

Strategic Planning, Sustainability and Transportation Committee

13 June 2017

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Neighbourhood Planning Act 2017

Final Decision-Maker	Strategic Planning, Sustainability and Transportation Committee
Lead Head of Service	Rob Jarman, Head of Planning and Development
Lead Officer and Report Author	Mark Egerton, Planning Policy Manager & Sue Whiteside, Principal Planning Officer
Classification	Public
Wards affected	All

This report makes the following recommendations to this Committee:

1. That the provisions of the Neighbourhood Planning Act 2017 are noted.

This report relates to the following corporate priorities:

- Keeping Maidstone Borough an attractive place for all; and
- Securing a successful economy for Maidstone Borough

The Neighbourhood Planning Act 2017 includes provisions that affect the delivery of development through the plan making and development management processes.

Timetable

Meeting	Date
Strategic Planning, Sustainability and Transportation Committee	13 June 2017

Neighbourhood Planning Act 2017

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report summarises the provisions of the Neighbourhood Planning Act 2017 (the Act), and is presented for information only.
- 1.2 The Act strengthens the role of neighbourhood planning, and introduces measures that will ensure local planning authorities (LPAs) have up-to-date local plans for their areas. The new legislation includes restrictions on powers to impose planning conditions, and removes permitted development rights relating to drinking establishments. The Act also includes provisions intended to improve the operation of compulsory purchase orders.

2. INTRODUCTION AND BACKGROUND

Abbreviations used in the report	
Act	Neighbourhood Planning Act 2017
CPO	Compulsory Purchase Order
DPD	Development Plan Document (including the Local Plan)
LDD	Local Development Document
LDS	Local Development Scheme
LPA	Local Planning Authority
NDP	Neighbourhood Development Plan
SCI	Statement of Community Involvement
SPD	Supplementary Planning Document

- 2.1 The Neighbourhood Planning Bill gained Royal Assent on 28 April 2017.
- 2.2 Part 1 of the Act covers a range of planning matters including neighbourhood planning, local development documents, planning conditions, permitted development rights relating to drinking establishments, the development of New Towns by LPAs and the register of planning applications.
- 2.3 Part 2 of the Act relates to changes to compulsory purchase powers.
- 2.4 Several of the Act's provisions have already come into force, but others will require secondary legislation.
- 2.5 This report is for information only.

Neighbourhood planning

- 2.6 The Act aims to strengthen neighbourhood planning by ensuring that LPAs take account of well advanced neighbourhood development plans (NDPs) by including a duty on LPAs to have regard to a post-examination draft neighbourhood development plan (NDP) as a material consideration in the determination of planning applications (provided the authority has made a

decision that the referendum will be held on the draft plan or an examiner has recommended that the authority should make the draft NDP with or without modifications). Full weight is given to an NDP in draft form once it has passed referendum stage but before the NDP is formally made by Council. Following referendum, the only basis under which an NDP may cease to be part of the LPAs development plan is if the Council decides that the NDP would be incompatible with European Union Law or Human Rights Law. An NDP will still date over time, as do local plans, and its policies can be superseded by a later adopted local plan or by national policy and/or guidance.

- 2.7 The Act introduces a process for modifying NDPs, and the designation of a Neighbourhood Forum can cease to have effect if a new or amended Parish Council boundary overlaps with the relevant neighbourhood area.
- 2.8 Changes to neighbourhood planning procedures will require amendments to Regulations, including the Neighbourhood Planning (General) Regulations 2012. The Council's protocol for preparing neighbourhood plans will be reviewed once Regulations are in place.
- 2.9 The Council currently sets out how it helps neighbourhood plan making bodies in an advice note which is published on its webpage. In future this will need to be formally included in the Council's Statement of Community Involvement (SCI). Amendments relating to the content of an SCI will require revisions to the Town and Country Planning (Local Planning) (England) Regulations 2012. A report on the review of the SCI is included in this Committee's work programme for the forthcoming year.

Local development documents

- 2.10 Local Development Documents (LDDs) include statutory development plan documents (DPDs) and non-statutory supplementary planning documents (SPDs). The Government is seeking to ensure that all LPAs have an up-to-date local plan (which is a DPD). The Secretary of State will be able to make Regulations that require LPAs to review LDDs within prescribed time frames. Once an LDD has been reviewed, the local planning authority must publish its reasons if a document has not been revised.
- 2.11 DPDs (taken as a whole) will need to identify the strategic priorities for the development and use of land. This removes an expectation that a LPA (or joint LPAs if preparing a joint local plan) should be covered by a single local plan.
- 2.12 The Act introduces new powers whereby the Secretary of State will be able to direct two or more LPAs to develop joint local plans if it would facilitate more effective planning of the development and use of land. County Councils may be invited by the Secretary of State to prepare local plans where districts have not done so.
- 2.13 The Secretary of State is required to issue guidance for LPAs on how their LDDs (taken as a whole) should address housing needs that result from old age or disability.

2.14 The Secretary of State may also introduce Regulations that prescribe additional matters to be addressed by a Local Development Scheme (LDS) or an SCI (both of which are included in this Committee's work programme for the forthcoming year).

2.15 With the exception of the requirement to provide guidance as to how LDDs should address housing needs that relate to old age or disability, new or amended secondary legislation will be required, mainly to amend the Town and Country Planning (Local Planning) (England) Regulations 2012 which set out the procedures for preparing LDDs.

Planning conditions

2.16 The new legislation includes restrictions on powers to impose planning conditions, including the tightening of rules around a LPAs use of pre-commencement conditions by ensuring only those with written agreement from the developer can be used. The intention is for the Act to reduce the time lag between planning permission being granted and the commencement of building on-site. The aim is to ensure that conditions are only imposed where they meet the tests for planning obligations set out in the National Planning Policy Framework.

2.17 This section of the Act is not yet in force, so the Secretary of State does not have the power to make Regulations controlling the use of conditions. Once the provisions of the Act are commenced, Regulations will set out the circumstances under which pre-commencement conditions may be imposed without the applicant's consent, together with prohibited conditions.

2.18 As indicatively drafted, the Regulations controlling the use of conditions would apply to planning applications granted (as opposed to submitted) after a certain date, so a system will need to be put in place to seek applicant approval of pre-commencement conditions on all planning applications under consideration on or after the given date (possibly before the Regulations come into force).

Permitted development rights relating to drinking establishments

2.19 The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017 came into force on 23 May 2017. The order removed permitted development rights to change drinking establishments (use class A4) to shops (A1), financial and professional services (A2), or restaurants (A3). Temporary rights to change to a school and to use classes A1/A2/A3 are also removed. A new typology has been introduced where a public house or other drinking establishment use operates concurrently with an A3 use.

2.20 Planning permission will be required to demolish a drinking establishment, or a drinking establishment with expanded food provision.

2.21 As a consequence of the removal of these rights, the current requirement to establish with the local planning authority whether the drinking establishment has been nominated as an asset of community value is removed because it is no longer relevant. Transitional arrangements apply.

Development of new towns by local authorities

2.22 The Act will allow the drafting of Regulations that transfer functions under the New Town Act 1981 to one or more LPAs within the area proposed for the New Town.

Planning register

2.23 The Act allows for Regulations requiring LPAs to record prior approval applications (and activity or inactivity (as the case may be)) on their planning registers, regardless of whether the authority has responded to an application. Regulations may also stipulate the information to be included in the planning register, and the circumstances when an application or notification may be removed from it. The intention is to lead to an accurate recording of the number of homes permitted via permitted development rights.

2.24 The requirement for LPA's to include prior notifications on the planning register has commenced, but a development order prescribing the information to be recorded is needed.

Compulsory purchase

2.25 The Government made further commitments towards compulsory purchase in the Housing White Paper earlier this year, including a commitment to encourage LPAs to use compulsory purchase in relation to stalled development sites. The Act includes provisions intended to improve the operation of compulsory purchase orders (CPO) and also seeks to clarify case law that determines compensation for landowners. National commitments and the measures in the Act will add to changes previously enacted through the Housing and Planning Act 2016.

2.26 The Act creates a right to take temporary possession on largely the same basis as the right to compulsorily acquire. As such the Act gives all those who can acquire land, by agreement or compulsorily, the power to take temporary possession of land for the purposes connected with the purposes for which it could acquire the land compulsorily. Temporary possession may be achieved with by agreement or compulsorily. Notice periods are prescribed with the ability of the landowner being able to serve a counter-notice which seeks to limit the time that temporary possession can be taken. Enforcement provisions will also be available if a person refuses to give up temporary possession of land with compensation being available for any loss or injury sustained

2.27 The Act's compulsory purchase provisions will enter force once a Commencement Order has been laid before a Parliament.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

3.1 This report is for the Committee's information only.

4. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The Neighbourhood Planning Act 2017 includes provisions that affect the delivery of development through the plan making and development management processes.	Mark Egerton (Planning Policy Manager)
Risk Management	This report is for information only so there are no risks directly arising from the report.	Mark Egerton (Planning Policy Manager)
Financial	This report is for information only so there are no financial implications directly arising from the report.	Suzan Jones (Finance) and Mark Green (Section 151 Officer)
Staffing	There will be changes to plan making and development management processes arising from the Act, but these can be managed within existing staff resources.	Mark Egerton (Planning Policy Manager)
Legal	There are no legal implications directly arising from the report, other than a requirement to manage (a) the changes to plan making and development management procedures and practices, and (b) amendments to the operation of compulsory purchase.	Russell Fitzpatrick (Planning Team Leader)
Equality Impact Needs Assessment	N/A	[Policy & Information Manager]
Environmental/Sustainable Development	N/A	[Head of Service or Manager]
Community Safety	N/A	[Head of Service or Manager]
Human Rights Act	N/A	[Head of Service or Manager]
Procurement	N/A	[Head of Service &]

		Section 151 Officer]
Asset Management	N/A	[Head of Service & Manager]

5. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

Appendix I: Link to the Neighbourhood Planning Act 2017

<http://www.legislation.gov.uk/ukpga/2017/20/contents/enacted/data.htm>

6. BACKGROUND PAPERS

There are no background papers.