

## **MAIDSTONE BOROUGH COUNCIL**

### **RECORD OF DECISION OF THE CABINET**

Decision Made: 14 January 2015

#### **MAIDSTONE BOROUGH LOCAL PLAN - DEVELOPMENT MANAGEMENT AND INFRASTRUCTURE DELIVERY POLICIES**

##### **Issue for Decision**

- 1) The issue for consideration concerns the responses to development management policies contained in the Maidstone Borough Local Plan Regulation 18 Consultation 2014 (MBLP 2014) in accordance with the Town and Country Planning (Local Planning)(England) Regulations 2012. This report covers proposed amendments to these policies following regulation 18 consultation, with the intention that these policies will then be approved for regulation 19 consultation, planned for July 2015.
- 2) In addition to development management policies, proposed amendments to the two infrastructure delivery policies are being reported. The intention is that these policies will then be approved for the regulation 19 consultation.
- 3) A new development management policy, covering care homes, is also being reported. This policy is proposed to be grouped with the housing policies in the plan. As this is a new policy, it needs to be subject to regulation 18 consultation. On that basis and subject to approval, the policy would be consulted on alongside site additions and amendments in the further regulation 18 consultation at the end of February 2015.

##### **Decision Made**

- 1) That the proposals set out in the SCRAIP from Planning, Transport and Development Overview and Scrutiny Committee (PTDOSOC) on 16 December 2014 as attached at Appendix C to the report of the Head of Planning and Development, together with the proposed amendments to the development management policies detailed in Appendix A to the report be agreed, subject to the following amendments:-

**Policy DM1** – There should be an additional amendment to Policy DM1 so that the first sentence reads – “Proposals for development on previously developed land (Brownfield land) that make effective and efficient use of land and which meet the following criteria will be encouraged and permitted”.

**Policy DM4** – Paragraph iii) be removed, paragraphs xii) and xiii) be amalgamated and the rest of the paragraphs be renumbered to

reflect these changes.

**Policy DM10** – An additional paragraph be added – “Further consideration will be given to concerns about receptor sites and additional reference will be drafted by the Head of Planning and Development in consultation with the portfolio holder for Planning, Transport and Development”.

**Policy DM23** 11.124 – The final sentence of this paragraph should read “Where affordable housing is proposed or required, the housing register **will** provide additional guidance”.

**Policy DM25** Key Issue 2 Officer Response: Replace the word ‘principal’ with the word ‘principle’ and Key Issue 8 Officer Response: remove the Planning Minister’s name

and with the exception of Policies DM13, 14 and 15 which will be subject to further consideration when transport modelling advice is available and Policy DM24 which will be subject to further consideration when updated viability information is available;

- 2) That, the proposals set out in the SCRAIP from PTDOOSC on 16 December 2014 (as attached to the report at Appendix C) and the proposed amendments to the infrastructure delivery policies detailed in Appendix A to the report be agreed and that the policies be approved for regulation 19 consultation in July 2015;
- 3) That, the proposals set out in the SCRAIP from PTDOOSC on 16 December 2014 (as attached to the report at Appendix C), and the amendments to the proposed care home policy detailed in Appendix B to the report be approved, for regulation 18 consultation in February 2015; and
- 4) That it be noted that in regard to **Policy DM18** – an additional representation had been received to include the James Whatman Site, at least in part, in the list of retained employment sites and that consideration should be given to this before Regulation 19 consultation is conducted; and
- 5) That reference to Neighbourhood Plans and their importance in the Development Plan framework be highlighted and strengthened in the introductory narrative to the Local Plan as a whole and that publicity material associated with the Local Plan should also reference the important role of Neighbourhood Plans prominently where appropriate.

### **Reasons for Decision**

- 1) The Maidstone Borough Local Plan Regulation 18 consultation ran from 21 March 2014 until 7 May 2014.
- 2) A large part of the local plan consultation was about finding the land to accommodate 19,600 homes, which at that time was identified as the objectively assessed need for the borough in the

plan period 2011-2031.

- 3) In addition to housing allocations and other types of allocations which addressed issues such as employment or retail, there were topic based policies, which gave general guidance to submitting and determining planning applications – these are the development management policies. Development management officers will use these policies on a day to day basis to form the foundation of their assessment of the merits of planning applications.
- 4) The list of development management policies is detailed as follows:

Development management policies for Maidstone Borough	
DM 1	Development on brownfield land
DM 2	Sustainable design standards
DM 3	Renewable and low carbon energy schemes
DM 4	Principles of good design
DM 5	Residential garden land
DM 6	External lighting
DM 7	Signage and shop fronts
DM 8	Residential extensions, conversions and redevelopment
DM 9	Non-conforming uses
DM 10	Historic and natural environment
DM 11	Publicly accessible open space and recreation
DM 12	Community facilities
DM 13	Sustainable transport
DM 14	Public transport
DM 15	Park and ride sites
DM 16	Air quality
DM 17	Economic development
DM 18	Retention of employment sites
DM 19	Town centre uses
DM 20	District centres, local centres and local shops and facilities
DM 21	Residential premises above shops and businesses
DM 22	Mooring facilities
DM 23	Housing mix
DM 24	Affordable housing – this will not be reported, subject to ongoing consultation
DM 25	Local needs housing
DM 26	Gypsy, Traveller and Travelling Showpeople accommodation
Development management policies for the town centre	
DM 27	Primary shopping frontages
DM 28	Secondary shopping frontages
DM 29	Leisure and community uses in the town centre
Development management policies for the countryside	
DM 30	Design principles in the countryside
DM 31	New agricultural buildings and structures
DM 32	Conversion of rural buildings
DM 33	Rebuilding and extending dwellings in the countryside
DM 34	Change of use of agricultural land to domestic garden land
DM 35	Accommodation for agricultural and forestry workers

DM 36	Live-work units
DM 37	Expansion of existing businesses in rural areas
DM 38	Holiday caravan and camp sites
DM 39	Caravan storage in the countryside
DM 40	Retail units in the countryside
DM 41	Equestrian development

- 5) At the meeting of PTDOSOC on 19 August 2014, the key issues arising from the MBLP 2014 consultation were reported. This included the development management policies and listed the amount of comments against each policy that were either in support, an objection or an observation.
- 6) Appendix A to the report of the Head of Planning and Development was in effect a continuation of the 19 August 2014 report, albeit restricted to the development management and infrastructure delivery policies. The issues identified in the 19 August report were responded to and any proposed changes are detailed. Each policy as amended was included following the responses and proposed changes.

**General issues raised as objections or observations in the local plan consultation.** This section was a general consideration of issues raised in the local plan consultation and the changes that officers have proposed in response to these. The issues were covered individually in Appendix A to the report.

Cabinet considered these issues and made some amendments as set out in the decision.

**Reading the plan as a whole.** A number of issues were raised in general throughout the consultation response. One point that was raised a number of times, but in general not accepted, was regarding cross references. Requests to refer to other policies in the plan or make reference to individual aspects of policy such as transport or the Kent Downs AONB. These requests were rejected on the basis of the principle of the requirement to read the local plan as a whole. Unless policies are location or topic specific, all policies will apply. So as an example, it was noted that where a comment requests reference to the Kent Downs AONB, the majority of times, this will already be covered by DM30 – Design principles in the countryside. In some cases, requests are made to reference guidance documents – again a good example of this is in relation to the Kent Downs AONB. The principle here is slightly different in that these documents can provide useful guidance and that because these are not a part of the plan, they can be referenced in policy – assuming that they are relevant.

**Cross-referencing parish councils and neighbourhood plans.** In a similar vein to the issue about cross-referencing policies and topics, a frequent comment related to the referencing of parish councils or neighbourhood plans. It was noted that the knowledge that parish councils bring to the planning process was invaluable, however, the circumstances in which a neighbourhood plan is

referenced within the local plan should be limited. This is because neighbourhood plans are part of the development plan, alongside the local plan. What this means is that apart from the issue about neighbourhood plans being in general conformity with the strategic policies in the local plan, the weight afforded to policies in an adopted neighbourhood plan is equivalent to that afforded to policies in an adopted local plan. There was no need to reference an adopted neighbourhood plan as it has equal statutory weight and must be taken into account. In any case, the emerging neighbourhood plans have been a material consideration in the formulation of policies.

In terms of referencing a parish council and the guidance that they might be able to offer the process, then this is slightly different. An example where such a comment has been accepted is DM11 – Publicly accessible open space and recreation, in relation to deciding whether alternative provision is of equivalent community benefit. The proposed policy change makes reference to community representatives determining if the alternative provision is of an equivalent benefit. This does not reference the parish council directly because not all areas are parished.

**Place shaping policies versus topic based policies.** It was noted that an interesting issue relates to DM13 – Sustainable transport. There was concern that parts 1 and 2 of the policy could not be used for development management purposes as they do not offer decision making criteria and are rather an indication of the council's strategic intent. This is true in the respect that, as a topic, sustainable transport does cross boundaries with strategy elements and specific decision-making criteria. The structure of the draft local plan is such that its strategic policies are drafted as place shaping policies, rather than as topic based policies. A good example of the change in approach is to compare it with the Maidstone Borough-Wide Local Plan 2000. The recommendation in this case was for the policy to remain as drafted, because this was a necessary compromise resulting from the way that the draft local plan is structured. This does not impact on decision making because sufficient and appropriate development management criteria are included in the transport policies.

### **Housing policies.**

As part of the council's collegial approach to refining the local plan, the development management housing policies were responded to by the council's housing team. These policies are DM23, DM24, DM25 and DM26. In general, the housing team had sought to better define aspects of the policies and added detail where they have considered it appropriate. It is important to recognise that the way the policies function affects both the development management team and the housing team, so housing input to the drafting of these policies is valuable in the longer term.

**Local needs housing.** An issue of note that had arisen in the consultation was concerning local needs housing and the definition of what that is versus general affordable housing. Affordable

housing in its general sense, would be reported to Cabinet as part of the proposed Regulation 19 consultation in July 2015, however, there will be some appropriate commentary to be made. Some parishes have expressed a desire to restrict affordable housing only to local residents/those with a local connection. This is against the general principle of affordable housing provision and would serve to assist in making the relevant parishes/villages closed communities. While the council does not agree with that in principle, the housing team have expressed some empathy from a differing perspective that perhaps the long term sustainability of placing residents in locations they might not have chosen otherwise, could be detrimental.

**Affordable housing.** DM24 – Affordable housing had not been reported on within the report. The policy has been the subject of a large number of comments in the consultation. These relate to the cost of providing affordable housing, tenure split, the proposed geographical split and the tenants that ultimately would live in the houses. The nature of the comments and their implications for plan viability is such that further work will be required in order to update the policy appropriately. In any case, the affordable housing policy as consulted on in the draft local plan is based on viability evidence produced by Peter Brett Associates, in the evidence document – Local Plan Viability Testing (2013). To amend the policy in the plan would require an amount of this evidence to be retested.

**Economic development policies.**

In a similar manner to the housing policies, the council's economic development team has responded to the comments on development management economic development policies in the plan. These policies are DM17, DM18, DM19, DM36 and DM37.

Of note among the proposed amendments to the economic development policies were the additional employment sites proposed in policy DM18 – Retention of employment sites. The amendments to the list of employment sites takes account of the evidence in the 2014 Qualitative Employment Sites Assessment (undertaken by GVA). Cabinet noted an additional representation to include the James Whatman Site, at least in part, in the list of retained employment sites and to give consideration to this before Regulation 19 consultation is conducted.

A number of the comments regarding economic development related to the allocations and designations. Allocation specific comments, responses and proposed changes i.e. new sites as identified in the consultation and either denoted EMP1(XX) or RMX1(XX), and would be reported to Cabinet in time for any necessary further regulation 18 consultation in February 2015. Comments relating to the designations, i.e. identification of existing sites for protection purposes, query the nature of the identification and suggest that limiting the use of the site to traditional B class employment uses will unduly restrict development. The response in these cases, however, is that policy DM18 does allow for non-B class uses, but with recognition that this is under strict

circumstances where it can be demonstrated that in the medium term there is no prospect of take-up/continued use. The purpose of the policy remains, to protect traditional employment uses, albeit noting that the NPPF is now more flexible in its definition of what employment is.

**Sustainable construction – winding down the Code for Sustainable Homes.** DM2 – Sustainable design standards is currently subject to Government policy. In the Housing Standards Review – Technical Consultation, published in September 2014, the Government indicated that it would wind down the Code for Sustainable Homes and that it would publish a policy statement on the matter early in 2015. Accordingly, when the statement is published, the Government expects new local plan policies to no longer refer to the Code for Sustainable Homes – these standards will be incorporated into building regulations.

What is not clear is how the Government intends to deal with BREEAM or with the so called Merton Rule (requiring 10% of energy provision to be provided on site through renewable technology). It appears at this point that when the policy statement is published, the requirements for Code levels will have to be removed from this policy, but that the references to BREEAM and the 10% renewable energy requirement could be allowed to remain. No changes to this policy are currently proposed, but it may need to be amended prior to the regulation 19 consultation.

**Design principles.** Design principles are key to all development proposals. The draft local plan included two design policies – DM4 – Principles of good design, and DM30 – Design principles in the countryside. A number of comments relating to these policies question how they can be enforced or seek further clarification of certain elements. These are appropriate questions and are a reflection of how the policies should be used. The policies themselves set parameters and the way that the design policies are enforced is through an iterative design process undertaken in conjunction with the council. This involves a design and access statement and ultimately if it is considered at application stage that the consideration of design has been insufficient, through refusal.

**Sustainable transport.**

DM13 – Sustainable transport, had the most varied comments of any development management policy. The comments, perhaps unsurprisingly, relate a lot to infrastructure delivery, so there is significant read across with policy ID1 and the infrastructure delivery plan (IDP). Allowing for affordable housing, transport is the top of the infrastructure prioritisation list for residential development and for business and retail development.

The comments in general seek either the delivery of physical infrastructure, be that a high speed railway station, the Leeds/Langley bypass or a rapid transit system – such as a monorail; or they seek better services on existing infrastructure. Other comments relate to the policy structure and suggest that the

policy approach is not integrated with the rest of the local plan.

The difficulty in addressing comments at this stage related to further transport modelling, which is still being undertaken by Amey, on behalf of Kent County Council. Officers have responded appropriately to the comments made in the consultation, but what is still apparent is the need to model transport solutions to mitigate the impact of developments proposed in the plan, and then make commentary based on the results of modelling.

The mitigating factor was that apart from the identification of park and ride sites, the transport policies take a generalised approach, so comments can also be responded to in generalised terms where necessary.

**Infrastructure delivery policies.**

Infrastructure delivery is a key element of the local plan. The infrastructure delivery policies in the draft local plan deal with the principle of infrastructure delivery in general and with the specifics of electronic communication.

The two infrastructure delivery policies are as follows:

ID 1	Infrastructure delivery
ID 2	Electronic communications

A number of concerns were raised in relation to policy ID1, specifically about the timing of infrastructure and about what types of infrastructure might be included and not be included in the list that the council intends to seek funding for/use Community Infrastructure Levy receipts to fund. The prioritisation included in the policy is in part the reason for these comments, however, they are still legitimate comments. The other side to these comments is that if a relevant infrastructure type has been included, but is low down the list then some comments have sought for these rankings to be changed. Some clarification has been proposed to be added to the policy to make it clear that the priority list is a guide and that in some cases the context of a given application may mean this is altered.

**Timing.** One concern raised many times is the timing of infrastructure. The concern is that the infrastructure on developments is being delivered late and that in some cases, such as with public transport services, this is hindering the success of that infrastructure. There are options for the delivery of infrastructure earlier in the development of given sites and can be specified in site policies. As with all infrastructure, viability is a key consideration. An additional sentence had been proposed to address this issue.

**Sewage.** In the southern villages in particular, but also across the borough in general, there have been instances of surface water flooding leading to sewage flooding the streets, frequently because of rain water inundating the main foul drainage system. These



instances are a key concern for residents. The council has been involved in ongoing work to understand what it can seek to achieve so that developments can be accommodated and problems adequately addressed.

**IDP and CIL.** Key to the understanding of infrastructure delivery will be the infrastructure delivery plan and the Community Infrastructure Levy. The CIL is acknowledged in ID1 as the means to secure funding for strategic infrastructure and it may be that as a result of the CIL the council will be better placed to deliver infrastructure and offer infrastructure in a more timely manner, where it is proven to be necessary. The IDP remains the key document in terms of listing what infrastructure is needed where, by when and identifying how it is intended to be funded. While comments have been made that request the specific infrastructure types and perhaps even schemes that need to be addressed in ID1, the proper approach is for the IDP to remain as the list and for ID1 to specify how that is delivered.

### **Additional policy – Nursing and care homes**

Included as Appendix B to the report is the proposed policy addressing nursing and residential care homes. On 10 September 2014, the Cabinet agreed a figure of 960 additional care home places in the borough for the period 2011-2031.

The proposed policy included in Appendix B follows the wider spatial distribution of the plan and seeks for nursing and residential care homes to be delivered in the urban area, rural service centres or the larger villages, subject to standard planning principles i.e. the impact on the amenity of neighbours and neighbouring uses.

Following the approval of Cabinet, the draft policy would be included in the further regulation 18 consultation proposed to begin at the end of February 2015.

### **Next steps**

The proposed next steps were:-

- **Policies DM1-DM41 (excluding DM24)** – approve recommended changes detailed in this report and consult on these in regulation 19 draft of the local plan (July 2015).
- **Policy DM24 – Affordable housing** – subject to further consideration as part of the wider IDP and CIL work, will be reported to July 2015 Cabinet for approval as part of regulation 19 consultation.
- **Policies ID1 and ID2** – approve recommended changes and consult on these in regulation 19 draft of the local plan (July 2015).
- **Policy DMXX (Nursing and care homes)** – approve recommended policy for inclusion in further regulation 18 consultation, intended for February 2015.

## **Alternatives considered and why rejected**

In reality the only alternative course of action would be to delay the proposed amendments to the development management policies until the full version of the regulation 19 consultation draft would be reported back to Cabinet in July 2015. This is the route that is being taken with DM24 – Affordable housing, and with other elements of the plan. The reason this has not been recommended is because the plan contains a significant amount of information and it is considered that the chance to approve some of this earlier, rather than later is a prudent approach. The development management policies in the large part, although with some recognised exceptions, are topic based and can be dealt with ahead of determining some of the more strategic elements of the plan.

Should you be concerned about this decision and wish to call it in, please submit a call in form signed by any two Non-Executive Members to the Head of Policy and Communications by: <b>23 January 2015</b>
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