

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

13 November 2019

Report of the Director of Planning, Housing & Environmental Health

Part 1- Public

Matters for information

1 PLANNING ENFORCEMENT UPDATE

Summary

This report seeks to update Members on matters pertaining to planning enforcement.

1.1 Introduction

1.1.1 Matters surrounding planning enforcement were last reported to the Board on 04 June 2019, specifically seeking endorsement of the adoption of a Direct Action Protocol to sit alongside the main Enforcement Plan. The protocol has since been published and work has commenced to identify breaches of Notices across the Borough that could be the subject of such action.

1.1.2 In more general terms, since adoption of the main Plan there has been an undertaking to periodically review and provide updates on Planning Enforcement matters.

1.2 Planning Enforcement Funding

1.2.1 In July of this year, the Department of Communities, Housing and Local Government (DCHLG) gave certain Local Authorities across the country identified as having large proportions of Green Belt land the opportunity to bid for up to £50,000 to dedicate towards planning enforcement. The Council made its bid on the basis that it had recently adopted the Direct Action Protocol and that several specific projects had been identified within the Green Belt, where considerable harm was arising from persistent and flagrant breaches, but where the Council felt it unlikely to be able to successfully recover costs in the event that Direction Action was pursued.

1.2.2 Brief details of those identified projects are set out below:

- 1) A long outstanding, unauthorised Traveller site, subject to an appeal against an Enforcement Notice, which was called in by the Secretary of State and upheld. That decision was then challenged in the High Court and Court of Appeal and permission to be considered by the Supreme Court has recently been rejected. Following this, the Council took immediate steps to seek

compliance with the extant notice. Residential occupation has subsequently ceased, however various caravans and associated development has been left behind. The Council has since taken steps to secure the site to prevent any return to unauthorised residential occupation but structures remaining in situ continue to cause harm in their own right and in breach of the notice. The risk that whilst these remain on site, the owners will make attempts to recommence residential occupation was also identified.

- 2) Removal of facilities contained within a garage building which facilitates an independent residential occupation. Repeated refusals, dismissed appeals and Notices dating back to 2006 have failed to secure resolution to this harmful use. The Council successfully prosecuted a breach of a notice resulting in a fine of £15,000 plus Council costs but even this has not compelled the owner to comply and the breach (and harm) continues.
- 3) Removal of a vehicle scrapyards, caravan, associated hardstanding and buildings where a total of four notices have been served and all dismissed by the Planning Inspectorate at appeal. There remains no indication of compliance and no engagement can be secured with the owner.
- 4) Two further sites subject to ongoing unauthorised open storage uses where the Council has repeatedly sought to secure compliance through notices but the site owners refuse to engage with the process.

- 1.2.3 The identified projects were considered to inevitably incur the most expense if Direct Action were to be taken, by virtue of their particular nature, the complexities involved, level of action required, need for storage of items, involvement of bailiffs and specialist companies to undertake the works required. Coupled with this, it was considered that in each of the cases identified, the prospect of any costs recovery was remote at best. It was felt that these factors combined would in all likelihood render the option of direct action prohibitively costly and action would therefore not be taken, the substantial level of identified harm effectively continuing unabated. It was on this basis that the bid was taken forward.
- 1.2.4 The Council received formal notification in September that the bid was successful and we will be awarded the full £50,000 towards these projects. Officers are now compiling full schedules of the works and actions necessary to remedy the breaches in order to fully cost them and prepare for receipt of the funds.
- 1.2.5 In terms of the particular projects identified, the funding will allow the Council to take action to entirely remove significantly harmful development and allow for sites to be properly and appropriately returned to their formal condition without the risk that cost recovery would not be possible. Such harm will be completely ameliorated to the benefit of the openness of the Green Belt and the wider amenities of the localities affected.
- 1.2.6 Moreover, and more broadly than the site specific benefits that will be derived from such action coming forward, Officers are acutely aware that often, there is a

great amount of public frustration on occasions where Notices are upheld at appeal or prosecutions are successfully brought about only for no progression to be seen to be made “on the ground”. The ability to rectify such harmful breaches of planning control within the Green Belt will undoubtedly not only seek to maintain public confidence in the planning system but will, it is hoped, further seek to promote an enhancement in public faith in the system.

1.2.7 The ability to take such conclusive action on sites that are causing such a great deal of harm also sends a clear and important message to others across the Borough that breaches of planning control will be taken seriously and that the Council will take all reasonable and necessary action. This will also serve as a clear warning to those who continue to breach planning control in a flagrant and repeated manner and thus act as a preventative tool in the future.

1.2.8 Officers will continue to update Members as this project progresses, once the funding has been received.

1.2.9 Full regard will be given to the Direct Action Protocol in all steps of the project to ensure accordance with all relevant statutory and policy duties and requirements.

1.3 Updated Planning Practice Guidance (PPG)

1.3.1 The PPG was updated on 22 July 2019 and is now entitled “Enforcement and Post Permission Matters: Responding to suspected breaches of planning control.” New paragraphs have been added to the guidance concerning build out, completion notices, discontinuance orders and revocation of a planning permission.

1.3.2 Officers will have full regard to this guidance in undertaking investigations. It is not considered at this time necessary to formally amend the adopted Plan to take account of these insertions and the two documents should continue to be read in conjunction. The adopted Plan would only need formally amending in the event that any of its contents expressly contradicted national policy or guidance.

1.4 Requesting Retrospective Planning Applications and Expediency

1.4.1 One matter that has previously been raised by Members in respect of planning enforcement action concerns requesting retrospective planning applications to regularise works when breaches are identified rather than deciding such action is “not expedient”. Officers appreciate Members’ frustrations in this respect; particularly given the majority of residents in the Borough follow the proper channels and the apparent lack of fairness that some might not.

1.4.2 The PPG and the Council’s adopted Planning Enforcement Plan are both clear in this respect, setting out that enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

1.4.3 Investigating officers will continue to carefully and thoroughly consider all the relevant merits of a case before determining whether the correct approach is to seek the submission of a retrospective planning application in light of the very specific guidance given in this respect.

1.5 Section 215 Notices

1.5.1 The adopted enforcement plan continues to be a valuable tool in undertaking investigations and instigating action where appropriate and proportionate to do so. One specific aspect of planning enforcement that causes a high volume of complaints across the Borough centres on untidy sites and powers afforded to the Council as Local Planning Authority under Section 215 of the Town and Country Planning Act 1990 (as amended). Whilst there is mention of the circumstances when it might be appropriate to take action to remedy untidy sites within the adopted Plan, a review of cases since its adoption does indicate that complainants do sometimes find it difficult to understand when and how we might look to take such action.

1.5.2 Best Practice Guidance on a national level does exist (published by the ODPM, January 2005) and initial research indicates the Local Planning Authorities across the country rely on this to provide guidance to their local residents. Clearly, matters have moved on somewhat since publication of this document particularly since the production of the NPPF and associated PPG. Whilst the published guidance does continue to provide some useful, high level advice on best practice, it is considered that a Borough specific protocol which sets out plainly how this Council will respond to complaints would be a beneficial tool to all parties involved in the process.

1.5.3 As such, and in order to improve transparency concerning how these cases will be dealt with it is considered that a further protocol to sit alongside the main Planning Enforcement Plan and Direct Action Protocol would be appropriate. Officers have therefore commenced work into the production of such a protocol and the final draft will be reported in due course.

1.6 Legal Implications

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

1.7 Financial and Value for Money Considerations

- 1.7.1 The protocol will ensure that Council resources are properly focused on appropriate cases which is important given the high volume of complaints received.

1.8 Risk Assessment

- 1.8.1 The adoption of a clear protocol by which decisions will be made 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.

1.9 Equality Impact Assessment

- 1.9.1 The protocol as drafted will need to make 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.

1.10 Recommendations

- 1.10.1 That the contents of the report be **NOTED**.

Background papers:

contact: Emma Keefe

Nil

Eleanor Hoyle
Director of Planning, Housing & Environmental Health