

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

13 November 2018

Report of the Director of Central Services & Monitoring Officer

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 PLANNING ENFORCEMENT PLAN

Summary

This report provides an overview of the review of the adopted planning enforcement plan which is intended to continue to provide a clear and transparent structure in respect of how the Service will deal with planning enforcement matters, in particular the various powers available to the Council in remedying breaches of control and how decisions will be taken to exercise such powers.

1.1 Introduction

1.1.1 The introduction of the Council's Planning Enforcement Plan was first reported to this Board in July 2016, with the plan subsequently being adopted following approval by Cabinet on 04 November 2016.

1.1.2 The Board at that time recommended that the Plan be subject to a six month review period. Since its adoption, Officers have continually monitored the usefulness of the Plan in terms of their day to day ways of working and for those who have contact with the Planning Enforcement function.

1.1.3 Subsequent to the wider review of the Planning Service which has now been implemented, an audit of the enforcement function and changes to the delegated authority of the Director of Planning, Housing and Environmental Health, and the publication of the updated National Planning Policy Framework (July 2018), the opportunity has been taken to undertake a more wholesale review of the Plan in its entirety to ensure that it remains fit for purpose and reflects changes to working practices arising from these recent events.

1.2 Relevant policies and guidance:

1.2.1 The Council's objectives in producing a Planning Enforcement Plan are consistent with the National Planning Policy Framework (2018) (NPPF).

- 1.2.2 Paragraph 58 of the NPPF relates to the enforcement of planning control and states:

'Effective enforcement is important as a means of maintaining public confidence in the planning system. 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.'

- 1.2.3 The proposed planning enforcement plan does not conflict with the contents of the Council's wider enforcement policy or with legislation or Government guidance.
- 1.2.4 Since the Planning Enforcement Plan was first produced, the Council now also has a Corporate Enforcement Plan. The principles and approaches contained within that Plan accord with the enforcement specific plan.

1.3 Review of Planning Enforcement Plan:

- 1.3.1 The review of the Enforcement Plan has been holistic but has principally addressed the following issues:
- 1.3.2 In recent months, it has been necessary to instigate action which has not habitually been undertaken by the Council including seeking injunctive relief to prevent works and subsequently residential occupation of a site by a Traveller family and endeavouring to take direct action to improve the condition of a site which was deemed to be causing a significant adverse impact on the amenity of the area in question. Whilst these powers are available to the Council through the provisions contained within the Town and Country Planning Act 1990, they were not directly referenced within the originally adopted Enforcement Plan. Whilst there is no need to set out any and all available powers within such a plan, in the interests of improving transparency and accountability, the opportunity has been taken to include these available measures, along with certain others which are referenced in the corporate plan including taking action under proceeds of crime legislation, overtly.
- 1.3.3 How the Council will deal with unauthorised Traveller encampments is also now directly referenced in the revised plan given that this is an issue which can cause a great deal of concern amongst local communities. This also affords the opportunity to make clear that the Council does not operate an out of hours planning enforcement service and distinguishes between the powers afforded to the Council as landowners in the event of an unauthorised incursion compared to those which can be used through the Planning Acts.
- 1.3.4 Until recently, the schemes of delegation set out in the Constitution did not extend to the serving of Enforcement Notices meaning that, except in emergency

situations, this fell within the terms of reference of the relevant Area Planning Committee. Expanding the delegated authority in respect of Enforcement Notices clearly has the advantage of allowing Officers to take the necessary action quickly where appropriate and proportionate to do so but it does mean that Councillors will not necessarily be fully aware of all actions being undertaken on a regular basis. Officers will continue to work closely with the relevant Councillors through informal exchanges of information and via the weekly lists but it is also suggested that a report could be brought to this board on a regular basis going forward to update Members on key enforcement cases and action taken.

- 1.3.5 Lastly, the review of the Plan has taken into account the implementation of the Planning Service review and the revisions included within the document reflect the updated reporting lines, removing reference to the previous Area Team based structure.

1.4 Legal Implications

- 1.4.1 Without an up to date Planning Enforcement Plan in place the Council's decisions to take, or not to take, enforcement action (including prosecutions) may in future be subject to legal challenge through the Courts.

1.5 Financial and Value for Money Considerations

- 1.5.1 The revised Planning Enforcement Plan will continue to ensure existing resources are utilised in a more effective way and there are no direct financial implications with regard to its implementation.
- 1.5.2 The revised Planning Enforcement Plan will continue to provide a framework that makes best use of resources and is in accordance with the recommendations of the NPPF.

1.6 Risk Assessment

- 1.6.1 The revised Planning Enforcement Plan will reduce the risk at appeal or by judicial review as it clearly sets out the process and timescales by which enforcement complaints will be investigated and progressed

1.7 Equality Impact Assessment

- 1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Recommendations

- 1.8.1 It is recommended to Cabinet to APPROVE the following proposals

- 1) Adopt the Planning Enforcement Plan as attached at **Annex 1**

The Director of Central Services confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

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Planning Enforcement Plan (revised version)
PTAB report dated 26 July 2016

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