

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

29 June 2021

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 REVIEW OF PLANNING ENFORCEMENT PLAN AND ASSOCIATED PROTOCOLS

Summary: This report seeks to provide an update on the activities of the Planning Enforcement Team over the last 12 months, with reference to the effectiveness of the adopted Planning Enforcement Plan. It also recommends the publication of an additional guidance note setting out circumstances where cautions will be issued. Finally, the report seeks approval for the adoption of a Tree Protection Enforcement Protocol intended to sit alongside the adopted Planning Enforcement Plan and Tree Preservation Order Protocol (which appears elsewhere on this agenda).

1.1 Planning Enforcement Update 2020/21

- 1.1.1 Matters relating to planning enforcement were last reported to the Board on 28 July 2020. At that time, officers reported that a key aspect of planning enforcement activities centred on untidy sites in respect of powers afforded to the Council as Local Planning Authority under Section 215 of the Town and Country Planning Act 1990 (as amended). As such, a further protocol to sit alongside the main Planning Enforcement Plan and Direct Action Protocol was agreed and it has since been published and implemented. Already, this has proved successful in remedying breaches of control, particularly when taken in conjunction with the Direct Action Protocol.
- 1.1.2 More generally, Members should be aware that so far 2021 has been a particularly busy calendar year for the Planning Enforcement Team. For the period 01 January – 31 May 2021, a total of 197 enforcement complaints had already been received requiring investigation. That compares to a total of 110 for the same period in 2020, 149 in 2019 and 179 in 2018. We expect this trend in upward trajectory to continue for the remainder of the year and into 2022 in all likelihood.

1.2 Relevant policies and guidance:

1.2.1 The Council's objectives in producing a Tree Protection Enforcement 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 Planning Practice Guidance sets out that LPAs should consider publishing tree protection enforcement policies and having clear written procedures to deal with cases. These procedures may require close liaison between tree officers, enforcement officers and legal advisers.

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

1.2.5 The detailed legislative framework for dealing with such matters is contained within the Protocol itself.

1.3 Planning Enforcement and Trees

1.3.1 Since planning enforcement related matters were last reported to the Board, consideration has been given as to what further improvements to our ways of working are needed to ensure effective and efficient enforcement operations to remedy breaches of planning control across the Borough.

1.3.2 One aspect of planning enforcement related work that has been particularly challenging in recent months is connected to protected trees. The need to ensure enhanced interaction between the Council’s landscape and tree functions with planning enforcement has been identified as a necessary service improvement and this is discussed in more detail elsewhere on this agenda. That report explains the need for a further Protocol to be developed explaining precisely how unauthorised works to protected trees will be investigated, how evidence will be collected and how decisions will be made as to what action, if any, should be taken when breaches are identified.

1.3.3 The draft protocol is provided at **Annex 1** to this report. It sets out in detail what detailed investigations officers will undertake in establishing what action might be necessary and proportionate considering all the prevailing circumstances of a case. If the Protocol is adopted, all tree related enforcement investigations will be expected to comply with the contents of the Protocol.

1.4 Simple Cautions and Planning Enforcement Guidance Note

- 1.4.1 Discussion has taken place around circumstances where the Council could make better use of simple cautions as an enforcement tool in certain, specified circumstances. Whilst this would not necessitate the publication of a detailed Protocol, it is proportionate to publish a guidance note to sit alongside the overarching Planning Enforcement Plan to ensure a consistent and transparent approach to these is adopted going forward.
- 1.4.2 **Annex 2** contains the draft guidance note intended for publication.

1.5 Plots sold at auction

- 1.5.1 In recent months, there has been a notable upward trend in areas of land being sold off in plots at auction. There is nothing inherently wrong in this and most prospective purchasers may legitimately be interested in such plots for small scale agricultural and horticultural purposes/hobbies. However, recent experiences have shown that plots are being purchased with a view to undertake unauthorised, and in many cases, harmful development across the Borough.
- 1.5.2 Habitually, when the Council is notified of plots being marketed for sale in this way, an assessment is undertaken regarding the risk of the plots being subject to unauthorised development if sold and in many cases Article 4 Directions are served with immediate effect removing permitted development rights for (most commonly) the erection of fences, accesses, temporary uses, and agricultural buildings. As Members will be aware, Article 4 Directions do not prevent such development from taking place in perpetuity but rather necessitate the submission of a planning application for consultation, assessment, and determination in accordance with the adopted development plan and having regard to all material planning considerations. In some cases, purchasers of the plots do not take heed such restrictions and move forward with development in any event, leading to investigations and the need to consider and bring forward prosecution action. In many circumstances, this can be difficult and demand significant Council resource because, for example, the new purchasers do not register the land (to circumvent the system or as a result of a lack of understanding of the system) or choose to engage with our attempts at negotiation and resolution.
- 1.5.3 Such processes are often long drawn out and can create a significant amount of concern in local communities. Equally, circumstances can arise where purchasers might simply not understand the system and think they are buying land with more value or opportunity than it has as a result of high-level planning constraints such as the Green Belt. This can cause further confusion and frustration. In cases where prospective purchasers use our pre-application advice service, we can advise accordingly but increasingly this does not tend to be used, either due to a lack of knowledge or because there is not sufficient time to engage prior to auctions taking place.
- 1.5.4 With these issues in mind, officers intend to undertake the following:

- Continue to react to information received regarding new plots being marketed and/or brought to auction and serve Article 4 Directions restricting relevant permitted development rights where appropriate and proportionate to do so;
- Commence appropriate and proportionate enforcement action if unauthorised development commences on any such plots in accordance with the Council's adopted Planning Enforcement Plan;
- Initiate a Kent-wide discussion of Planning Enforcement Officers to establish any common experiences and agree ways to communicate with agents and auctioneers about the issues and constraints around such sales; and
- Review the planning pages of the Council's website and update content to provide clear messaging about the risks involved in purchasing such plots and encouraging use of the pre-application advice service.

1.6 Legal Implications

- 1.6.1 Without an adopted Tree Protection Enforcement Protocol in place setting out when action might be taken in connection with tree related breaches, such decisions may be subject to legal challenge through the Courts. A formal protocol also assists good governance and transparency in decision making and ensures a consistent approach is adopted in all cases.
- 1.6.2 Without a published guidance note setting out when simple cautions will be used as a planning enforcement tool, such action may be taken on an inconsistent basis.

1.7 Financial and Value for Money Considerations

- 1.7.1 The Tree Protection Enforcement Protocol will ensure that Council resources are properly focused on appropriate cases, which is important given the high volume of allegations of unauthorised works received.
- 1.7.2 Issuing simple cautions as an alternative to prosecution action in a specified and consistent manner will ensure that the Council's resources are properly focused on harmful breaches where prosecution action and/or direct action is justified.
- 1.7.3 Attempts to signpost prospective purchasers and vendors to the consequences of buying/selling plots of land will help to ensure that the Council's resources are properly focused.

1.8 Risk Assessment

- 1.8.1 The adoption of clear strategies 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 implementation of all strategies will ensure full regard is given to the Public Sector Equality Duty as set out at Section 149 of the Equalities Act 2010.

1.10 Recommendations

- 1.10.1 It is recommended to Cabinet to **APPROVE** the following proposals:

- 1) The principle of a Tree Protection Enforcement Protocol be adopted subject to consideration by the Cabinet following on from any necessary amendments to the draft document to reflect all feedback from this Advisory Board to ensure it is fit for purpose, with a 6-month review period following the successful appointment to the Tree and Landscape Officer post. Final authority to be delegated to the Director of Planning, Housing and Environmental Health in consultation with the Cabinet Member for Strategic Planning and Infrastructure.
- 2) Adopt the Simple Cautions and Planning Enforcement Guidance Note as attached at **Annex 2**.

- 1.10.2 The actions to be taken in respect of the sale of land in plots be **AGREED**.

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:

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Draft Planning Enforcement Tree Protocol
Simple Cautions Guidance Note

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