

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

10 March 2015

Report of the Director of Planning, Housing and Environmental Health Services

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 PLANNING REFORMS UPDATE

This report provides Members with an update on the Government's recent and on-going planning reforms and requires a decision in relation to the negotiation of Affordable Housing contributions.

1.1 Introduction

1.1.1 The Government has continued to introduce further significant planning reforms, for example, by updating National Planning Practice Guidance (NPPG) or consulting on proposals. This report provides a brief summary of the main items since the last Board meeting in November

1.2 Recent or Impending Changes

1.2.1 Planning Contributions for Affordable Housing

1.2.2 On 28 November the NPPG was amended to set new thresholds for seeking affordable housing contributions. The Government believe this will remove some of the financial burdens on small scale house builders. These changes came into force immediately and are therefore part of the consideration of any relevant planning application and reflected in advice in Committee reports.

1.2.3 In brief, contributions for affordable housing can no longer be sought from developments of 10 units or less and with a gross floor area of no more than 1,000sq.m. In designated rural areas (as defined by Section 157 of the Housing Act 1985), Local Planning Authorities have the discretion to use a lower threshold of 5 units or less. The only such designated rural areas in Tonbridge and Malling are the Areas of Outstanding Natural Beauty (AONBs) of which there are two in the Borough, broadly in the north/north west and south of the Tonbridge bypass.

1.2.4 Residential annexes and extensions are exempt from affordable housing contributions. However, the changes do not apply to rural 'exception' sites, the main purpose of which is to deliver affordable housing as an 'exception' to the application of other prevailing planning policies.

- 1.2.5 This has implications for the implementation of adopted planning policies in Tonbridge and Malling. The adopted planning policy will be the starting point in determining applications, but the NPPG will carry significant weight as a material consideration.
- 1.2.6 Core Strategy Policy CP17 addresses affordable housing. In urban areas the threshold for seeking contributions from a proposal is 15 dwellings or 0.5 hectares.
- 1.2.7 The new threshold of 10 units is below the 15 unit threshold in CP17, so there will be no noticeable change based on the number of units proposed. However, in future, on sites that are 0.5 hectares or above, contributions can only be sought if the proposal is for 11 dwellings or more, or the combined gross floor space of the development is over 1,000sq.m. Previously, contributions would have been required on sites over 0.5 hectares regardless of the number of units proposed.
- 1.2.8 For rural areas there is a more significant change. The LDF currently describes rural areas as the entire area outside the defined urban areas. Policy CP17 requires affordable housing contributions in rural areas for proposals of 5 dwellings or more or a site area of 0.16 hectares.
- 1.2.9 However, as noted above, the NPPG only identifies those parts of the Borough designated as an AONB as being eligible for a lower threshold. Therefore, in all other rural areas, the thresholds will, in future, be the same for urban areas (i.e. contributions can only be sought on proposals of 11 or more dwellings or where the gross floor space is over 1,000sq.m). I find this distinction between AONBs and other rural areas to be rather artificial in terms of applying policy concerning affordable housing, but that is the position we are bound to follow.
- 1.2.10 In the AONBs, the threshold of 5 units can still apply, meaning financial contributions can be sought from proposals of 6 units or above (although it is worth noting that in future this will only be in the form of commuted sum cash payments for proposals of between 6 -10 units and then only at the completion of that development).
- 1.2.11 The new thresholds do not apply in the case of rural exception sites and therefore Policy CP19 remains unaffected.
- 1.2.12 The changes to NPPG in November also introduced the concept of **vacant building credit** in respect of calculating affordable housing contributions. This means that where a vacant building is brought back into use or demolished to be replaced by a new building, the developer is offered a financial credit equivalent to the gross floor space.
- 1.2.13 This latter provision could have serious consequences for affordable housing contributions arising from brownfield developments where there are eligible vacant buildings. This is not a matter open to negotiation by the Council – it is required by Government Practice Guidance. In light of the opportunity to continue to secure

contributions on sites of between 6 and 10 units in the AONBs, we have considered whether it would be appropriate to recommend to Members that such an approach is justified. The most recent research in the SHMA indicates an unmet need for affordable housing provision in Wards of the Borough within the AONBs. On this basis it appears that the most recently available evidence justifies the adoption of the 5 unit threshold for sites in the AONBs. I recommend that the Board supports such an approach at the end of this Report.

1.2.14 Sustainable Urban Drainage Systems (SUDs)

1.2.15 From 6 April 2015, planning applications for developments over 10 units of housing, or non-residential developments of equivalent scale, will be subject to new requirements for SUDs to be put in place, unless it can be demonstrated that it would be inappropriate so to do. This will be a **material consideration in determining planning applications after 6 April** and will have to be reflected in Local Plan policy in due course.

1.2.16 The Government is still considering future arrangements for statutory consultees relating to SUDs which will have implications for Lead Local Flood Authorities (Kent County Council for Tonbridge and Malling) and the Environment Agency (EA). However, Government has yet to publish the necessary secondary legislation or associated guidance and so exactly how the process will be required to work within the planning system is not yet known.

1.2.17 Details of the changes post 6 April and implications for TMBC are addressed in a separate report on this agenda. Although there must undoubtedly be key roles for KCC and the EA, it seems that the Borough Council as Local Planning Authority will carry the ultimate responsibility for approving schemes.

1.3 **Current Government Consultations**

1.3.1 Stepping onto the Property Ladder

1.3.2 This consultation, which closed on 9 February, sets out Government proposals for a **new national starter homes 'exception site' policy** to enable starter homes to be built on under-used or unviable brownfield sites that are not currently identified for housing.

1.3.3 In brief the proposal would work in a similar way to the rural exceptions policy. Local Planning Authorities would work positively with landowners and developers to secure sites that would be suitable for housing for first time buyers.

1.3.4 Underused brownfield sites not allocated for housing would be identified as 'exception sites', which would have a presumption in favour of residential development for starter homes (to be offered for sale at least 20 per cent below market rates), unless there were overriding considerations in terms of health, safety or infrastructure that could not be mitigated.

- 1.3.5 The homes would be offered to buyers who had not previously owned a home before, who would be less than 40 years of age at the time of purchase and there would be no resale at market value for a given time period (5 -15 years proposed). These developments would be exempt from developer contributions for affordable housing.
- 1.3.6 An officer level response to the set questions accompanying the consultation has been returned to the DCLG raising a number of significant concerns. Notwithstanding the normal detailed observations surrounding these proposals, such as defining the term 'underused', the main issue relates to the principle of establishing residential use on brownfield sites that might be allocated for other uses in the development plan, such as employment uses. This would not be an exception policy, but represent a new housing policy/allocation. It is also very difficult to see how, once a site is seen as suitable for housing in basic land use terms, it could be defended as a 'starter homes exception site' against pressure for general housing development, which might in itself offer some affordable housing!
- 1.3.7 The Officer level response can be found at **[Annex 1]** to this report and Members are invited to endorse the approach adopted therein.
- 1.3.8 Building More Homes on Brownfield Land
- 1.3.9 This consultation began in January and closes on 11 March. It seeks views on proposals to ensure that information on brownfield land that is suitable in principle for housing is monitored and made publicly available by Local Planning Authorities. The intention is that such land would be subject to Local Development Orders which would effectively grant outline planning permission for housing in order to meet the Government's target of 90 per cent of suitable brownfield land with LDOs by 2020. The Government is also seeking views on whether to introduce performance criteria that would place those Local Planning Authorities failing to do so in special measures.
- 1.3.10 It is not entirely clear how these proposals would interface with the previous Stepping onto the Property Ladder consultation, but the intention is to bring more underused or vacant brownfield sites forward for housing before considering greenfield sites.
- 1.3.11 There would appear to be few implications for Tonbridge and Malling of these proposed changes. Historically the Borough Council has achieved a very high level of use of brownfield land – 96 per cent on average 2006/7-2011/12 recorded in the Annual Monitoring Report (AMR). The emerging Strategic Housing Land Availability Assessment (SHLAA) looks likely to identify most of the brownfield sites in question. Many of those that meet the proposed criteria already have planning permission. In any event, it is questionable how the introduction of LDOs would make much practical difference when, in policy and development control terms, there is such a clear presumption in favour of brownfield development.

1.4 S106 Negotiations

1.4.1 The Government has very recently published a further consultation regarding a new potential S106 disputes resolution procedure. This seems to take as its underlying assumption that the failure to conclude a S106 agreement results from recalcitrance on behalf of LPAs. While this might be the situation in some cases, I am bound to say that our experience is that often a developer will wish to wait for the final completion of a S106 until he is absolutely ready to commence a land purchase or start a development. There are, indeed, some current major cases where the developer is the party currently 'holding' draft agreements for completion. We will need to give serious consideration to the suggested "improvements" in processing S106 disputes and will respond to the Consultation, which is due by 19 March.

1.5 Concluding Remarks

1.5.1 The march of Government planning reforms, either proposed or actual, is currently remorseless. Officers are responding to consultations where appropriate and taking necessary action in determining planning applications and preparing the new Local Plan. The rate of change from potential reforms and the actual impact on service delivery from those reforms already introduced is noticeable, but not necessarily in a positive way.

1.5.2 Moreover and in addition to the reforms described in this report, Ministerial statements also have some impact on the interpretation of planning policy and these are also being monitored. For example, the Housing and Planning Minister Brandon Lewis MP, recently wrote to the Mayor of London to confirm the latter's intention to publish further alterations to the London Plan. In the letter he welcomed the Mayor's commitment to responding positively and quickly to address the expected increases in London's population, but he also took the opportunity to remind him that areas beyond London's boundaries will have their own challenges in meeting future housing needs and also to reiterate the Government's policy on the Green Belt. This will help to inform the ongoing discussions between the Mayor and the GLA and the Local Authorities within the London city region.

1.6 Legal Implications

1.6.1 There are no direct legal implications arising directly from this report.

1.7 Financial and Value for Money Considerations

1.7.1 There are no financial or VfM implications arising directly from this report. There may be resource implications of some of the proposals described in this report in the future if they result in new roles and responsibilities for Local Planning Authorities.

1.8 Risk Assessment

- 1.8.1 This report updates Members in respect of the Government's planning reforms. To not do so would carry the risk of the Authority being out of step with Government policy and practices.

1.9 Recommendations

- 1.9.1 That Cabinet be advised to adopt a threshold of 5 dwelling units for the securing of affordable housing contributions for proposed development in the AONBs.
- 1.9.2 That the Board endorses the response to DCLG consultation as set out in **[Annex 1]**.

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:

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Nil

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