

**CABINET**  
**11 DECEMBER 2008**

**REVIEW OF INTERIM KENT THAMESIDE TRANSPORT TARIFF  
POLICY**

1. Summary

- 1.1 In November 2008 a public inquiry was held to consider a planning application where the key issue was the Council's interim transport tariff policy. This report reviews the policy considerations arising from the appeal and recommends accordingly.

2. RECOMMENDATIONS

- 2.1 That the policy issues arising from the recent appeal case be noted;
- 2.2 That the programme for introducing a Supplementary Planning Document be accelerated, with a timetable to be submitted to Cabinet as soon as possible;
- 2.3 That the proposal to apply the tariff policy with consistency, but allowing flexibility to consider unique site factors, be noted.

3. Background and Discussion

- 3.1. The General Assembly of the Council adopted an interim policy on 30 July 2007 requiring residential developers to contribute to the Kent Thameside Strategic Transport Investment Programme (STIP) at the rate of £5,000 per home (min. no. 49).
- 3.2. Further reports have been received by Cabinet and by the General Assembly of the Council, dealing with the development of the policy and other aspects of the STIP.
- 3.3. The policy has been successfully applied since its introduction. By August 2008, 15 planning permissions had been granted subject to a tariff requirement. These generate a total developer contribution towards the STIP of £3,391,000, in addition to the £40 million which was secured from Land Securities in respect of the Eastern Quarry planning permission shortly before the tariff was introduced.
- 3.4. In September 2007, an application was received for 49 flats at 1a to 1c Knockhall Road, Greenhithe. The application gave rise to a tariff requirement of £230,000. The applicant was not prepared to offer this or any other amount, and appealed against the Council's non-determination of the application. The transport contribution was the only matter at issue in the appeal.
- 3.5. The appeal was heard at a public inquiry which took place on 11-13 November 2008. As expected, the appellant raised a number of points of objection at the public inquiry which challenged the Council's justification in applying the interim policy.

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- 3.6. At the conclusion of the public inquiry an application for full costs was made by the appellant, on the grounds that the Council had acted unreasonably in the manner in which it introduced and applied the tariff policy. The Council rebutted the application. A decision on costs will be made once the appeal itself has been determined.
- 3.7. Although officers, and lawyers representing the Council, consider the costs application to be unfounded, it is considered prudent to consider whether the appeal has raised any fundamental issues which affect the approach that should be adopted to the tariff policy until the outcome of the appeal is known, and whether any other action is deemed necessary.
- 3.8. This report therefore reviews the key arguments raised at the inquiry and comments on them. Officers have sought the guidance of lawyers advising the STIP partners (DBC, GBC, KCC) in drafting this report.

***Statutory basis***

- 3.9. The appellant argued that the interim tariff policy has no statutory force because the Core Strategy (that part of the Local Development Framework which will set out the tariff policy in general terms) has not progressed far enough towards adoption. Government guidance (The Planning System: General Principles ODPM 2005) says that the weight to be given to policies in an emerging Development Plan Document increases as successive stages are reached, and depending upon the strength of objection to a policy at submission stage.
- 3.10. The Core Strategy is not yet at submission stage, although there has been sufficient consultation on the tariff to gauge the overall level of objection to it. The responses to the two stages of consultation were reported to the Cabinet on 24 January 2008, the General Assembly of the Council on 28 January 2008, and Cabinet again on 25 September 2008, and adjustments have been made to the policy in the light of those responses. It should be pointed out, however, that consultation on the non-residential tariff has not yet occurred. The appellant argued that the non-residential tariff could have an indirect bearing on the residential tariff, as changes to one could affect the required yield from the other.
- 3.11. Notwithstanding the progress of the Core Strategy, the Council's position is that the tariff policy does not rely for its statutory force only upon that document. There are statutory policies in the adopted Local Plan (Policies T1 and T2 in particular) and the Kent and Medway Structure Plan (Policies QM12 and IM1 in particular) which already provide a firm policy foundation for the tariff policy, and Policy CC7 of the Government's proposed changes to the South East Plan identifies development tariffs as one of the mechanisms for bringing forward strategic transport infrastructure, where it is required to support housing delivery.

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- 3.12. The report to the General Assembly of the Council on 30 July 2007 drew the Council's attention to the fact that the tariff policy would not become part of the Local Development Framework until the Core Strategy was adopted. At the time of that report this was expected to be in 2009.
- 3.13. Members were advised of the exceptional reasons why it was considered appropriate to introduce the tariff policy on an interim basis in paragraphs 3.49 and 3.50 of that report rather than to await the adoption of the Core Strategy. In essence if the tariff was not applied to developments already in the planning pipeline a significant financial contribution would be lost, and a disproportionate burden would then be transferred to developments approved after the Core Strategy was adopted. Alternatively, developments would have to be delayed awaiting the introduction of the tariff or some alternative solution to the problems which the tariff had been introduced to solve.
- 3.14. Paragraph 3.51 of the report explained that in the interim, the existing Local Plan and Structure Plan policies (which comprise the development plan until such time as the Core Strategy is adopted) provide a statutory development plan basis for the tariff.
- 3.15. Although the relevance of the Local Plan and the Structure Plan were challenged by the appellant, officers stand by their advice that the existing statutory development plan provides support for the tariff policy. It is relevant to note that the Secretary of State confirmed policies T1 and T2 of the Local Plan as saved policies in 2007. In effect, this means that they have been reconfirmed as the starting point for development control decisions.
- 3.16. Officers do not consider, therefore, that the tariff policy is being applied prematurely pending the adoption of the Core Strategy. However, since the Core Strategy is not now expected to be adopted before May 2010, the case for removing any residual doubt or basis for argument by introducing a Supplementary Planning Document (SPD) is strong.
- 3.17. It had always been anticipated that the details of the tariff policy would be incorporated into an SPD (see paragraph 3.48 of the 30 July 2007 report to the General Assembly of the Council). More recently, in the report to Cabinet on 25 September 2008, it was suggested that the whole policy be set out as SPD to provide a clearer statutory policy basis for the tariff. This will now be taken forward as a matter of urgency, with consultation taking place early in 2009.

***Flexibility***

- 3.18. The appellant argued that because the Council did not take into account site-specific factors such as accessibility by public transport when negotiating the tariff planning applications, but applied the tariff in what he considered to be a rigid way, the Council was not taking sufficient steps to ensure that the tariff contribution is directly related to the impact of the development in question.

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- 3.19. Circular 05/2005 requires planning obligations to be directly related in scale to the impact which the proposed development will make. Taken on its own, this implies that the impacts need to be assessed site by site, leaving little room for standardisation. On the other hand, Circular 05/2005 also encourages the use of formulae and standard charges for infrastructure contributions, as a way of making the planning system faster and more predictable. It should be borne in mind that the tariff was introduced because of the severe difficulties which the Council had encountered in applying a site-by-site approach to transport assessment. To this extent it can be considered an ideal candidate for standard charges as envisaged in the Circular. Also of importance is that the tariff only covers a proportion of the overall costs of the infrastructure required to support development. It would have been possible to seek considerably more than the £5,000 charge.
- 3.20. There is clearly a balance to be struck between standardisation, which inevitably means a degree of generalisation when relating contributions to impacts, and consideration of site-specific circumstances. The Council argued at the public inquiry that the number of units to be built is the strongest and most reliable indicator of the transport impact of a development. Other measures, such as the size of units and the availability of public transport may come into play, but their relationship to transport impact is far from straightforward and it is therefore problematic to incorporate them into a formula.
- 3.21. These matters were considered in section 6 of the Cabinet report of 25 September 2008, where the difficulties of drawing reliable conclusions from the data available were discussed. Section 7 of that report reiterates the need for a fair, simple, predictable and clear approach to the tariff, and concludes that these considerations outweigh the case for a more complex tariff system which may or may not be more closely related to impact.
- 3.22. In general terms, therefore, officers consider that the tariff can normally be applied without having to consider from first principles the traffic generation characteristics of each separate site. However, if there are unique characteristics in relation to a site or a development proposal which clearly take it outside the general range of situations which the tariff envisages, then as part of the determination of applications the Council ought to consider whether these (or other) factors mean that the policy should not be applied. This is a normal part of the process of applying policy to individual proposals.
- 3.23. This approach would be consistent with the advice in Circular 05/2005 and the Government's Planning Obligations Practice Guide when read together. Circular 05/2005 says that "standard charges and formulae should not be applied in blanket form regardless of actual impacts, but there needs to be a consistent approach to their application". The Practice Guide repeats this principle, and then says that "there will be a need to discuss and negotiate unique aspects of the individual

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application". Clearly this advice is contemplating unique aspects, rather than the normal range of variations around the average.

- 3.24. It is suggested that in future discussions with developers about the tariff, the principle is adopted that the tariff will be applied on a per dwelling basis, unless the Council accepts that there are factors which take the development outside the normal range of impacts expected. In a recent case, where the applicant proposed a sheltered housing scheme, this approach has been adopted, on the basis that the traffic generation expected by such a development would not be within the typical range for a housing development, as represented by the database on which trip generation rates for Kent Thameside are based.

***Traffic generation of flats vs. houses***

- 3.25. Notwithstanding the general case set out above to retain a flat rate tariff, the public inquiry did raise one fresh consideration which has not previously been explicitly reported to Cabinet, albeit that it was implicitly considered as part of the review of the size of dwellings. The appellant gave evidence which sought to demonstrate that flats may typically generate fewer trips than houses of a comparable size. It should be noted that this is an assumption which is used in the Kent Thameside Transport Model.
- 3.26. As with dwelling size, the link between dwelling type and traffic generation may not be as strong as first appears. Although the data presented to the inquiry superficially suggested a link, the sample of sites used included many other variables which could also have contributed to different trip generation rates. There was insufficient information, for example, to say whether the flats in the sample were in comparable locations to the houses.
- 3.27. Although there is differentiation in the Kent Thameside Traffic Model between flats and houses, which the appellant claimed should be reflected by a similar differentiation in the tariff, Kent County Council comment that the trip generation rates in the model are for all flats and all houses, and since flats tend on average to be smaller than houses, their lower trip generation may be attributable as much to dwelling size as to dwelling type. They also comment that a typical sample of flatted development would tend to have a higher representation of town centre development than a sample of houses, again skewing the apparent trip generation rates. Therefore, assumptions which are used for general application in the model may not be suitable for specific application to individual development sites.
- 3.28. Taking these considerations as a whole, it is not possible to draw the conclusion from the data before the inquiry, or from Kent County Council's subsequent comments, that on any given site in Kent Thameside flats are likely to generate fewer trips than houses of the same size. Such a conclusion would, indeed, be counter-intuitive.

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- 3.29. Officers do not consider that a case has been made for amending the tariff policy on the basis of dwelling type. However, when a consultation draft SPD is brought forward, analysis of the available data on trip generation of flats and houses can be included as part of the evidence base.
- 3.30. In all considerations about the choice of tariff units it should be borne in mind that trip generation per dwelling, however accurately calculated, is not in itself a fully rounded basis against which to determine impact and contribution. This is because the STIP is not designed only to create more road capacity for cars. The STIP also includes schemes which deliver benefits not to drivers but to public transport users and other non-car users. These include the Dartford Town Centre package (£10m), Fastrack link (£12.5m) and Rathmore Road link (£10m). In addition, many of the other schemes will deliver journey time savings for buses as well as for cars. Therefore, a development which has a lower traffic generation because it relies more heavily on public transport, for example, will still be required to contribute to the STIP, to ensure that the level of public transport service in Kent Thameside is available to meet the demands of the development.

***Way forward***

- 3.31. Taking into account all the above factors it is considered that the Council should continue to apply the interim tariff policy. The reasons for introducing the tariff, as set out in previous reports, remain valid, as do the reasons for applying the policy before the Core Strategy provides it with a new statutory policy basis. The policy has an existing foundation in the development plan. Officers consider that it complies with Government guidance on Planning Obligations as set out in Circular 5/05. In a recent appeal decision, the Inspector confirmed that in his view the tariff met the policy tests of Circular 5/05, and the Council is entitled to take this finding at face value.
- 3.32. In order to move quickly to reduce future arguments in determining applications and on appeal, it is suggested that the following steps be taken:
- i) further data analysis on the relationship between trip generation and dwelling type;
  - ii) consultation on a draft Supplementary Planning Document early in 2009, to include consideration of point i) above, and also the non-residential tariff, on which consultation has not yet occurred;
  - iii) consistent application of the existing interim tariff policy, but with consideration given to unique site factors, as required by Circular 5/05 and the Planning Obligations Practice Guide;
  - iv) a review of outstanding planning applications, to ensure that the above approach is taken.

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3.33. Members are reminded that the application of the policy in individual cases is a matter for the Development Control Board. The purpose of this report is to bring to the attention of the Cabinet the general policy issues which have arisen in relation to specific cases.

4. Relationship to the Corporate Plan

Strategic Objective E3: Manage transport demand in a sustainable way and increase travel options in the area

Action ET3(a): Ensure that all eligible domestic and commercial developments make tariff contributions

5. Financial, legal, staffing and other administrative implications and risk assessments

Financial Implications	<p>If the interim tariff policy is not consistently applied, the financial basis for the Kent Thameside Strategic Transport Programme will be made less predictable and secure. The tariff yield is expected to generate in the order of £58 million, towards an overall programme funding requirement of £185 million. The various public sector contributions, which total £74 million, have been offered on the proviso that the tariff is introduced, and it is not clear whether these offers will be honoured if the tariff is not applied consistently.</p> <p>The financial risks relating to the funding of the STIP are borne by Kent County Council, the Accountable Body for the programme. There are no direct financial implications for the Council arising from the proposals in this report.</p>
Legal Implications	<p>The tariff is a form of planning obligation. Section 106 of the Town and Country Planning Act provides for local planning authorities to enter into agreements providing, <i>inter alia</i>, for financial contributions to be made towards infrastructure and other facilities required for development. Circular 05/2005 sets out the policy considerations which apply in the use by local planning authorities of obligations, including standard charges.</p>
Staffing Implications	None
Administrative Implications	None
Risk Assessment	The general risks in operating a tariff policy have been set out in previous reports to Cabinet and

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	<p>the General Assembly of the Council.</p> <p>The specific risks identified in this report relate to the outcome of the appeal, which could be accompanied by a costs award to the appellant, and any heightened risk which could arise from the Council continuing to apply the tariff policy in the knowledge that an appellant has challenged the reasonableness of doing so, and that the judgement on his case remains outstanding.</p> <p>There is no action which the Council can take retrospectively to mitigate against the award of costs if the appellant is successful in his appeal. However, the Council has considered the risks of applying the policy from the outset, and has taken legal advice throughout the process of developing the tariff policy. As a result, it is considered that the Council has acted reasonably in applying the tariff policy, and assuming the Secretary of State agrees with this, the risk of an award of costs is remote.</p> <p>As far as any future risks are concerned, it is important that the Council is able to demonstrate that it has considered the points raised at the appeal, and that where necessary it takes appropriate action in response to these. So long as the Council can demonstrate this, it is considered that the Council can be held as acting reasonably.</p> <p>The measures described in this report, summarised in paragraph 3.32, are considered to be an appropriate response to the issues raised at the public inquiry.</p>
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6. Details of Exempt Information Category

Not applicable

7. Appendices

None

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## BACKGROUND PAPERS

Documents consultedDate /  
File RefReport AuthorSection and  
DirectorateExempt  
Information  
CategoryRob Scott  
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Regeneration

N/A

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