

TONBRIDGE & MALLING BOROUGH COUNCIL
HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

19 July 2022

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 HIGHWAY OFFICER ATTENDANCE AT TMBC AREA PLANNING COMMITTEE

This report provides an update for members on the negotiations with KCC to agree a protocol for highway officer attendance at the Area Planning Committees.

1.1 Background

1.1.1 Officers and Members have been seeking to agree a Planning Committee Protocol on highway officer attendance at Area Planning Committees with KCC for some time. This is due to concerns raised that KCC highway officers were not attending planning committee for applications where the key areas of concern related to significant highway issues including highway safety.

1.1.2 In January 2021, KCC offered the following terms for attending Area Planning Committees which TMBC were informed had been offered to all other Kent Districts. The terms were set out as follows:

Subject to availability, an officer from KCC Highways will attend district planning committee meetings to speak on applications where:

- *these meetings are held virtually*
- *proposals are of a strategic nature and where it is agreed there are significant or complex highways issues which cannot be adequately presented by the district planning officer*
- *the highway recommendation is for refusal and this is contrary to that of the planning authority*
- *the district planning officer will field questions of clarification in the first instance and questions of clarification of detail contained within the Transport Assessment will be referred to the applicant's transport consultant*
- *Officers will be treated with respect at all times.*

In accordance with the above KCC Highways will only attend Chairman's Briefing meetings for those applications on the agenda that meet the above criteria.

To assist officers and Members, KCC Highways will provide:

- *training in highways development planning matters where this is requested*
- *assistance in preparation of planning officer presentations*
- *written responses to Member questions where these are not already covered in previous consultation responses*

- 1.1.3 Whilst TMBC wished to work collaboratively with KCC to find a workable solution and agree a protocol that would result in attendance of KCC officers at the Area Planning Committees, it was considered that the proposed protocol put forward did not address the key concerns of Members and Officers alike.
- 1.1.4 Further meetings and discussions were held (including drafting alternative terms for the protocol) with key KCC highway managers to ensure proposals of a strategic nature or ones that raised significant or complex highway issues which could not be addressed by the TMBC planning officer, had the attendance of a highway officer at the meetings.
- 1.1.5 TMBC's alternative proposal on a draft protocol is set out in **Annex 1** and was sent to KCC highways following the initial round of officer meetings.
- 1.1.6 On the 4 February, a letter was received from Barbara Cooper, Corporate Director of Growth, Environment & Transport, which is set out in **Annex 2**, confirming that KCC highways officers would only attend planning meetings to speak on applications in the same terms as set out in paragraph 1.1.2 above.
- 1.1.7 The Director for Planning, Housing and Environmental Health responded to Barbara Cooper's letter on the 5 February 2021 seeking to find a workable solution for all parties, however further discussions on the matter were not progressed.
- 1.1.8 Given the serious concerns raised by Members and officers alike on the stalemate position of negotiations, the Leader contacted the Cabinet Member for Highways and Transport at KCC to progress discussions and to push for a resolution and agreement on the protocol. These discussions were held between 26 January and 20 May 2022.
- 1.1.9 Unfortunately the Cabinet Member for Highways and Transport in his latest e-mail re-affirmed KCC's position on a protocol along the same terms as set out in 1.1.2 above. It is understood that this approach has been agreed with the other Kent districts.

1.2 Current Position

- 1.2.1 The current position is that TMBC do not have an agreed protocol in place and there is currently no highway attendance at the Area Planning Committees. KCC has indicated that they will continue to make officers available under the parameters laid out at 1.1.2.

1.3 Legal Implications

- 1.3.1 Whilst there are no direct legal implications arising from the current position of KCC on a protocol for attending Area Planning Committee, there are potential legal implications arising to TMBC should Members chose to refuse an application on highway grounds when the statutory consultee has not raised an objection. This can be mitigated by attendance of the legal officer at Area Committee meetings and advice given at the time of draft grounds being provided by Members.
- 1.3.2 There is no legal requirement for a statutory consultee to attend a planning committee meeting; all statutory consultees are given an opportunity to comment on relevant applications as part of the formal consultation process.

1.4 Financial and Value for Money Considerations

- 1.4.1 Whilst there are no direct financial implications arising from the current position of KCC on a protocol for attending Area Planning Committee, there are potential significant financial implications arising should Members chose to refuse an application on highway grounds when the statutory consultee has not raised an objection. This could take the form of an award of costs for raising unreasonable grounds without having the evidence to substantiate such grounds for not following the advice of the statutory consultee.

1.5 Risk Assessment

- 1.5.1 The risks associated with not having a protocol in place for highway attendance at Area Planning Committees have been set out in 1.3 and 1.4 above and mainly centre around the implications of Members choosing to refuse an application on highway grounds when the statutory consultee has not raised an objection. This risk is still present even if a protocol was in place, but an agreed protocol with KCC in attendance would allow Members to ask further questions on highway related technical matters which the planning officer may not be able to address.

1.6 Equality Impact Assessment

- 1.6.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.7 Recommendations

- 1.7.1 That the content of this report be **NOTED**, and that Members set out their concerns with not having an agreed protocol in place, which can be relayed to the Cabinet Member for Highways and Transport.

Background papers:

- Annex 1 - TMBC agreed protocol position
- Annex 2 - Letter from Barbara Cooper on KCC's
protocol position (4 February 2021)

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