

TONBRIDGE & MALLING BOROUGH COUNCIL

OVERVIEW AND SCRUTINY COMMITTEE

06 October 2022

Report of the Director of Planning, Housing & Environmental Health

Part 1 - Public

Matters for Recommendation to Cabinet

1 PLANNING ENFORCEMENT REVIEW

1.1 Background

1.1.1 In January 2022, a scoping report was brought to Overview & Scrutiny that outlined the following areas for a service review to focus on:

- 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.

1.1.2 The Planning Enforcement Plan was first published in 2016 and has been appended by a number of protocols since that time. It has always been the intention that this document would be subject to regular review to ensure it

remains in line with legislative requirements and is a useful tool for both officers and those who engage with the service. As part of the issues explored below, a proposed revised version of the Enforcement Plan is attached at **Annexe one** and any key changes are highlighted in the body of the report.

- 1.1.3 As of 23 August, there are 435 live enforcement cases on the system which comprise 386 cases under investigation and pending consideration with a further 49 cases either awaiting the assessment of a planning application (before the enforcement case is decided) or having had formal enforcement action taken. In the past three years, the enforcement team have received 339 cases in 2019/20, 325 in 2020/21, 418 in 2021/22.

1.2 Planning Enforcement Plan – Prioritisation

- 1.2.1 At present, the prioritisation table is included within the ‘Involvement in the Process’ section of the Enforcement Plan. It is proposed however to move this to its own section, given that this is a fundamentally important part of the approach. It will now sit as Part 2, with Part 3 being for involvement in the process.
- 1.2.2 Given numbers of cases routinely reported to the Council, there are the following number of cases within the existing categories (snapshot from Member tracker data of 23 August);

Top	23
High	119
Medium	274
Other	11

The remaining eight cases are made up of High Hedge complaints and breaches of Article four Directions.

- 1.2.3 The information above demonstrates that with our case levels, the priority rankings are not nuanced sufficiently to ensure that the targets are achievable.
- 1.2.4 A proposed revised priority table, with additional targets and priorities, is also included in the attached Enforcement Plan. This includes the existing target for a site inspection to be undertaken and a target for acknowledgement (see 1.3.4 below).

1.3 Planning Enforcement Plan – Communication

- 1.3.1 The nature of Planning Enforcement investigations, where there are often ongoing legal processes involved that mean information has to remain confidential, can result in communicating with stakeholders in a way that meets their expectations

becoming challenging. It is therefore essential that the service is clear from the outset of any engagement about what updates will be feasible and legally permissible.

- 1.3.2 The Planning Enforcement email inbox, which is a key source of case reports, has an auto response on it to acknowledge receipt of the email. It is proposed that this is updated to better manage expectations and to include a link to the Planning Enforcement Plan as well as an explanation that not every email will be individually acknowledged. This message will reflect information provided on the Council's website and is designed to manage expectations about the Planning Enforcement process.
- 1.3.3 At present, those reporting a breach who are not borough Members receive an acknowledgement letter stating that the matter they have raised is to be investigated and directing them to the Planning Enforcement Plan for further information. They also receive an update at case closure to inform them of the final outcome. Both of these are issued automatically via email where that information has been provided, or by post. In addition to this, case officers informally update stakeholders where possible throughout the progress of a case, however this is not applied consistently due to the varying nature of cases and the high caseloads officers currently carry. It is the intention therefore that additional automated updates are implemented as part of the move to the new Agile system. This will mean that from April 2023, where it is legally permissible to provide an update at key stages of an investigation such as when a retrospective planning application is submitted, or enforcement action has been taken (not specifying the type of action), these will also be automatically sent to those listed on the case file as 'interested parties'.
- 1.3.4 In addition to this, the Enforcement Plan currently states that we will let those who raise an issue know what priority the case has been given and who is investigating it. However, this information is not currently provided as part of the acknowledgement letter. It is therefore proposed that the current template be amended and that an acknowledgement target is set accordingly. This will ensure that the customer who raises the issue will be informed of the priority of the case and the case officer at the same time and within two days of the issues being raised with the Council. This will require a change of process and it is therefore proposed that this is implemented ahead of the Agile template changes or in tandem with them to take effect at the earliest opportunity. In addition to this, the acknowledgement letter will explain that follow up communication from stakeholders will not always be individually acknowledged, for example where it is a follow up report on the same or similar potential breach. The auto response email from the Planning Enforcement inbox will serve as confirmation that the information has been received, however it is considered that manual acknowledgement of this type of message is not an efficient use of officer time, especially when the additional automated notifications are introduced.

- 1.3.5 Members currently receive a weekly list of opened and closed enforcement cases, which contain confidential information that is not to be shared more widely. Although these are considered a useful snapshot tool across the borough, officers routinely receive Member queries about ongoing cases that these lists do not enable. The Head of Planning, working closely with IT, has therefore developed a Planning Enforcement Tracker tool for Members. Prior to this meeting, all Members have been sent a link to that tool, which is designed to ensure that Members can access real time information about updates on cases. Officers have commenced a revised working practice that sees them update case files on a more regular basis, which generates the case updates shown in the tracker. A further overview demonstration of the tracker will be presented as part of this report and Members are encouraged to raise any queries about its use with the Head of Planning to ensure that best use is made of this tool.
- 1.3.6 The next stage of developing the approaches mentioned above will be to enable full mobile working capabilities for enforcement case officers, whereby they are able to use portable devices on site (where it is safe to do so) to complete case updates and record findings. This will enable site visits to be carried out more efficiently and for decisions on cases to be completed or closed down more quickly. As the new Agile system will be implemented by April 2023, it is proposed that mobile working capability be introduced alongside this.
- 1.3.7 At present, the Planning Enforcement Plan does not have a separate section relating to Member communication. In the draft appended to this report, the insertion of a section is proposed, both to ensure that Members are clear on what has been agreed to but also to ensure that stakeholders more widely understand that some information can only be shared with Members and not with other interested parties.

1.4 Resourcing the Planning Enforcement Function

- 1.4.1 The proposed changes to the Planning Enforcement Plan, the digital improvements detailed in this report and the number of cases received each year and live cases in the system provide a revised basis for considering staffing requirements in the Planning Enforcement team. There is also a need to consider what work is considered to be required and core to the function.
- 1.4.2 Outside the core work of the team in reviewing and enforcing Planning breaches, the officers also play a lead role, in close collaboration with Legal Services, on short term unauthorised traveller encampments (longer term unauthorised encampments are considered part of the core work of the team) on Council, Parish/Town Council and Leisure Trust Land. At present, this activity is charged at a flat rate per incursion of £400 or £600 should the case go to court. Having carried out an assessment of the time spent by both Planning Enforcement and Legal officers, it is considered that based on the average time spent, cost recovery for this work would sit at around £1,400 (should the case go to court). Therefore, at present, the Council is making a considerable loss every time this

activity is undertaken. This is in addition to the fact that several of the activities for Planning Enforcement Officers need to be undertaken by two team members for safety reasons and therefore this is a considerable drain on team capacity.

- 1.4.3 On the assumption that Members wish us to continue to offer this service to Parishes and Leisure Trust (which not all Councils do), we need to seek cost recovery and accept that in the months when this activity is most prevalent, officer time will potentially be limited on other enforcement activity.
- 1.4.4 At present, the Development Manager is the only senior manager overseeing the Planning Enforcement function and all case endorsement sits with that role. Given the wider range of requirements that role has, this is not an effective or efficient use of their time and may well result in delays to enforcement cases being concluded. As Members may be aware, a new permanent incumbent will start in the Development Manager role in October 2022, and it is considered important to ensure that they are able to provide oversight of their functions rather than needing to provide operational management. Moreover, as per the recent confidential report to the General Purposes committee, operational management arrangements have been introduced or amended across other Development Management functions both to empower officers and to make processes more efficient, so there is an argument that not to do so in Planning Enforcement would leave this function out of line with the rest of the service and could create a potential drain on management resource as a result.
- 1.4.5 The Head of Planning has been carrying out successful backlog exercises with both the Development Management and Planning Technical teams over the past few months. It is proposed that in order to support the implementation of the revised processes identified in this report, the agency member of staff who is currently filling a Planning Enforcement Officer role (to maintain capacity during a period following the departure of a permanent member of staff and prior to this reporting cycle) be retained until end of the financial year (in line with Agile implementation) in any staffing option, in order to work on case backlogs and provide transitional capacity. This decision to continue this fixed term resource is delegated to Chief Officers and as such has been approved by Management Team.
- 1.4.6 Given all of the matters laid out in this report, it is considered necessary to review the staffing structure in the Planning Enforcement Team. Four options are laid out below for Members' consideration.
- 1.4.7 *Do nothing scenario* – at present, the team structure is as shown at **Annexe two**. Although there is a senior officer, this role is not graded at such a level as to have significant management responsibility and is rather a role for a very experienced enforcement officer to manage complex cases. At present however, due to the fact that this planning function has no interim management before reaching the Development Manager (as outlined above at 1.4.4), this officer is currently operating in a quasi- managerial role, which removes capacity from enforcement

activity. Given caseloads and management structure, it is considered that should the digital changes outlined above (Agile implementation and Enforcement Tracker) be implemented but there is no change to the existing structure, it is unlikely that improvements to timescales for investigations and follow up activity will be significantly improved, as the current cohort of officers will continue to have to manage all aspects, albeit that Members and stakeholders will be kept better informed and this may see some reduction in administrative activity to manage stakeholder engagement. It will also mean that implementation of the revised approach to prioritisation proposed in this report is likely to take longer due to the need for officers to complete the backlog exercise and to maintain incoming case timescales.

- 1.4.8 Optimised growth scenario – **Annexe three** shows the proposed structure. This option assumes the digital changes and efficiencies created by the introduction of Agile outlined above are implemented and that 3 roles are maintained within the team but that one of the Planning Enforcement Officer roles is changed to a Principal Planning Enforcement Officer at M8. This role would manage case allocation, decision sign off and complex multi-agency cases as well as taking line management responsibility for the Senior Planning Enforcement Officer and Planning Enforcement Officer roles. The role would also have responsibility for formal enforcement action sign off on specified cases. This would mean that those two posts would be able to focus solely on inspections and casework (including short term unauthorised traveller encampments) and would in time have digital working capability to streamline their processes and reduce case timescales. It would also be part of this new role to review the protocols that sit alongside the Planning Enforcement Plan and liaise with colleagues in Legal, as well as the Landscape Officer (in relation to Tree Protection). This is still considered to be a lean structure given the case levels in the team; however, it provides a more graduated management structure and allows case officers to focus on that aspect of the enforcement process more fully, whilst taking account of the Council's wider financial challenges. Details of the financial implications of the options are detailed at 1.6 below.
- 1.4.9 Full resourcing scenario – given the importance that Members understandably place on Planning Enforcement, officers have also considered an option which augments the current structure rather than amending it. In this proposal, the Principal Enforcement Officer role at M8 would be in addition to the existing 3 roles and would provide ongoing resilience and capacity to both manage the team but also resolve more cases more quickly. It should be noted however that this results in significant growth on base budget.
- 1.4.10 Hybrid proposal scenario – although more challenging to recruit to, as the team currently has a permanent vacancy (staffed by an agency member of staff at present, as above) at Planning Enforcement Officer level, a hybrid proposal would be to implement the Optimised Growth structure permanently, with a two-year fixed term role at Planning Enforcement Officer level to provide some additional short-medium term capacity whilst new ways of working are embedded. This

would also allow the new incumbent in the Development Manager post sufficient time to implement any further service efficiencies that they identify.

1.5 Legal Implications

- 1.5.1 Having an effective Planning Enforcement Plan in place ensures that there is a framework for prioritisation and decision making that reduces the risk of the Council's decisions being subject to successful legal challenge. It is also considered to be best practice to have such a plan in place.
- 1.5.2 Planning enforcement work is discretionary and there are no statutory provisions *requiring* the Council to undertake such work. However, as set out in the NPPF, effective planning enforcement is important to maintain public confidence in the planning system. Insufficient or ineffective enforcement could lead to long term harm to the amenity of the Council's area, a lack of trust in the planning system and an inability for the Council properly to administer effective planning control.

1.6 Financial and Value for Money Considerations

- 1.6.1 The cost of the optimised growth option is £24,913 growth on the Council's base budget.
- 1.6.2 The cost of the full resource option is £62,165 growth on the Council's base budget.
- 1.6.3 The cost of a fixed term two-year Planning Enforcement Officer post is £37,252 per annum. Should O&S endorse this approach alongside the optimised growth option, then Management Team have agreed this fixed term post in principle.
- 1.6.4 At present, no offset savings are identified to mitigate the potential growth. As per the recent report to Members on staffing resource in the Planning Service more widely, service efficiency will be considered again once the implementation of Agile is completed.
- 1.6.5 It is essential for the Council's overall financial viability that where services are provided, costs are recovered. As such, it is proposed that the fee for enforcement work relating to traveller incursions on Parish or Leisure Trust land is increased to £950 for initial action, increasing to £1,400 where the case is taken to court.

1.7 Risk Assessment

- 1.7.1 Stakeholder expectations are not met - reputational risk which undermines the confidence in the planning system.
- 1.7.2 Breaches rise due to Council's inability to efficiently enforce due to workload and resourcing issues.

- 1.7.3 Recruitment to new post/s takes longer than expected due to market forces and necessitates employing a consultant for a longer period with consequential impact on rising caseloads and costs.
- 1.7.4 Potential delays in having a new structure agreed due to internal governance and associated impact on case load and priorities.
- 1.7.5 Future changes are not effectively implemented due to a lack of resources
- 1.7.6 Agreement is not reached on increased fees for dealing with short term encampments which means that costs recovery is not achieved and diverts resources away from other priorities.
- 1.7.7 Potential misalignment with other recent changes agreed by General Purposes Committee for other Development Management functions to empower officers and to make processes more efficient which could have the effect of de-motivating team members in the enforcement team.
- 1.7.8 Risks associated with backlogs in the court system which could delay taking action to remove short term unauthorised traveller encampments and consequential impacts on the Council's reputation for taking decisive action.

1.8 Equality Impact Assessment

- 1.8.1 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.

1.9 Policy Considerations

- 1.9.1 Business Continuity/Resilience
- 1.9.2 Human Resources

1.10 Recommendations

The Overview & Scrutiny Committee is asked to;

- 1.10.1 CONSIDER the proposed changes to the Planning Enforcement Plan and the associated activity and timescales, as laid out in section 1.2 and 1.3 of this report and RECOMMEND to Cabinet that these changes be agreed for implementation.
- 1.10.2 CONSIDER the resourcing options laid out at Section 1.4, to be read alongside the financial considerations at section 1.6 and the risk assessment at section 1.7 and AGREE an option to propose to General Purposes Committee.
- 1.10.3 RECOMMEND the increase in the fees charged for activity relating to traveller incursions on Parish or Town Council or Leisure Trust land laid out in Section 1.4 to be read alongside the financial considerations at section 1.6 and the risk

assessment at section 1.7, for consideration by Council as part of the budget setting process.

Background papers:

Annexe 1 – Revised and updated Enforcement Plan

Annexe 2 – Current team structure

Annexe 3 - Proposed structure options

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