

Central Bedfordshire Council

Sustainable Communities Overview and Scrutiny Committee

14 January 2016

TITLE OF REPORT: Outcomes of the scrutiny enquiry of planning enforcement

Report of: Cllr Ken Matthews, Chairman of the Enquiry

Advising Officers: Jason Longhurst, Director of Regeneration and Business (Jason.longhurst@centralbedfordshire.gov.uk), Peter Keates, Head of Development and Regulation (peter.keates@centralbedfordshire.gov.uk) and Rebecca Preen, Scrutiny Policy Adviser (rebecca.preen@centralbedfordshire.gov.uk)

Purpose of this report

1. To summarise the findings of the planning enforcement enquiry and to provide recommendations for the improvement of the Planning Enforcement Service.

RECOMMENDATIONS

The Committee is asked to:

1. Approve the recommendations resulting from the enquiry (paras 30 to 43) subject to any additional input as may be necessary.
2. Request a performance monitoring report be submitted to the Committee 6 months after implementation of the recommendations.

Background

2. At their meeting on 20 August 2015 the Sustainable Communities Overview and Scrutiny Committee (SCOSC) requested a review of the Planning Enforcement Service in light of concerns raised by Members.
3. An enquiry was formed of Cllr K Matthews, Cllr B Saunders, Cllr A Graham and Cllr R Johnstone who undertook to review the subject and report back to the SCOSC with their findings.

National Context

4. Central Government guidelines provide a framework to assist Local Authorities in shaping their policies with regards to Planning Enforcement.

5. In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 207:

“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. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

6. The primary function of Planning Enforcement is to investigate alleged breaches of planning control which includes:-

- Carrying out development without the required planning permission;
- Failure to comply with conditions or limitations subject to which planning permission has been granted;
- Unauthorised advertisements; and
- Unauthorised Gypsy and Traveller incursions.

7. The local planning authority cannot take enforcement action where development has planning permission, is built to plan in accordance with conditions, within permitted development rights or when it is not expedient to do so (for example whether the breach would cause harm, be detrimental to the area, or the existing use of land and buildings merit protection in the public interest).

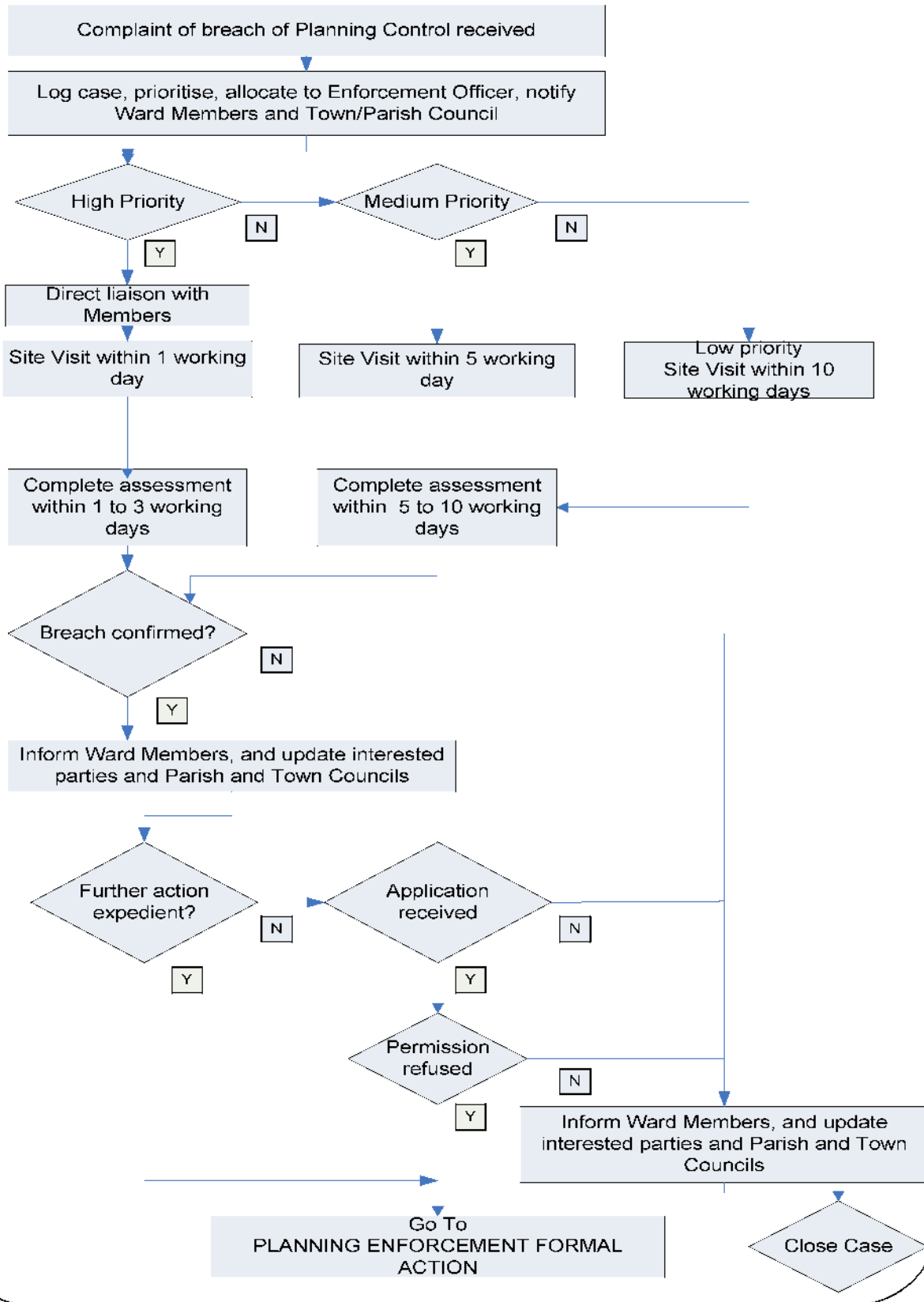
8. In assessing the need for enforcement action and after investigation of any breach, where it is considered likely that planning permission would be granted for the development, it is appropriate to invite a retrospective planning application.

Current Practice in Central Bedfordshire

9. In setting the context for the enquiry Members examined the Council's current Enforcement Plan and agreed that it was readily available to Members and the public via the Council's website and had been written in accordance with guidelines published by Central Government.

10. The Plan included a procedural flow chart (below), which Members felt was very useful and needed greater prominence, with a clearer explanation as to what constituted a low, medium or high priority. Members agreed it would also be useful for these priorities to be communicated to complainants, with a detailed explanation as to the rationale behind the decision.

Flow Chart 1 – Planning Enforcement Process



11. Members inspected the Enforcement Plans of other Local Authorities and found many similarities with that of Central Bedfordshire. Members also identified some cases of good practice, which could be adopted by the Council when reviewing the existing Plan. These aspects of good practice are detailed within the recommendations of this report.

Member Evidence

12. To support the enquiry all Council Members were invited to submit any cases or concerns in relation to planning enforcement which they felt merited further investigation. Members were asked to focus their evidence around the themes of the current Plan. A total of 8 responses were received via an online questionnaire, email and in person, detailing experiences from across Central Bedfordshire. In summary these related to the following:-

- Slowness of response to a Gypsy and Traveller (G&T) matter where the flood plain was being eroded for building purposes by depositing high volumes of hardcore.
- Several incidences where responses had not been provided to emails sent to the service, where communication had been poor and updates on progress had not been provided.
- Failure to complete agreed conditions.
- Failure to act upon information provided with regards to potential illegal activity, provide clarity on land ownership or provide an update on progress.
- Apparent reluctance to act if there was the possibility of a successful appeal.
- Concerns regarding the transparency of the activity carried out by the service.
- The need for a greater degree of process that is followed consistently.
- Inconsistency as to whether Members were aware that the out of hours service had been withdrawn.

13. In light of the enquiry and the individual cases raised by Members, further investigation was undertaken and Ward Members updated accordingly.

14. In addition to the evidence received by Members the enquiry reviewed the manner in which the current process was applied to consider whether it was fit for purpose and met the needs of complainants. The enquiry concluded that the Plan was sound in principle but that procedures detailed within the Plan were not always followed and there were improvements that could be made, which are set out in detail in the sections that follow.

Resources and demand management

15. During 2014/15 there were 557 cases dealt with by the Planning Enforcement team, which is currently run as a reactive service. There is presently a very minimal amount of compliance activity undertaken.
16. Complaints and cases are received by the service in person, by letter, email or telephone and are acknowledged within 3 working days in accordance with policy, although the time taken to provide a response is dependent upon the priority allocated to the individual case.
17. The Council previously had an automated response to Planning Enforcement enquiries detailing the timescales and procedures applied by the service. This automated response was removed in December 2014 and this may have led to a negative impact upon response times and detrimentally affected customer perception of activity. Members agreed that further consideration should be given to reinstating this automated response, taking into consideration imminent changes to IT systems within the department and across the Council.
18. In April 2014 as an efficiency saving, the Council also removed the out of hours service provided by public protection which included limited cover for planning enforcement. There had been no out of hours planning enforcement cases logged within the previous 12 months.
19. Members reviewed the nature of customer contact with the service, during which it became apparent that the service was often contacted in relation to cases that did not involve breaches of planning enforcement. This diverts valuable resource and time, which could otherwise be used to support genuine planning enforcement cases. The most common non related cases are general planning enquiries, the control of vehicles on the highway, fly tipping and mud on the road. Members agreed a mechanism was required to efficiently filter queries that did not relate to planning enforcement. This could include education and preventative measures and the potential review of the triage system to filter out and respond to non-planning enforcement related enquiries.
20. The Council's Enforcement Team currently consists of a total investigative resource of 5.07 FTE. Members were keen to understand if this was comparable to that of neighbouring and other similar sized unitary authorities. A benchmarking exercise was undertaken (see appendix B) to provide a comparison to other authorities and whilst it cannot be ensured that all local authorities have provided data in the same fashion it does provide a useful comparison. Appendix B demonstrates that CBC is similar to some authorities when comparing caseload to FTE equivalent although in some cases it differed dramatically. Members agreed the Council should seek to understand the differences with other local authorities further in order to shape the service going forward.
21. In light of the existing resource and the benchmarking exercise Members concluded they had concerns relating to the deployment of staff and the team structure. In the absence of a full time team leader it was agreed that additional cover should be provided in order to ensure continuity of service. Due to HR constraints and difficulties relating to funding additional

resources it was agreed this should be investigated within the existing team structure.

22. The enquiry also agreed that due to a lack of compliance measures the service was too reactive and could be more preventative. Members agreed the service should investigate how compliance could be enhanced within the existing team structure.

Communication, timescales and prioritisation

23. Members agreed there were inconsistencies with the implementation of the current Enforcement Plan, particularly around communication and adherence to response times. Members agreed that information was not communicated as effectively as it could be and it was clear that on occasion complainants had to chase the information they required. There was also a perception that response times as detailed within the Plan were not adhered to although it was felt that this could be due to poor communication.
24. It was important to ensure that information was shared in a clear and transparent manner and for Town and Parish Councils to be aware of the process in order to raise a wider public awareness of procedures. In order to improve this, Members agreed the service should investigate the possibility of engaging the Partnership team to support the dissemination of information.
25. Members also agreed that a detailed explanation of the priority attributed to a case and why it had been deemed such should be included within any response to complainants so as to support transparency of the process.
26. To further promote awareness of the remit of planning enforcement, encourage self-service and to filter and redirect enquiries Members agreed that further information should be made available via the Council's digital channels.
27. In light of the enquiry the service acknowledged that communication could be improved and agreed to seek to address this issue quickly.

Enforcing planning conditions

28. In response to comments during the enquiry that the service was reluctant to carry out enforcement action, Members reviewed some specific examples of planning conditions to determine the extent to which they could be enforced. Members reviewed the following examples:-
- 'The outbuilding hereby approved shall be finished in dark green colour or any other dark colour to be agreed in writing by the Local Planning Authority.'

This is unenforceable as there is no time frame over the provision of the appropriate colour, and wording too vague - 'dark colour'.

- 'Condition 1: - Within 3 months of the date of this permission a scheme for the parking of vehicles on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall define areas for customer and staff car parking and those for the storage of end of life vehicles. The scheme shall be fully implemented within 1 month of approval and thereafter retained for that purpose. Reason: To ensure sufficient provision of car parking clear of the highway.'
- Condition 3: - No vehicles which have been left with or are in the control of the applicant shall be stored or parked in King Street or Walkley Road. Reason: To prevent the obstruction of the highway.'

A Breach of Condition Notice was served in respect of Condition 1, a scheme has now been approved and implemented, however it does not completely prevent parking on the highway, and Condition 3 is unenforceable because 24/7 monitoring would be required and there would be no way of knowing which vehicles were in the control of the applicant.

- 'Prior to commencement of the development hereby approved detailed plans and proposals shall be submitted to and approved in writing by the local planning authority of the measures to be taken on site to ensure that West End Road is only used by those who already have access to the existing properties in West End Road and West End Lane and the occupiers and visitors to the three dwellings approved on Plots 38 - 40 and by no one else in association with the development hereby approved. Reason: In the interest of highway safety.'

Several complaints from local residents and the Ward Member have been sent to planning enforcement. We have received and approved details for Condition 4 but cannot formally enforce as there is no requirement for the approved scheme to be implemented and no time scale for this to be done.

29. In light of the examples cited, Members agreed that close liaison and effective communication between planning officers and enforcement colleagues was vital to ensure that conditions were sound and appropriately applied so that enforcement action could be undertaken if necessary.

Recommendations of the enquiry:-

30. That the Planning Enforcement Team's communication strategy be updated and enforced and that the automated email response

detailing timescales and processes be reinstated during the current review of IT systems.

- 31. That complainants and Ward Members receive notification of any breach of planning conditions in their area and that the level of priority of each case be set out with a clear rationale for the level of priority. Notification should also be provided when cases are not considered to be a breach of planning conditions with a detailed explanation as to how this conclusion was determined.**
- 32. That the Planning Enforcement Team implement reasonable timescales for retrospective planning applications, taking into consideration the complexities of each case and adhere to timescales appropriately.**
- 33. That the quality of information sharing be enhanced through collaboration with the Partnership Team to coordinate the dissemination of information, as far as it is allowed for by law or other means, to Town and Parish Councils, increasing public awareness of planning enforcement processes.**
- 34. That communication be improved between Enforcement Officers and Planning colleagues in order to gauge whether conditions are enforceable. In order to achieve this it is recommended that it be included in the wider communication strategy within the department.**
- 35. That to support the efficient use of part-time staff, planning enforcement cases be shared across the team. In the absence of a dedicated officer, cases to be allocated to colleagues via a triage system, orchestrated by a suitably trained member of staff with regard being given to the urgency of the case.**
- 36. That in the absence of a full time team leader, responsibilities be shared, where appropriate, across the team and measures introduced to ensure staff cover.**
- 37. A review of out of hours cover for planning enforcement service to be undertaken to establish if a service similar to that operated by Building Control can be introduced or other cover arrangements can be put in place within existing budgets.**
- 38. That the department proactively seek preventative measures through the analysis of existing complaints. The service should ascertain whether enhancing the monitoring of compliance would reduce the number of enforcement actions undertaken.**
- 39. That the current Enforcement Plan be updated to include a clearer explanation of processes and a separate flowchart including detailed timescales.**
- 40. That the contact list within the Enforcement Plan be updated with details of the most appropriate methods of communication and the best practice included in the examples provided by St Albans (succinct and user friendly) and Bristol (specifically Appendices 2-4).**
- 41. That the Plan be updated to include Gypsy and Traveller legislation.**

42. **That a Member Protocol be developed alongside the updated Enforcement Plan and communicated to all Ward Members.**
43. **That processes within the current and future plan be adhered to, particularly with regards to high priority cases.**

Reason/s for decision

44. The evidence considered by this enquiry highlighted the need to review the existing service in light of the number of concerns raised. Due to the number of cases dealt with each year and the constant flow of communication received by the Council from the public and Members it is important that the Council provides a robust service. The recommendations detailed in this report will support the delivery of a robust service.

Council Priorities

45. The improvement of the Planning Enforcement Service directly addresses the Council's priority of Enhancing Central Bedfordshire and ensuring a more efficient and responsive Council.

Corporate Implications

Legal Implications

46. Where the recommendations merely seek to clarify and better explain the current processes within the Council's Policy they do not give rise to legal implications. It should however be noted that substantial changes to the Policy would be an Executive function in any event.
47. The recommendations relating to staff duties and the out of hours service may result in changes to terms and conditions of employment. This will require the relevant employment law and legislation to be followed to ensure any such changes are carried out lawfully.

Financial Implications

48. The recommendations of the enquiry propose the increase of the team leader role to 1 FTE, for which there are currently no funds allocated.
49. The recommendations also propose the reinstatement of the out of hours service, which may require a change in staff terms and conditions and could lead to further financial implications.

Equalities Implications

50. The Council has a duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics. The

recommendations included in this enquiry relate to several aspects of communication with residents and the application of existing committee procedures. If implemented it is envisaged that the recommendations would enhance communication with all residents in Central Bedfordshire.

Conclusion and next Steps

51. The Committee are asked to review the recommendations detailed in the report (paras 30 to 43) and agree that they be presented to the Executive and implemented.
52. In light of the enquiry the Planning Enforcement team have already begun to address many of the issues raised and it is anticipated that further improvements will be made as a result of the recommendations detailed in the report.
53. Once the recommendations have been approved the service has agreed to present a 6-month performance monitoring report, at which point progress can be measured and further recommendations made as appropriate.

Appendices

Appendix A – Task Force scoping document

Appendix B – Other Local Authority Benchmarking data (anonymised)

Appendix C – Other Local Authority Enforcement Plans

Background Papers

54. The following background papers, not previously available to the public, were taken into account and are available on the Council's website:

National Planning Policy Framework – Central Government paper

Town and Country Planning Act 1990 – Central Government paper

Planning Enforcement Government Guidelines

CBC Enforcement Plan

New Government Gypsy and Traveller documents – Dealing with Illegal and Unauthorised Encampments and Planning and Travellers' Policy