

PLANNING ENFORCEMENT

Report by Planning and Built Environment Panel

Councillor Mrs G Blackett (Scrutiny Lead)
Councillors B Gibb-Gray, R Bolton, G Shimbart, C Hilton

Planning and Built Environment Portfolio - Councillor D Guest

Key Decision: N/A

1.0 Purpose of Report

- 1.1 To update the Scrutiny Board on the resource and work of the Planning Enforcement element of the Development Management team.

2.0 Recommendation

- 2.1 That an Enforcement Plan for HBC be prepared to manage enforcement proactively and set out how the Planning Development Service will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

3.0 Summary

- 3.1 An Improvement Plan for the Development Management Service has been prepared and a number of actions taken which have resulted in improved performance against national and local targets, at a time when there has been a significant increase in the number of large scale major planning applications across the Borough.
- 3.2 This report focuses on the Planning Enforcement function and examines the current resource levels, the number and type of enforcement investigations, identifies issues and proposes future actions to ensure a focussed and effective enforcement service.

4.0 Subject of Report

4.1 Background

- 4.2 The Board received a report from the Planning and Built Environment Panel, setting out findings and recommendations in relation to its Development Management Service Management Improvement Plan scrutiny review at the meeting held on 20 November 2012. The Panel had worked with Managers, as part of a wider engagement with the Development Management Team and customers, to contribute to the development of a Service Improvement Plan.

- 4.3 The report set out the progress made on the implementation of the Development Management Improvement Plan and provided a table of key achievements and actions (quick wins) that had been implemented to date.
- 4.4 The report also summarised the findings of a benchmarking review, carried out by the Planning Advisory Service. The objective of the benchmarking review was to give the authorities an understanding of the costs, income and use of resources associated with the various elements of their development management services and to show how these compared with the other authorities in the peer group.
- 4.5 A further update report was presented to the Board on 20 May 2013. The report identified areas of improved performance – particularly on the speed of decision making on planning applications and condition approvals - explained planned IT improvements and set out proposals for structural changes to ensure focus on priority cases. A further report on Development Management improvements and performance will be presented to a future meeting of the Board.
- 4.6 Arising from the Scrutiny Lead’s review of the Q4 Performance Healthcheck report, members were concerned that there were perceived delays in taking forward enforcement cases and requested that the P&BE Scrutiny Panel look at this.
- 4.7 As part of its ongoing review of the Development Management Improvement Plan, the Panel sought to establish how many cases had been opened and closed in the last 12 months, how many were still live, identify possible causes of delay and find out how any issues are being addressed in the team.
- 4.8 Planning Enforcement powers
- 4.9 The National Planning Policy Framework (NPPF) states that:
- Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.*
- 4.10 Formal enforcement action should only be taken if it is necessary and expedient. The NPPF makes it clear that taking enforcement action is discretionary and should be used proportionately. There are a number of tools available, including Enforcement Notices, Stop Notices, Breach of Condition Notices and Section 215 (Untidy sites) Notices.
- 4.11 Planning Enforcement resource
- 4.12 The service has two dedicated Planning Enforcement posts. These are Graded D - F (£17,980 to £26,539). Both posts report directly to the Development Management Team Leader for Team 1 (the service has two teams, each with a

Team Leader). Individual Development Management case officers also have some limited enforcement work where the case relates directly to a recent or current application which they are involved with or where the case is more complex and requires a professional planner to lead (e.g. the recent Planning Inquiry relating to The Kench, Hayling Island).

4.13 Workloads and Performance

- 4.14 As part of the Improvement Plan work in 2012/13 a review of the enforcement workload had been carried out and as a result a more pro-active approach to managing the cases was introduced. This resulted in the number of enforcement cases recorded in the Acolaid system as 'in hand' falling from 615 in April 2012 to 178 in April 2013. It was established that the majority of these cases were historical and had actually been resolved but not correctly closed down on the system. This had now been addressed, with over 400 cases having been closed and removed from Acolaid in the last year.
- 4.15 In the period from 1 August 2012 to 31 July 2013, 281 new enforcement cases were recorded on the Acolaid system. As of October 2013 there were 120 live cases on the system. Most cases are what could be described as small-scale – they are not necessarily legally complex and can be dealt with by the Enforcement Officers without significant input from more senior Planning Officers. Of the current outstanding cases the majority are for unauthorised building works and non-compliance with planning permission/conditions. The next highest is unauthorised businesses. The remainder are unauthorised signs, untidy land and other random complaints e.g. caravans on drives.
- 4.16 Proactive monitoring of cases on the Acolaid system has now been established with regular reports going to all officers identifying outstanding cases and priority actions. Anonymous complaints are no longer being recorded or investigated. Whilst there may be scope to further reduce the number of enforcement cases through an improved recording mechanism, the current figures are not considered to be excessively high.
- 4.17 The smaller scale cases are investigated and generally resolved within reasonable timescales. Formal action is normally not taken as it is not necessary or expedient. Most minor breaches are resolved through negotiation. In 2012 a total of 7 formal notices were served (5 Enforcement Notices, 1 Section 215 Notice and 1 Breach of Condition Notice) and in 2013 so 7 formal notices have been served (3 Enforcement Notices, 1 Section 215 Notice, 2 Breach of Condition Notices and 1 Planning Contravention Notice).
- 4.18 Concerns have been raised about delays in the enforcement action being taken. The perception that there are delays appears to relate to the more significant cases where there are a number of factors which can impact on the timescale. These include:
- The need to gather evidence over a period of time (eg use of a breach diary in cases of unauthorised activity at a particular site)
 - The need to obtain Development Management Committee approval to take formal action (this has been addressed through recent changes to the constitution and officer's delegated powers)

- The need to obtain information on land ownership before serving the formal notice and the legal processes associated with this
- The 'checks and balances' built into the process – i.e. the owner's right to submit one or more planning applications and to appeal where a refusal of planning permission occurs.

4.19 Review findings

4.20 The procedures and processes related to the investigation of enforcement complaints have been reviewed and a number of issues have been identified:

- multiple complaints received in connection with the same matter were recorded as separate issues within the system (this has been addressed);
- minor complaints were recorded before it was established whether there was any substance to them;
- a minor issue concerned the occasional allocation of complaints about non planning-related matters through the Customer Contact Centre to the planning service which can be resolved through better training;
- complaints about development activities on site once works are underway would be better dealt with through negotiations with developers channelled through ward Councillors and resident groups, rather than through the formal complaints process – the Council should not be acting as an intermediary between developers and residents. Such an approach appears to have been successful in the case of the Hampshire Farm development;
- need to reduce the number of conditions applied to permissions that lead to technical breaches that are difficult to enforce; need to ensure that conditions are reasonable, appropriate and enforceable; the Council could liaise informally with developers to encourage neighbour-friendly development works rather than impose excessive and unrealistic conditions;
- need to manage both Councillors' and public expectations in relation to what the Council can and cannot enforce;
- some cases necessarily remain unresolved on the system due to factors beyond the control of the planning team, for example matters that are subject to the Committee decision-making process and those that are referred to the Planning Inspectorate on appeal;
- a more sophisticated use of the Acolaid Enforcement module could provide a breakdown of cases and be helpful to Councillors in understanding the figures, as well as streamlining the work of the team in responding efficiently to complaints;
- better filtering and prioritisation of complaints at an early stage would help to ensure that complaints are directed to the appropriate body for action, that enforcement action is only taken as a last resort and only when such action is proportionate and necessary; an enforcement plan setting out priorities would provide clarity; and
- improved liaison between Development Management and Legal Services to ensure timely issuing of formal notices.

4.21 In particular, the Panel felt that Ward Councillors should be encouraged to intervene at an early stage to help resolve issues informally at a local level and to help promote better relations between developers and local residents so as to reduce the number of formal complaints requiring enforcement action that may not be appropriate nor of any significant benefit to the community

4.22 Future actions

- 4.23 A review of the use of Acolaid is already underway and new standard letters and monitoring reports are being created. This is being done in parallel with new procedures for dealing with complaints. It is proposed to introduce an Enforcement Plan as recommended in the NPPF. This will set out case priorities (e.g. works to TPO trees and Listed Buildings might be high priority and Estate Agents signs might be low priority) and establish formal targets for key milestones (e.g. acknowledging complaints and carrying out initial site visits etc). This document would be key to clarifying the Council's Planning enforcement powers and managing public expectations. It would explain those areas where we are unable to take action as well as those we can. Any policy would be subject to Councillor input and public consultation.
- 4.24 The existing resource level within the Service has been reviewed and it has been concluded that there is no requirement for increased staff resource. However, the potential for identifying specific dedicated resource at Senior Planning Officer level is being investigated to provide better focus and priority on the more significant and complex cases.
- 4.25 There is a need to improve liaison with Legal Services to ensure that the legal processes and serving of formal notices is carried out in a timely manner. A regular review meeting will be established to ensure there are no unnecessary delays in serving notices.
- 4.26 Recent experiences at major development sites such as Hampshire Farm, Emsworth and Manor Farm, Havant have emphasised the need to ensure that planning conditions are relevant to planning and enforceable. The use of conditions on major development sites will be reviewed to ensure that all are necessary and enforceable. These developments have also highlighted the importance of developer/resident liaison groups with strong local councillor involvement and this approach should be rolled out as good practice for future development sites.

5.0 Implications

- 5.1 **Resources:** Process, policy and any structural review work will be resourced from within the Planning team and individual projects will be supported as required by ICT, HR and Business Improvement Teams. Requests for external funding for improvements will come to JEB as required.
- 5.2 **Legal:** There are no legal implications.
- 5.3 **Strategy:** An enhanced and effective enforcement service which acts proportionately will directly support the following HBC Corporate Plan priorities:
- Economic growth
 - Public Service excellence
- 5.4 **Risks:** Management of public expectations. The Planning Enforcement role can't always meet the expectations of the customer.

- 5.5 **Communications:** Any change to the service or new Enforcement Plan/Policy will include a communications plan and consultation process as necessary as part of the project development process.
- 5.6 **For the Community:** There is a range of customers impacted by the Planning Enforcement process. The overall aim is to enhance customer service and provide clarity to support the P&BE objective of providing a high quality cost effective service that plans with our communities and businesses for a sustainable and natural built environment that adapts to today's demands and the needs of the future.
- 5.7 **The Integrated Impact Assessment (IIA) has concluded the following:** The report details a review of the current Planning Enforcement service. Further work on an Enforcement Plan/Policy will include IIA where necessary.

6.0 Consultation

- Executive Head of Planning and Built Environment
- Service Manager Legal and Democratic Services

Background Papers:

Development Management Service Improvement Plan – Report to Scrutiny Board 20 November 2012 and 20 March 2013.

Agreed and signed off by:

Service Manager, Legal and Democratic: 11 November 2013

Service Manager (Finance): 11 November 2013

Executive Head Planning and Built Environment: 11 November 2013

Contact Officer: Chris Murray

Job Title: Service Manager – Planning Development

Telephone: 01730 234231

E-Mail: chris.murray@havant.gov.uk