

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

18 January 2022

Report of the Director of Planning Housing and Environmental Health

Part 1- Public

Delegated

1 SCOPING REPORT: PLANNING ENFORCEMENT

A scoping report looking at the existing Planning Enforcement Plan and associated practices to identify opportunities for improvement.

1.1 Background

1.1.1 The Council's adopted Planning Enforcement Plan was first published in 2016 following a report to the Planning and Transportation Advisory Board and subsequent approval by Cabinet. Since that time, a number of associated Protocols have been published seeking to further crystallise best practice around certain specific elements of planning enforcement with a view to improving transparency and consistency in our approach.

1.1.2 This Plan itself sets out the approach the Council will take in relation to breaches of planning control in the Borough, explaining how the Council's planning enforcement service seeks to address breaches of planning control, prioritise its work and communicate with those involved in the investigations.

1.1.3 It has always been the intention for the overarching Plan to be subject to ongoing review to ensure it remains a useful tool both for officers in terms of their day to date ways of working but also for those who come into contact with the Planning Enforcement function.

1.2 Overview of current practice – updating complainants and Members

1.2.1 It is appreciated that effective community engagement is a key part of delivering a responsive and accountable planning enforcement service and this one of the focuses of the Plan as published.

1.2.2 The adopted Planning Enforcement Plan (which was first reported to PTAB in July 2016 and subsequently adopted following approval by Cabinet on 04 November 2016) sets out how the team presently communicate with complainants on the progress of our investigations. It states that we will acknowledge complaints, explain what priority it has been given, the name of the investigating officer, keep complainants informed on progress and advise on the final outcome. The Plan

does not contain a specific framework which sets out how and when complainants will be kept informed about progress.

- 1.2.3 In terms of keeping Members updated on the progress with our investigations, they receive a weekly list of open and closed cases. Additional updates by the investigating officers are more ad hoc and usually upon individual request. Again, the Plan in its current form does not set out a framework for when any such updates will be given other than at the start and end of an investigation.

1.3 Scope of the review

- 1.3.1 In the above respects, it is understood that there can be frustrations amongst complainants because they do not consider they are being updated early or often enough during our investigations. Similarly, Members have expressed concerns that outside the weekly lists, they do not receive regular, detailed updates on case progression.

- 1.3.2 Whilst the Plan fully acknowledges the importance of effective community engagement, it is equally important to recognise that the team have limited resources available to them and much of their focus must be on undertaking their investigations in a timely manner.

- 1.3.3 With these factors in mind, it is suggested that the scope of the review focus on the following key aspects:

- Review the schemes of prioritisation contained within the Plan (and as set out at Annexe 1 to this report) to ensure that the resources of the team remain focused on the most significant breaches and review the associated target timescales to ensure they remain reasonable, proportionate, and fit for purpose
- Linked to the above, review internal processes regarding case allocation, prioritisation and workflow management systems (the steps contained within Section 5 of the adopted Planning Enforcement Plan) to ensure that the adopted schemes of prioritisation and associated actions are adhered to in all circumstances
- Review the content of the Plan insofar as it relates to communicating with complainants (including where Members are the complainant) with a view to establishing key milestones within our investigations where they will be updated and to establish efficient internal processes to ensure agreed measures this is met
- Review the content of the Plan insofar as it relates to updating Members on enforcement investigations, with a particular emphasis on whether such updates should be focused on cases where Members have asked to be kept updated (either via the weekly open case list or otherwise) and/or for certain case types linked to the scheme of prioritisation, for example, and to

establish efficient internal processes to ensure agreed measures can be met.

1.4 Legal Implications

- 1.4.1 Without an effective 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 investigating officers all have significant caseloads and no dedicated administrative support beyond that of the planning technical team. Any additional actions implemented resulting from the review of the Plan and the associated activities of the team are likely to have an additional resourcing cost.

1.6 Risk Assessment

- 1.6.1 The Planning Enforcement Plan reduces 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.
- 1.7.2 Public sector equality duty 2011

1.8 Policy Considerations

- 1.8.1 Communications
- 1.8.2 Customer Contact
- 1.8.3 Equalities/Diversity
- 1.8.4 Community
- 1.8.5 Human Resources

1.9 Recommendations

- 1.9.1 That Members **ENDORSE** the approach identified in Section 1.3 of the report, to review and update the existing Planning Enforcement Plan.

Background papers:

contact: Emma Keefe

Annexe 1: Adopted schemes of prioritisation

Eleanor Hoyle
Director of Planning Housing and Environmental Health

**Annex 1:
Adopted Schemes of Prioritisation (as contained in Planning Enforcement Plan)**

PLEASE BE AWARE: These are target timescales for the undertaking of an initial site inspection and will be adhered to as far as reasonably practicable in the prevailing circumstances. Following the initial inspection, a subsequent investigation will take place the length of which will be dependent on the complexities of the individual case.

Priority ranking	Case characteristics	Target for initial site inspection	Comments
Top Priority	1. Work to Listed Buildings. 2. Work to protected trees. 3. Development likely to have a serious impact on health or public safety.	1 working day	Approach would be to inspect site as soon as possible to prevent irrevocable damage.
High Priority	1. Development causing significant harm the quality of life of a significant number of local residents. 2. Development with some (less serious or immediately threatening) impact on health or public safety. 3. Development causing potential harm to a Conservation Area or Site of Special Scientific Interest. 4. Development potentially causing significant harm to the landscape.	5 working days	Cases with these characteristics are inevitably themselves subject to assessment and judgement during triage – may require engagement with outside specialist bodies which may have more appropriate powers of control or enforcement (e.g. Environment Agency, Health and Safety Executive)
Medium Priority	1. Development which causes limited harm to individuals and/or local communities. 2. Development other than of a wholly minor nature not falling	10 working days	

	within any other category.		
Other Priority	<ol style="list-style-type: none"> 1. Minor developments such as sheds, fences. 2. Most advertisements. 3. Other minor breaches of planning conditions. 4. Minor departures from approved plans. 	As soon as resources allow, bearing in mind other priorities	

This prioritisation reflects the perceived urgency and level of harm arising to amenity or to areas or features that benefit from special protection.