

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

**10 November 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 UPDATE**

**Summary:**

**This report seeks to provide an update on various matters pertaining to the Development Management function over the course of the year. The recommended actions contained within the report result in some savings in wider service efficiencies to support the Council's medium term financial strategy.**

**1.1 Introduction**

- 1.1.1 Presently, the Development Management team comprises a total of 11 officers who are 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 who 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.
- 1.1.3 As Members will be aware during 2021, the team has been operating at reduced capacity because of officers leaving the authority at relatively short notice and delays with successful recruitment to those vacant posts. This, coupled with high volumes of case work, has meant that the team have experienced a highly pressurised work environment over a prolonged period. This is evidenced below by some of the key statistics provided. Nevertheless, the team continues to operate in a collaborative manner, keen to engender improvements to our key service functions. These are also discussed throughout the report that follows.

## 1.2 Decision Making and Key Statistics

### Planning applications:

- 1.2.1 For the period September 2020 – September 2021, a total of 2886 planning and allied applications were submitted to the Authority for determination, compared to a total of 2105 for the same period in 2019/20.
- 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 to date as of the end of September, our performance measured against nationally set targets is:

- Major applications – 60% (against a target of 60%);
- Minor applications – 66% (against a target of 60%);
- All other applications – 72% (against a target of 80%).

1.2.9 Members will be aware that our statistics historically have been very strong, and the figures above are not representative of our long-term track record for efficient decision making, albeit in most cases we still remain over the nationally set targets. Members will also be aware that this year has been an exceptionally challenging one for the DM team in terms of the high volume of applications received alongside some vacant posts sitting within the team. Recent new appointments within the team and continued efforts to seek to make effective use of the income generated by PPAs should assist in improving this position for the remainder of the year.

#### Income and Fees

1.2.10 For the financial year 2021/22, by the end of September the total income on planning applications stood at £498,212 and a total of £37,196 had been received for pre-application advice.

1.2.11 As a basis for comparison, for the same period in 2020/21, the income received stood at £450,531 (planning applications) and £28,165 (pre-application advice).

#### Planning Inspectorate Decisions

1.2.12 Since 01 January 2021, a total of 40 appeals have been lodged with the Planning Inspectorate so far this year; 0 against non-determination within the statutory timeframe, 9 against the serving of Enforcement Notices and the remainder against the decision of the Authority to refuse planning permission.

1.2.13 In September, a 4-day public inquiry was held at the Council offices in connection with the refusal of the Council to grant retrospective planning permission for the change of use of land to residential occupation by a traveller family at Oak Tree Stables, Vigo Road. The Council was represented by a specialist consultant along with Counsel and the outcome of the appeal is awaited at the time of writing this report. The inspector's decision in this case will be an important material planning

consideration in respect of any discussion around unmet need for pitches across the Borough going forward.

- 1.2.14 Another 3 public inquiries are to take place in the coming months, all of which have complex and controversial planning enforcement histories related to them and where the decision has been taken to appoint external consultants to defend the Council's position.
- 1.2.15 Since 01 January 2021, the Planning Inspectorate has determined a total of 26 appeals for development in the Borough, with a total of 8 being allowed.
- 1.2.16 Within this time period, there has been one award of costs made against the Council: TM/19/00786/FL (The Oast House, Hollow Lane, Snodland). The inspector's decision in this case was circulated to all Members and I can advise that the costs paid to the appellant in this case amount to £1,500.

### Judicial Reviews

- 1.2.17 There have been no legal challenges brought against the Council in respect of its planning decisions over the course of the past year. This is testament to the diligent and careful way decisions are made, both under delegated powers and by the three Area Planning Committees.

## **1.3 Public Consultation and Engagement**

- 1.3.1 As Members are aware, since March 2020, Town and Parish Councils have been notified of the receipt of planning applications via our published weekly list and are given a 21-day period from publication within which to make any representations on individual applications. Since this was introduced, we have taken every opportunity to improve the content of the weekly list to ensure it contains key information to assist Parish Councils in establishing whether they may want to make representations and what the timescales are for doing so. Although this was a significant shift in historic practices, the new practice has integrated well and now that the weekly list has been refined, there are no reported issues with how this is working operationally. Indeed, feedback from officers is that the new practice is far more efficient.
- 1.3.2 In making this change, it had been anticipated that PCs would have been able to use the Public Access system to a greater extent to sign up to locational based alerts. The functionality of this system has however presented some issues, but a comprehensive user guide has been produced and circulated for assistance with this.

## **1.4 Engagement with Developers and Applicants**

- 1.4.1 Another key change in how the team operates introduced last year related to the decision to not accept amendments or additional supporting information on applications which are not subject to a Planning Performance Agreement (PPA).

- 1.4.2 Unsurprisingly, there has been mixed feedback on the introduction of this practice with notable benefits identified around efficient and consistent decision making throughout the team. Negative feedback has centred on certain applicants and agents being frustrated that they are no longer able to seek to resolve issues arising during the course of the application itself. The rationale behind the changes to our practices in this respect was set out in March 2020 and remains the case now; 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. There is nothing contained within legislation or the Constitution that *requires* the Council to accept unsolicited amendments or additional supporting information to planning applications.
- 1.4.3 In practical terms, the correct time for constructive negotiations to take place on proposed schemes remains via the pre-application process and using PPAs where necessary.
- 1.4.4 I appreciate that elsewhere on this agenda, changes to the PPA protocol are recommended, specifically that we should not seek to enter into PPAs for schemes below 10 residential units or 1,000 square metres. It is accepted that this change coupled with the protocol of not accepting amendments on applications outside of the PPA process could disenfranchise those applicants making submissions for such development types. However, it remains the case that the correct forum for seeking to negotiate on the quality of schemes is via the pre-application advice service. It is recommended that the website content be expanded to make absolutely clear the Council's position in these respects.
- 1.4.5 Officers have reported that a possible unintended consequence of our new practices in this respect has been around resources being diverted by lengthy discussions with applicants about the relative merits of withdrawal and resubmission or receiving a refusal and having the option to appeal to the Secretary of State via his Planning Inspectorate. This indicates that our own internal practices around how we engage and inform applicants requires some improvement, alongside messaging via our website and the pre-application advice service we offer. This will be developed over the course of next few months and progress will be reported to Members in due course.
- 1.4.6 Linked to this, it is important to remember that submissions on this scale will always require a minimum level of supporting information to be provided to assist in our assessments and ultimately the decision as to whether planning permission should be granted.
- 1.4.7 As Members will be aware, there are national information requirements that set out what information must accompany all planning applications (set out in the Town and Country Planning (Development Management Procedure (England)

(Order) 2015). These requirements set a minimum amount of information that must be submitted with an application.

- 1.4.8 The Government's policy on local information requirements can be found in the National Planning Policy Framework. It sets out that LPAs should take a proportionate approach to the information requested in support of planning applications.
- 1.4.9 An LPA may request supporting information with a planning application. Its requirements should be specified on a formally adopted 'local list' which has been published on its website less than 2 years before an application is submitted. Local information requirements have no bearing on whether a planning application is valid unless they are set out on such a list.
- 1.4.10 The local list is prepared by the local planning authority to clarify what information is usually required for applications of a particular type, scale or location. In addition to being specified on an up-to-date local list published on the local planning authority's website, information requested with a particular planning application must be:
- reasonable having regard, in particular, to the nature and scale of the proposed development; and
  - about a matter which it is reasonable to think will be a material consideration in the determination of the application.
- 1.4.11 We do have a published local list, but it needs review to ensure it continues to be fit for purpose. The PPG sets out the recommended process for reviewing and revising local lists. It is therefore proposed that we embark on a comprehensive review of the local requirements with a view to reporting back to this Board in early 2022. In the meantime, internally, our practices need to reflect the importance of adhering to these requirements in all circumstances.
- 1.4.12 As such, at this time it is not proposed to change our practices and allow for amendments or additional information to be submitted outside the PPA process.

## **1.5 Section 106 Protocol and Monitoring**

- 1.5.1 The Protocol and associated monitoring fees were adopted by the Council in April 2021. As yet, it is too early to report any significant themes arising from the adoption of the protocol other than to note as follows.
- 1.5.2 The suggestion has been made that requiring the monitoring fees to be paid at the point the legal agreements are completed is unfair and a phased approach to payment should be considered. This option was discounted previously when recommending to Members that a monitoring fee should be introduced because the fee is predicated on ensuring the obligations are being met for the lifetime of the development and phasing payment would, in effect, add a further layer of

monitoring to the process, diverting resources from the principal task. As such, it is not recommended to make any changes to the requirements surrounding the payment of monitoring fees presently. This will be kept under review.

- 1.5.3 We have recently sought to recruit to the post of Senior Development Obligations Officer but that exercise has not resulted in an appointment. This role is considered to be crucial in ensuring that developments and their associated obligations are monitored in an effective manner throughout the life of the development and also that third parties involved in delivery and mitigation are also meeting their obligations. As such, at the time of writing this report, options are being considered as to how we fill the post.
- 1.5.4 An important component of the protocol as published centres on the constructive engagement with Town and Parish Councils and other local community groups to ensure community-based provision associated with new developments comes forward in a way that is truly reflective of local needs, where that can be properly evidenced.
- 1.5.5 In June, we wrote to all Parish Councils explaining that as part of our ongoing work on s106 monitoring and delivery, we are seeking to engage further with PCs about the protocol and what they can put in place/what support we can offer them in ensuring they're able to access s106 contributions where appropriate and evidence their use.
- 1.5.6 To date, one Parish Council has made an approach regarding obtaining some specific training and we are presently looking to progress that with them.

## **1.6 Member Training**

- 1.6.1 The Member training programme has continued throughout 2021, with the most recent MS Teams sessions focusing on the assessment of highway impacts and viability in decision making.
- 1.6.2 In liaison with the Cabinet Member for Strategic Planning and Infrastructure, the training topics for 2022 have been agreed to cover the following:
- Overview of the Building Regulations and interaction with planning considerations
  - Kent Design
  - Heritage considerations in planning decisions
  - The role of small and medium developers in planning

## **1.7 Reflecting on the year and looking ahead**

- 1.7.1 Pre-application engagement is indicating that we should expect a continued upward trend in the submission of planning applications particularly given the

current position in respect of plan making and within the context of a continued absence of a five-year housing land supply. We are, for example, expecting formal submissions by the end of this year for developments of Broadwater Farm and Bushey Wood. Similarly, the various outline planning permissions that have been granted within the north of the Borough, including Aylesford Newsprint and Whitepost Field, will trigger the submission of reserved matters submissions and discharge of conditions and it will be crucial to ensure they are dealt with in a manner that ensures those developments come forward in an altogether high-quality manner. Careful consideration is being given as to how best the team can be resourced to ensure effective and efficient decision making in these regards alongside wider service delivery.

- 1.7.2 We also remain mindful that there is likely to be a series of reform to the planning system moving forward although presently the detail of that remains unclear. In respect of the administration of planning applications and in particular public engagement, we are likely to experience some wholesale changes to how the government expects LPAs to conduct themselves. Members will be aware that the Planning for the Future White Paper (published August 2020) makes clear the government's vision on how it expects public engagement with the planning system to take place in the future. It states:

*“We need to modernise the day-to-day operation of the planning system. Residents should not have to rely on planning notices attached to lamp posts, printed in newspapers or posted in libraries. The COVID-19 pandemic has highlighted the need for modern digital planning services that can be accessed from home, and many planners and local authorities have responded brilliantly to this challenge. The planning system must build on this success and follow other sectors in harnessing the benefits which digitisation can bring – real-time information, high-quality virtual simulation, straightforward end-to-end processes. It should be based on data, not documents, inclusive for all members of society, and stimulate the innovation of the great British design industry.”*

- 1.7.3 It also sets out the intention to take a digital-first approach to modernise the planning process. This means moving from a process based on documents to a process driven by data.
- 1.7.4 As the agenda becomes clearer in this respect, implications for delivery of the service will be explained to this Board and recommendations made. Any such recommendations will also have the Council's own medium financial strategy embedded within them.

## **1.8 Legal Implications**

- 1.8.1 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.

## **1.9 Financial and Value for Money Considerations**

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

## **1.10 Risk Assessment**

1.10.1 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.

## **1.11 Equality Impact Assessment**

1.11.1 No issues raised.

## **1.12 Recommendations**

1.12.1 That the contents of the report be **NOTED**, having regard to the following:

- 1) Officers will commence a review of the Council’s local validation requirements in accordance with the recommended processes set out in the Planning Practice Guidance;
- 2) Improvements will be made to messaging contained on the Council’s website concerning use of the pre-application advice service and our approach to not accepting amendments/additional information post submission where PPAs are not in place; and
- 3) Officers will continue to review the effectiveness of the adopted Section 106 Protocol with a substantive update to be reported to the Board after a further period of implementation.

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:

contact: Emma Keefe

Nil

Eleanor Hoyle

Director of Planning, Housing and Environmental Health