planning authorities that “are not adequately performing their function of determining applications”, when assessed against published criteria. Those criteria relate to:
- the speed of decisions made by local planning authorities for applications for major and non-major development, measured by the percentage of applications that have been determined within the statutory period or such extended time as has been agreed between the local planning authority and the applicant
 - the quality of decisions made by local planning authorities for applications for major and non-major development, measured by the proportion of decisions on applications that are subsequently overturned at appeal (including those arising from a ‘deemed refusal’ where an application has not been determined within the statutory period).
- 1.2.6 If a local planning authority falls below the performance thresholds set out in the criteria it may be designated for its performance in relation to applications for major development, non-major development, or both.
- 1.2.7 In this case, section 62A of the Town and Country Planning Act 1990 (as amended) allows applications for the category of development for which the authority has been designated (i.e. major development, non-major development or both) to be submitted directly to the Secretary of State (if the applicant wishes) as long as the designation remains in place. This excludes householder and retrospective applications, which must still be made directly to the local planning authority.
- 1.2.8 Within this context, in terms of decisions issued for the year 2020/21 to date, our performance measured against nationally set targets is:
- Major applications – 76.47% (against a target of 60%);
 - Minor applications – 89.66% (against a target of 60%);

- All other applications – 96.38% (against a target of 80%).

1.3 Income and Fees

- 1.3.1 For the financial year 2020/21, at the end of September the total income on planning applications stood at £450,531 and a total of £28,165 had been received for pre-application advice.
- 1.3.2 As a basis for comparison, for the same period in 2019/20, the income received stood at £332,761 (planning applications) and £43,773 (pre-application advice).

1.4 Planning Inspectorate Decisions

- 1.4.1 Since 01 January, a total of 29 appeals have been lodged with the Planning Inspectorate so far this year; 3 against non-determination within the statutory timeframe, 2 against the serving of Enforcement Notices and the remainder against the decision of the Authority to refuse planning permission.
- 1.4.2 One of these is due to be heard by Public Inquiry commencing on 01 December and expected to last a total of 8 days, two are to be heard by informal hearing with dates still to be agreed, with the remainder being dealt with by written representations and the householder procedure where it falls to be applied.
- 1.4.3 During the course of the year, the Planning Inspectorate has determined a total of 26 appeals for development in the Borough, with a total of 8 being allowed. Whilst this number appears proportionality higher than previous years it should be noted that 3 of the decisions were in connection with the conjoined Public Inquiry on the Kings Hill sites and another 4 related to a series of planning and listed building applications on a single site in East Peckham.
- 1.4.4 No awards of costs have been made against the Authority for any of the appeal decisions made over the course of the year.

1.5 Judicial Reviews

- 1.5.1 Only one legal challenge against our decision making was granted permission by the High Court this year (Woodford, Old Lane, Ightham). This resulted in officers providing evidence and witness statements to the court and along with their instructed barrister attending a two day virtual hearing in June. The challenge was not upheld and the planning permission granted by the Authority remains intact.

1.6 Reflecting on the year and looking ahead

- 1.6.1 Pre-application engagement is indicating that we should expect a continued upward trend in the submission of planning applications particularly as developers promoting sites alongside the local plan process want to demonstrate deliverability

in the continued absence of a five year housing land supply. We are, for example, expecting the third of our draft strategic sites (Broadwater Farm, land north of Kings Hill) to come forward as a planning application in outline form by the end of this calendar year. Members will recall that a large proportion of the South Aylesford allocation now has outline planning permission and we were able to secure all necessary infrastructure in order to make that application acceptable in planning terms. The remaining parcels of land are subject to separate, live, planning applications which continue to be assessed. Similarly, a proportion of the South-West Tonbridge allocation is a current application for determination in the coming months with the other parcels within separate ownership likely to follow next year.

- 1.6.2 At the other end of the spectrum, changes to the planning system, in particular a new tranche of permitted development rights coming into effect, will bring new challenges to how we administer, process and determine such proposals.

1.7 Engagement with customers and stakeholders

- 1.7.1 The Development Management team has embarked on a number of changes to our ways of working this year and these have been extensively reported to this Board in recent months. We remain committed to ensuring positive engagement with our customers and stakeholders as these changes take effect and to that end are looking to provide a series of workshop events with Parish/Town Councils and have our first Developer Forum scheduled to take place on 12 November.

1.8 Member Training

- 1.8.1 Following on from the production of a series of topic based briefing papers which have been published in the Member library, officers are now looking to make use of MS Teams to deliver some virtual training events and are in liaison with the Cabinet Member for Strategic Planning and Infrastructure and the Area Planning Committee Chairs. As part of this, we are also discussing the possibility of colleagues from Kent Highway Services and Design South East delivering some specific, targeted training.

1.9 Planning Enforcement:

- 1.9.1 Unsurprisingly, the number of planning enforcement cases and subsequent action was considerably lower from March of this year given that construction and commercial activities halted for a significant period of time. Now that activity has recommenced, complaints are rising again.
- 1.9.2 For much of the year, planning enforcement matters have not been prioritised by the courts and this means that there are a number of cases we now need to take forward to prosecution in the coming months. Similarly, Members will be aware that we have a number of breaches we intend to remedy through direct action using the £50,000 awarded to us by the government. Again, progression of that work has been stalled in recent months for reasons outside our control. The one

example of direct action we have been able to complete was in respect of a Section 215 Notice relating to a site in Hadlow. The condition of the land has now been improved and the owner of the property reimbursed the Council for the cost of the works as anticipated by the adopted Protocol.

1.10 Legal Implications

1.10.1 The ongoing work set out above will ensure that all functions undertaken by the Development Management team will continue to meet all statutory duties and requirements.

1.11 Financial and Value for Money Considerations

1.11.1 All services provided across the Development Management function are managed within existing budgets.

1.12 Risk Assessment

1.12.1 Failure to properly manage and deliver Development Management functions could result in an increased number of appeals, with associated resource and financial implications, risk of costs being awarded against the Authority for unreasonable behaviour. Furthermore, persistent failure to meet nationally prescribed determination targets could result in “designation” by the Secretary of State.

1.13 Equality Impact Assessment

1.13.1 No issues raised.

1.14 Recommendations

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

Background papers:

contact: Emma Keefe

Nil

Eleanor Hoyle
Director of Planning, Housing and Environmental Health