

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**SCRUTINY COMMITTEE**

**8 March 2011**

**Report of the Chief Executive and the  
Director of Planning, Transport and Leisure**

**Part 1- Public**

**Delegated**

**1 SCOPING REPORT – REVIEW OF PLANNING ENFORCEMENT**

**Summary**

**To agree the terms of reference for the next review to be undertaken by the Scrutiny Committee.**

**1.1 Introduction**

1.1.1 The purpose of this report is to set the scope for the forthcoming scrutiny review of Planning Enforcement. This area of activity was selected at the meeting of 24<sup>th</sup> November as an area for review, primarily because it is a front line service that often has a high profile amongst local communities and consequently with local members. It is governed by a range of policy and guidance and is subject to legal processes. Planning enforcement can be effective in responding to unauthorised development but can also be frustrating due largely to the frailties of the current systems and framework within which the Council must operate. It is inevitably resource intensive and the way in which the service is operated and managed is critical to success, efficiency and the perception of the service by local people. A review is timely as proposed changes to planning enforcement have been trailed recently by the Government.

**1.2 Planning enforcement**

1.2.1 Planning enforcement is an integral part of development control process and is designed to ensure that development control decisions are properly implemented and that unauthorised development is the subject of scrutiny and action as appropriate. We do this by;

- Pursuing compliance with a previously granted planning permission and conditions and,
- The investigation an alleged breach of control, the consideration of evidence and proportionate formal action.

- Employing other powers in appropriate cases, such as Notices under S 215 of the Planning Act to deal with the condition of land affecting public amenity.

1.2.2 Planning enforcement is carried out by the Borough Council in respect of development control matters for which it has responsibility and by the County Council in respect of minerals and waste planning matters. The recent Scrutiny of the regulation of quarries dealt *inter alia* with that KCC enforcement role. Consequently, it is proposed that this review be confined to the powers exercised by this Council, albeit that inevitably involves liaison with other organisations in some instances.

### 1.3 The workload context

1.3.1 Clearly the Scrutiny must be carried-out in the context of the workload and for the Committee's assistance a picture of the position between 2006 and 2010 is set out below.

Year	Cases opened	Cases closed	Notices made	Appeals
2006	505	498	10	8
2007	528	519	7	6
2008	678	613	7	3
2009	502	446	1	5
2010	472	315	10	10

1.3.2 As can be seen from a cursory glance at the above the figures, there is no clear pattern to the caseload. It also hides the fact that many cases, although not proceeding to formal notices require considerable attention either in negotiation with landowners and developers and/or correspondence and liaison with local residents, businesses or community groups. It is also rather obvious to point out that cases can range from relatively minor matters and those that can be dealt with relatively easily, to those cases which require significant and continuous effort to bring them to some form of resolution.

1.3.3 Over this period the Enforcement Team has operated with a core membership of 3 officers and during the time when funding was available from Planning Delivery Grant, an additional investigator was employed in the team. That post was then lost and a Team Leader recruited in order to introduce some important new management regimes. Subsequently, the Team Leader left the Council and the core team has remained at three staff with management being provided by other senior officers in the Planning Service.

## **1.4 Recent experience**

- 1.4.1 Members will be aware from their work through the Area Planning Committees of some of the enforcement activity that is carried out by the Council. It is currently at the Area Committees where authority lies for the service of enforcement notices, other than in emergency situations.
- 1.4.2 The vast majority of our work is undertaken by officers who either undertake pre-planned inspections and investigations into particular sites or, far more frequently respond to enquiries from members of the public, Parish Councils, local groups and others. These cases can range from very minor enquiries that can be dealt with immediately to major or complex cases that can take considerable time to resolve one way or another. The collection and analysis of evidence is a critical part of that process in informing judgements about more formal processes.
- 1.4.3 In recent years a number of cases, small by proportion, have taken a very high public profile, have proved complex in themselves and have demanded significant resource allocation including the very important part of the process in communicating regularly with local residents.
- 1.4.4 One of the key issues for the review will be how we manage our resources in these overall circumstances and how we prioritise and communicate our way of dealing with cases.

## **1.5 Key Issues and anticipated outputs**

- 1.5.1 There are a number of matters that may usefully be reviewed and assessed in order to establish how the planning enforcement function may be evaluated and its effectiveness improved:
- 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)

## 1.6 Review Process

- 1.6.1 In view of the borough wide interest in this topic, it is proposed that the whole of the Scrutiny Committee should be involved. It is anticipated that the evidence, conclusions and recommendations can be drawn together for the next meeting of the Committee in June. At that time it is envisaged that some actions can be identified but if further assessment is proved to be needed then that can be accommodated in the Committees onward programme.
- 1.6.2 It is not considered appropriate for external parties to provide an input to this review, although reference to particular cases or circumstances may be involved in the reporting process.

## 1.7 Legal Implications

- 1.7.1 None arising from this report but legal considerations are an integral part of the planning enforcement service and will be referred to in the main report to the next meeting.

## 1.8 Financial and Value for Money Considerations

- 1.8.1 There are none directly arising from this report.

## 1.9 Risk Assessment

- 1.9.1 As a general consideration the Council must always act reasonably, proportionately and in accordance with adopted planning policies in undertaking its planning enforcement function.
- 1.9.2 The Council should also manage and set out standards for the service to best balance the level of expectation with resources.

## 1.10 Recommendations

- 1.10.1 That the terms of the review, as set out above, **BE APPROVED**.

Background papers:

Nil

contacts: Gill Fox  
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David Hughes  
Chief Executive

Steve Humphrey,  
Director of Planning, Transport & Leisure

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
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	This report only deals with the initial scoping of this scrutiny review. In proposing any changes to the planning enforcement service regard will need to be taken of any potential impact although none is envisaged at this stage.
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	See above
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.*