

## Appendix A

### Planning Enforcement Function with the Planning and Strategic Housing Service

#### What we do

We re-actively investigate alleged breaches of planning control that come to the service as complaints (reactive enforcement);

We aim to pro- actively monitor planning permissions which are fettered by conditions restricting occupancy of dwellings to agricultural/equestrian occupants and restricting use to either holiday lets or ancillary uses. Other permissions may be added to the Monitoring data base at the request of the Development Manager e.g. Listed buildings, persistent contraveners, sites with archaeology (pro-active enforcement)

#### Why we do it

The Government advises at paragraph 207 of the NPPF that effective enforcement is the bedrock of the land use planning system and that public confidence in the planning process is dependent upon the readiness of the Local Planning Authority to back its planning policies and decision making by taking appropriate and proportionate action in response to breaches of planning control.

In accordance with government guidance the Council has an adopted Enforcement Policy (*appendix B*) which sets out how we monitor the implementation of planning permissions; investigate alleged breaches of planning control and outlines the appropriate course of action to be taken when seeking to resolve a breach of planning control. In accordance with the Council's adopted Enforcement Policy and Government advice formal enforcement action is usually taken as a last resort and only when such action is considered **reasonable, expedient and justifiable on planning grounds**.

When considering whether or not formal action in respect of a breach meets the above tests Planning Officers will more often than not do so having liaised with the Councils legal team and other technical specialists as required (e.g. Highways, drainage etc).

#### Workload and key issues and trends

At the time of preparing this report there are approx 140 live re-active cases and 400 proactive cases in the system. For a breakdown of the type of complaint, number received and number outstanding etc over the last three years please refer to the table at *appendix C*.

The reactive complaints are generated by complaints from the public, complaints from the TC/PC, complaints from other services and other agencies (e.g. Highways) as well as case officers. Many cases upon investigation do not constitute a breach of planning control or are so minor that no further action is warranted. However they all need to be investigated thoroughly to ascertain their merits and even very small planning issues (e.g. a fence 2cm too high) can involve very considerable neighbour disputes which need to be managed professionally and competently if escalations into formal complaints/ombudsman issues etc are to be avoided.

In terms of outcomes the number of enforcement notices issued per annum is much smaller than the volume of complaints ( usually less than 10 formal notices annually) as, in accordance with the Councils adopted Enforcement Policy and Government guidelines officers seek to resolve most cases by negotiation - with formal action being a last resort when other avenues have failed.

Given restructures of other Services and cost cutting more generally across the public sector there is an impression that as one of a now limited number of dedicated enforcement teams, reactive matters that previously would have been dealt with by other Services and organisations are now directed to Planning Enforcement to try to deal with and if this impression is confirmed in due course this is likely to be a source of increasing workloads moving forward.

Proactive cases tend to have less public involvement and are more about ensuring that the decisions taken by Officers and Members are actually delivered on the ground. Historically we have found that even having a system of proactive monitoring increases the likelihood of agents/applicants tabling amended plans voluntarily when they are contemplating deviating from the approved plans because they realise that they may be caught. However this is an area of enforcement work that tends to be sacrificed when pressures increase elsewhere as there is less public involvement/profile. It is hoped that the proposed new staffing arrangements (set out below) will help to re-invigorate that element of enforcement work

Generally the enforcement service/function is seen as a necessary bedrock to the remainder of the planning function. However it should also be recognised that in seeking retrospective applications to assess the merits of work that has already been undertaken this helps to provide additional income to the Council.

### **Staffing Levels**

Historically individual DM case officers carried their own enforcement caseload. This however did not prove a very effective way to progress cases because planning applications and pre application enquiries took precedence because of statutorily imposed deadlines e.g. determine apps within 8 weeks, and because these were fee paying elements of work. There is no such statutory deadline for enforcement cases.

In order to address this problem a dedicated specialist team was formed some years ago made up of a senior planner, an investigator and an administrator. This was much more effective in terms of focussing on the enforcement caseload and progressing cases more expeditiously. However there was a very heavy reliance for planning advice on the one planning qualified member of the team and the model had in any event to be changed when the administration role was centralised. In order to ensure less reliance upon the Senior Planner the administration role was replaced by an enforcement planner dealing with lawful development certificates and retrospective applications. Proactive monitoring was introduced and this system has generally worked well.

Members may be aware that the team has been without a dedicated planning investigator for the last 11 months - albeit that in order to manage casework in more recent months this vacancy has

been filled with a temporary Agency investigator. Use of agency staff tends to be expensive and is not sustainable in the longer term. The Investigator role has therefore now been disestablished and to replace this role the model for the specialist enforcement team has evolved with the future team to consist of a senior planner and 2 career grade planners. It is anticipated that having a greater level of planning expertise within the team will mean that the investigations are progressed to conclusions in a timelier manner and we will have greater resilience as there are less specialisms. Proactive work will be easier to maintain with the greater planning expertise in the team.

## **Reporting**

### Member Involvement

It is recognised that Members have a very valuable contribution to make to the planning enforcement function as a conduit of information to Officers from people living within the community.

### Policy

Members have a key role in policy making through the Local Plan process. These policies input into how a breach of planning control is progressed.

The Planning Enforcement Policy was adopted by the Council in April 2006. This document outlines the approach Officers should take in dealing with alleged and actual breaches of planning control having regard to the '**reasonable, expedient and justifiable on planning grounds**' tests. A copy of the adopted policy is attached as appendix B

### Updating

The scheme of delegation determines whether or not officer recommendations in respect of breaches of planning control are reported to members.

Additionally officers aim to report on a 6 monthly basis to the Area Planning Sub Committees with an update on the cases where the Council has taken formal action or where it is considered that formal action may be taken in due course.

At one point in time we reported on a 3 monthly basis but Members expressed the view that this was too frequent.

Progress reports for oversight by Overview and Scrutiny can be produced if required e.g. on an annual basis.

## **The Future**

The above note advises of the past and current trends and arrangements and impending changes. In addition other matters that could be considered are outlined below:

- Members may like to receive training in planning enforcement in order to gain a greater appreciation/understanding of the extent of the powers available in enforcing breaches of planning control, the expediency test, the interplay of planners and lawyers in progressing cases and how the appeal process can delay matters.

- The next 18 months offers an opportunity to review how the planning enforcement function is managed as the new company 'Publica' evolves.
- There is an opportunity also for WODC to work with CDC and FODDC in the more immediate term to review the respective adopted Enforcement Policies and potentially to produce a joint policy across the Councils.
- The new staffing arrangements (assuming that the new post is successfully filled) means we will effectively have 3 planners working within the team and as such offers the opportunity to look at more innovative ways of managing the caseload e.g. working on an area basis/triage of complaints before they are registered etc