

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

**02 March 2021**

**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 STRATEGY 2021**

**Summary: This report outlines the intended strategy for development management related matters for the upcoming year in response to the current local plan position and delays to the adoption of the Plan. The implementation of an effective strategy that responds positively to the current position will ensure that the Council can continue to provide an efficient and high-quality service and robustly defend the Council's position in the event of appeals being lodged.**

**1.1 Introduction**

1.1.1 Members will appreciate that the current delay to the examination and adoption of a new local plan has immediate implications for day-to-day Development Management and associated decision making. Officers have been carefully considering what our strategy should be for determining applications until a successful resolution is reached on the Local Plan, with a particular (albeit not limited) focus on schemes proposing new housing across the Borough.

1.1.2 For decision making purposes, Members will be aware of the requirements of the National Planning Policy Framework (the "NPPF") in respect of the weight to be afforded to draft plans. This is set out as follows:

1.1.3 Paragraph 48 of the NPPF states that a local planning authority can give weight to relevant policies in an emerging plan according to

(1) the stage of preparation of the plan,

(2) whether there are unresolved objections to the relevant policies and

(3) the degree of consistency of the relevant policies with the NPPF.

1.1.4 Paragraph 49 then advises that this, when taken in the context of the NPPF and "in particular the presumption in favour of sustainable development - arguments

that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
- b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.”

- 1.1.5 As Members know, a significant period of time has elapsed since the Plan was originally submitted for examination. It is accepted that, whatever the outcomes of the Inspector’s latest letter, there will be a further delay to formal adoption. However, the requirements of the NPPF are clear and are not predicated on the length of time the draft plan has been with the Secretary of State/his appointed inspectors, but rather how far it has advanced successfully through the examination process.
- 1.1.6 It is clear at this time, based on our current position and the relevant NPPF paragraphs, that the draft local plan is not at an advanced stage (notwithstanding the timeframes involved) and therefore continues to carry only limited weight for decision making purposes, certainly until it has progressed further through the examination process. As such, any allocations or associated policies contained within the draft plan cannot be determinative at this time and recommendations made by officers and associated advice provided in this respect will be reflective of this position until that moves forward in a meaningful way. Until such a time, officers will not seek to resist development proposals on grounds of prematurity and will continue to advise Members of this accordingly at Area Planning Committees.
- 1.1.7 Members are well versed in the fact that the Council as Local Planning Authority is under a statutory duty to determine planning applications in accordance with the adopted Development Plan unless material considerations indicate otherwise. The Development Plan currently in force comprises the TMBCS (September 2007), the DLA DPD (April 2008), the MDE DPD (April 2010), the Tonbridge Central Area Action Plan (April 2008), the saved policies of the TMBLP and the Kent Minerals and Waste Local Plan (July 2016). The NPPF and guidance contained within the associated NPPG are material considerations. It is on the basis of the requirements of these policies and those contained within the NPPF (including those relevant to the presumption in favour of sustainable development) that that all assessments will continue to take place and recommendations to planning committees will be made.
- 1.1.8 It should be noted that the adopted Core Strategy becomes time expired in September of this year. For the avoidance of any doubt, this does not automatically render all the policies contained within it immediately out of date.

Rather, we will be required to undertake an exercise of weight to be afforded to the relevant policies for the purposes of decision making, which will be attributed relative to their overall conformity with the requirements of the NPPF. This is an exercise that officers and Members are already well-versed in undertaking given the application of the presumption in favour of sustainable development (paragraph 11(d)(ii) of the NPPF). At this point, all officer reports will ensure that this position is carefully explained to protect against any possible challenges.

## **1.2 Housing land supply**

- 1.2.1 The Council's published housing land supply position stands at 2.6 years as at 31 March 2019. In appeal scenarios where new housing is proposed, it is commonplace for the parties to submit evidence as to the current housing land supply position as at the time of the inquiry itself. That is essentially because the benefits to be derived through the provision of new housing in the absence of an up-to-date five-year housing land supply is a matter that must be attributed weight in the planning balance when making decisions and in the most straightforward of terms, the lower the number the greater the amount of weight to be afforded to provision.
- 1.2.2 Furthermore, Members understandably wish to gauge what contribution to supply individual schemes would make in undertaking the same balancing exercise at Area Planning Committees.
- 1.2.3 With those matters in mind, officers are working on developing a database to allow us to efficiently capture our housing land supply position on a more regular basis. This would allow us to capture new permissions granted on a rolling basis and account for any lapsed permissions to give a more up to date position which would assist in our advising Members and in representing the Council's case at appeal. Such a system would assist in ensuring high quality decision making and build in wider efficiencies amongst the teams whereas presently there is a need to undertake reactive exercises on a case-by-case basis which is time consuming and resource heavy. It is also hoped that this system could be developed in a manner that would assist in monitoring other aspects of delivery such as the provision of infrastructure.

## **1.3 Objective evidence and additional decision-making tools**

- 1.3.1 Given the sensitivity of a number of sites that we understand will likely be coming forward by way of formal application in the coming months ahead of the local plan progression, it is considered prudent to put in place a strategy which allows for the Council to instruct external consultants to provide expert technical advice at pre-application and application stage (and on to appeal if necessary). Primarily the likely need for this will be centred around landscape and visual impacts particularly where housing schemes would involve the development of open fields of sensitive or local landscape value. Clearly there would be a cost to the Council in procuring such advice, but it is considered an important tool in assessing

speculative applications especially and, where necessary to do so, defending any refusals at public inquiry.

- 1.3.2 Additionally, Members will be aware that an up-to-date evidence base for decision making purposes at this current time is crucial for effective and informed decisions to be made. As such, officers are considering what parts of the local plan evidence base can usefully and properly be adopted in the short term for decision making purposes (such as the Infrastructure Delivery Plan). Officers will also undertake a review of whether any additional or updated work is required to bolster our evidence base, either to inform decision making on an application specific matter or more broadly. Whilst this will inevitably take some time, officers will seek to prioritise any identified key evidence and report back to this Board in June/July with a further update and recommended actions for adoption as necessary.

## **1.4 Planning appeals**

- 1.4.1 In all likelihood, over the course of 2021 and beyond the above will culminate in a number of additional appeals being lodged with the Planning Inspectorate for determination. It is our experience that in circumstances where housing is proposed, in the absence of a five-year housing land supply, appellants will seek to be heard by Public Inquiry. This process has consistently proven to be costly to the Council in financial and resourcing terms and our experience is that there has been little assistance to the appointed inspectors in reaching their decisions in real terms.
- 1.4.2 Going forward, it is our intention to firmly counter any such requests where the criteria provided by the Planning Inspectorate is not met and where there is no clearly evidenced case made. In particular, Members should note that the criteria set out that inquiries should be reserved for:
- the most complex of cases;
  - where there are matters which give risk to “substantial public interest”; or
  - where the appellant provides a clear explanation as to why evidence needs to be tested by cross-examination or why it is necessary to make legal submissions orally to the inspector.
- 1.4.3 Within this context, it is accepted that the Council cannot demonstrate a five-year housing land supply and there has been a delay in the progression of the draft local plan. However, this does not automatically mean that a case should be viewed as particularly complex in nature and this alone is not sufficient to trigger the need for a public inquiry to take place. Indeed, as Members are aware, this Authority has been involved in a number of inquiries since this position came to the fore and on no occasion has it been necessary for the housing land supply position to be tested in evidence. Instead, the matter has always been addressed

either by a Statement of Common Ground, roundtable discussion between the parties or a combination thereof.

- 1.4.4 Similarly, it is completely understood that housing developments across the Borough are locally very sensitive and often generate a large volume of representations to be made. Whilst this might equate to significant public interest, within the context of the PINS criteria, whether this alone justifies an inquiry should be tempered by the fact that public involvement (and the ability to follow proceedings) is, currently at least, facilitated through electronic means so people are not having to travel to a venue to see or participate in what is going on.
- 1.4.5 As such, any requests by appellants for public inquiries will be resisted in writing on an individual basis unless the specific circumstances of the case make it clear to us that this is the correct forum for decision making purposes. Ultimately, the final decision on the nature of the appeal rests with the Planning Inspectorate but every effort will be made to ensure public inquiries are undertaken on a proportionate basis.
- 1.4.6 When appeals are brought forward by developers, officers will continue to robustly defend the decisions of the Council, making use of external consultants where deemed necessary and appropriate to do so which will be established on a case-by-case basis. In addition, it is considered crucial that we adequately invest in our own officers across the service by obtaining suitable training to provide them with the skills needed to give evidence in appeal scenarios, particularly public inquiries. To date, this has happened via a variety of means of undertaking courses to ensure continued professional development within the context of limited time and budget constraints. At this point, a focused piece of training delivered by external means to all officers within the service is considered to be the most appropriate training tool.
- 1.4.7 Another cost to the Council in defending appeal decisions at inquiry is centred in the need for suitable legal representation as part of the wider inquiry team on any given case. Officers have commenced discussions around the importance of having an embedded legal team who can act for the Council on inquiries as they come forward. This team will include external planning counsel at various levels of experience, external legal support on planning obligation agreements (as is already the case) and the Council's own internal legal team. This will ensure they fully understand the Borough and are able to provide consistent advice which will be key to ensuring we can robustly defend our decisions.

## **1.5 Legal Implications**

- 1.5.1 Not having a comprehensive and consistent strategy 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 strategy 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 Not having the strategy in place could delay effective decision making, increase the likelihood of challenges and limit the Council's ability to effectively resource key development management operations.

## 1.8 Recommendation

- 1.8.1 That Members **AGREE** the proposed Development Management strategy for 2021 as set out in this report, namely:

- 1) Officers will not seek to refuse applications for planning permission on grounds of prematurity until such time that the local plan is at a sufficiently advanced stage to accord with the requirements of the National Planning Policy Framework 2019 and will advise the Area Planning Committees of the risks of doing so should any proposals be made to that effect
- 2) Development of an electronic system to regularly monitor the five-year housing land supply position to inform decision making and in defending housing related planning appeals
- 3) External consultants will be instructed to advise the Council on technical matters that require specific expert input to inform decision making and in defending relevant appeals where considered necessary to do so
- 4) Officers will explore all opportunities to adopt individual technical studies used as part of the local plan evidence base for development management purposes and seek to commission further studies for adoption on an individual or cumulative basis as required
- 5) External training will be provided to all officers across the service on giving evidence at hearings and public inquiries to ensure they have the necessary skills to advance and defend the Council's case in appeal scenarios in conjunction with any external specialist consultants that may be necessary to employ
- 6) Officers will assemble a legal team of suitable experience to thereafter be engaged where necessary as part of ongoing public inquiry work

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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