

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

04 June 2019

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

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

1 PLANNING ENFORCEMENT DIRECT ACTION PROTOCOL

Summary

This report seeks approval for the adoption of a Planning Enforcement Direct Action Protocol, which is intended to provide a clear and transparent framework in respect of how the Service will decide whether to take direct action to remedy a breach of planning control, in particular the specific circumstances where this might be appropriate and how decisions will be taken to exercise such powers.

1.1 Introduction

- 1.1.1 Since the adoption of the Council's updated Planning Enforcement Plan in March 2019, officers have taken the opportunity to give further consideration to the powers that are afforded to Local Planning Authorities to take action in default to secure compliance with outstanding requirements of a planning enforcement notice.
- 1.1.2 Where an owner or occupier of land has failed to comply with the requirements of a planning enforcement notice within the period for compliance specified in the notice, Section 178 of the Town and Country Planning Act 1990 (as amended) grants additional powers to the Council to enter the land and take the steps to satisfy the requirements of the notice and recover from the person who is the owner of the land any expenses reasonably incurred by the Council in doing so.
- 1.1.3 These powers have recently been used in order to satisfy the requirements of a Section 215 notice at a property in Aylesford whereby the Council commissioned contractors to clear the rear garden and garage of debris arising from a fire at the property. Prior to this, very little direct action has historically taken place, with breaches of notices habitually being subject to legal action. Prosecutions are consistently successful but do not in themselves bring about compliance with a notice and thus resolve breaches of planning control. They also carry with them an associated cost to the Authority particularly in terms of officer time and resourcing (planning enforcement and legal services specifically).

1.2 Relevant policies and guidance:

- 1.2.1 The Council's objectives in producing a Planning Enforcement Direct Action Protocol are consistent with the National Planning Policy Framework (2019) (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.'

- 1.2.3 The proposed protocol does not conflict with the contents of the Council's wider enforcement policy or with legislation or Government guidance.

1.3 Use of Direct Action:

- 1.3.1 Direct action offers an alternative to legal action and in some circumstances may be more appropriate in order to resolve breaches of planning control and obviate harm arising where landowners fail to comply with the terms of enforcement notices. It should, however, be noted that even if Direct Action is deemed appropriate in a particular case, it would still remain open to the Council to prosecute for the breach if that were considered to be appropriate.
- 1.3.2 Direct action can only be taken in circumstances where an Enforcement Notice has already been served by the Council, there has not been compliance with the Notice within the specified time period and there is no outstanding appeal under consideration by the Planning Inspectorate. Direct action cannot be used as mechanism to resolve unauthorised traveller encampments, for example, for the reasons set out in the main Planning Enforcement Plan (paragraph 5.28, page 13).
- 1.3.3 In order to ensure that any such action takes place in a proportionate and reasonable manner, it is considered that a protocol is required to sit alongside the main Planning Enforcement Plan to be utilised in specific circumstances.
- 1.3.4 A draft protocol is attached to this report as an annexe and sets out the aims, procedures and processes that would be applied in deciding to take and subsequently instigating such action.

1.4 Legal Implications

- 1.4.1 Without an adopted protocol in place setting out when such action might be taken, such decisions may be subject legal challenge through the Courts. A formal protocol also assists good governance and transparency in decision making.

1.5 Financial and Value for Money Considerations

- 1.5.1 The protocol as drafted will ensure that due consideration will be given to the likelihood of cost recovery in the event that direct action is taken. This would also be balanced against the resource and financial implications for taking prosecution action in the alternative and what the relative benefits of such approaches might be in any given circumstance.

1.6 Risk Assessment

- 1.6.1 The adoption of a clear protocol by which decisions will be made as to whether direct action should be taken in respect of enforcement matters will reduce the risk of any challenge as it clearly sets out the process and procedures the Council will adhere to in seeking to take such action.

1.7 Equality Impact Assessment

- 1.7.1 The decisions recommended through this paper do have relevance to the substance of the Equality Act. The protocol as drafted therefore makes clear that any decisions made will have full regard to the Public Sector Equality Duty as set out at Section 149 of the Equalities Act 2010

1.8 Recommendations

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

- 1) Adopt the Planning Enforcement Direct Action Protocol as attached at
[Annex 1]

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

Background papers: contact: Emma Keefe
Planning Enforcement Direct Action Protocol

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