

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

21 June 2011

Report of the Director of Planning Transport and Leisure

Part 1- Public

Delegated

1 REVIEW OF PLANNING ENFORCEMENT – INTERIM REPORT

To bring the Committee up-to-date with progress on this review following the initial discussions based on the Scoping Report at the last meeting of the previous Scrutiny Committee on 8 March 2011.

1.1 Background

1.1.1 At the last meeting of the previous Scrutiny Committee there was a very constructive debate about the scope of this brief review of the planning enforcement service, including some initial discussion on some specific areas that were flagged up for further consideration. For Members assistance I have annexed the report of 8 March to these papers.

1.1.2 The Key outputs that I had anticipated from the study were set out as follows:

- To review the current range of casework in terms of volume and complexity in the light of resources,
- To consider the opportunities to prioritise workload and the implications for customer service,
- To review some aspects of our processes in terms of decision making, communication with interested parties and bringing cases to conclusion,
- To review liaison with other services and agencies.
- To reflect on the impact and implications of high profile, complex and ongoing cases.
- To consider the local implications of the proposed shift in Government policy and practice.

- The need and scope for a Planning Enforcement Policy and Procedure emerging from the review (in light of the current work to develop a corporate prosecution policy)

1.1.3 Following the discussion at the previous Scrutiny Committee Members identified a number of aspects that they wished to be included in the project:

- The application of a more formal "triage" system to filter cases for priority;
- The introduction of a "light touch" for clear and easy to process cases;
- The enforcement of positive conditions attached to planning permissions as well as unauthorised development;
- The need for clarity and public explanation of the respective roles of planning enforcement and other civil remedies in securing action;
- A review of the role of the local Member in the initial stage of an alleged breach of planning control;;
- Clarification of the position regarding anonymous complaints;
- Information about the timing of the implementation of section 106 agreements and impact of future legislation in this area;
- An assessment of the costs of the service and future level of provision.

1.1.4 In addition we were asked to provide some further detail on the pattern of case work over recent years, the role of Parish Councils and Members in alerting the Council to potential breaches of planning control, the numbers of "anonymous" complaints and the longer view of appeals.

1.1.5 In terms of the specific sources of reported cases referred to in 1.1.4 above the position can be summarised as follows:

Year	Percentage of cases reported by Parish Councils	Percentage of cases reported anonymously	Percentage of cases reported by a Member
2006	12.3	No data	14.4
2007	11.5	No data	11.9
2008	11.5	0.5	7.8
2009	8.4	4.5	10.5
2010	12.1	4.6	10.1

These figures show generally even trends in these sources and that these are in the minority. The majority of cases are reported by local residents or are initiated by officers during the course of other duties.

- 1.1.6 In terms of enforcement appeals the number of cases that reach this stage is relatively low. That reflects to a large degree the success of the Council in negotiating an agreeable position or by removing entirely the subject of the unlawful development. Of the Enforcement Notices that are served and progressed to appeal the Council has a good success rate.

Appeals 2006-2011:

	Total	Percentage of decided appeals
Total Notices issued	36	
Number appealed	22	
Notices upheld	9	75%
Notices quashed	3	25%
Appeals as yet undetermined (Hop Farm enforcement notices)	10	

- 1.1.7 In order to give a picture of the outcomes of investigations of all the cases logged with the enforcement service we have set out below the situation for 2010.

- In some 44% of investigations, across the Borough, initial investigations lead to a conclusion that there is no breach of planning control occurring.
- In a further 17% we discover a technical breach of planning control, but one where it is judged not to be expedient to take action. Members will recall from our earlier reports that the Council can take action *only if it is expedient to do so in the interest of planning considerations*. That requires an assessment of the case to judge essentially whether permission would normally be granted for the unauthorised development
- 18% lead to the grant of planning permission following submission of an application,
- 21% require resolution and this is either achieved by informal means to achieve the cessation or removal of the unauthorised development; or the service of a Notice.

2010 case histories:

	Number of cases	No breach found (total/%)		Not expedient to act (total/%)		Permission granted (total/%)		Case resolved (total/%)	
Area 1	112	49	43.75	20	17.85	11	9.82	32	28.57
Area 2	223	85	38.11	47	21.07	49	21.97	42	18.83
Area 3	137	73	53.28	15	10.94	25	18.24	24	17.51
Total	472	207	43.85	82	17.37	85	18.00	98	20.76

1.1.8 It will be noted that in over 60% of investigations, across the whole Borough, there was no breach or justification for action. This can, however, be established only after quite a level of investigative work has been carried-out

1.2 Update

1.2.1 We are currently investigating areas of best practice and the ways in which some other Planning Authorities set out their enforcement aims so that we can develop our approach to the matters set out in 1.1.2 and 1.1.3. That work is continuing so that we may cover all of those issues in our further report.

1.2.2 However, for the purposes of this report it may be helpful to simply review the process which is currently operated when an alleged breach of planning control is reported:

- The enforcement team receives an allegation that a breach of planning control maybe occurring and the Senior Enforcement Officer assigns this case to a member of the enforcement team, either himself or one of the other two officers.
- At this stage the complainant is informed of the case officer's name and Local Members are informed of the receipt of the complaint.
- The case enforcement officer will then inspect the site to determine if a breach of planning control is occurring. This is an essential part of almost every case to establish the actual circumstances on the ground and will also involve an initial look at the site planning history.

- If there is no evidence of a breach occurring then a brief report is produced by the case officer and passed to either the Development Control Manager or Chief Planning Officer for endorsement. If the case is closed then complainants and Members are notified with an explanation.
- Should the first inspection prove inconclusive the site owner will be contacted requesting a site meeting so that further investigations can be undertaken.
- If a breach of planning control *is* subsequently found an assessment has to be made, on a case by case basis, as to whether:
 - 1) it is or is not expedient to take any further action at all
 - 2) we proceed to try to resolve the breach informally
 - 3) a retrospective planning application is to be invited; we will only do this if there is some prospect of permission being granted, or
 - 4) to proceed directly towards formal action such as the service of an enforcement notice.
- The assessments are made by the Enforcement Officer in conjunction with either the Area Planning Officer or another Planning Officer from the appropriate area team and these are endorsed by either the Development Control Manager or Chief Planning Officer.
- Where it is felt that the breach cannot be rectified by way of a planning application we will request that the breach is ceased/remedied with a specified timescale; this is determined on a case-by-case basis and will depend upon the seriousness of the breach and the nature of harm that is being caused. Should the owners fail to meet this request then enforcement action is required and, currently, a report is made to the appropriate Area Planning Committee.
- Where a planning application is invited but none is submitted within a reasonable period, further consideration is given to the expediency of taking further action
- It is our aim that all investigations into alleged breaches of planning control have an initial visit within ten working days of being received with a full assessment into what, if any, action is required within 20 working days. In some cases it will prove to be a shorter period. In others this does not always prove possible. Should, for instance, the enforcement team receive a call suggesting that unauthorised works to a Listed Building or protected trees are taking place then a site inspection is undertaken urgently (and usually requiring at least two enforcement officers) so other work may have to be set aside for that and any related follow-up work. However every

effort is made by the team to ensure that the time period for each investigation is adhered to, with a view to the potential severity of each case that is investigated.

- In those cases where formal action is contemplated advice is sought from the Chief Solicitor as to the adequacy of the available evidence and so on.

1.2.3 We have carried out some initial review work of the approaches adopted by other nearby authorities. The approaches we have discovered to date include instances where authorities have adopted an Enforcement Policy which ranks by priority the type of breach. This is a way forward that may be appropriate subject to some further work but as an example the following is typical of an approach to prioritisation adopted in some other authorities:

- Top Priority - work to Listed Buildings felling of protected trees and developments affecting the Highway. To be inspected within one working day of receipt.
- High Priority - Cases causing significant harm the quality of life of a number of local residences or causing potential harm to the landscape. To be inspected within 5 working days of receipt.
- Medium Priority - Cases which cause limited harm to individuals. To be inspected within 10 working days of receipt.
- Other Priority - Minor developments such as sheds, fences, extensions and all anonymous complaints. No time period set.

Elsewhere, authorities have adopted an Enforcement Policy which may give a specific time period to verify an alleged breach or provide guidance on priorities, seeking to focus enforcement resources on breaches causing major harm, or having the potential to cause major harm to public amenity or Areas of Special Protection.

1.2.4 As will be apparent from what is said in para. 1.2.2 above, some of these practices reflect the principles that we currently apply, albeit that they are not currently codified. It is planned that the next report to the Committee will make some detailed suggestions for prioritisation criteria within the context of an Enforcement Policy. Any such approach will need to be tailored to address the overall profile of the enforcement work arising in the Borough including any findings that may emerge from further, ongoing, analysis. . This will also have regard to our resources and seek to minimise the impact of work arising from matters that prove to neither require nor justify further action. Any specific matters raised by the Committee can be considered and incorporated in the final report as appropriate.

1.3 Legal Implications

1.3.1 None until detailed proposals for change are promoted.

1.4 Financial and Value for Money Considerations

1.4.1 None until detailed proposals for change are promoted.

1.5 Risk Assessment

1.5.1 None until detailed proposals for change are promoted.

1.6 Equality Impact Assessment

1.6.1 See 'Screening for equality impacts' table at end of report.

1.7 Recommendations

1.7.1 The contents of the interim report **BE NOTED** and the final report on the review be made to the next meeting of the Committee.

Background papers:

Nil

contact: Lindsay Pearson
Steve Humphrey

Steve Humphrey
Director of Planning, Transport and Leisure

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	No specific proposal yet made in the project
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	Yes	No specific proposal yet made in the project which would change the current position
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.