

Central Bedfordshire Council

**SUSTAINABLE COMMUNITIES OVERVIEW &
SCRUTINY COMMITTEE**

24 January 2019

Planning Enforcement and Unauthorised Development

Report of: Cllr Nigel Young, Executive Member for Regeneration and Business,
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This report relates to a decision that is Non-Key

Purpose of this report

To provide an update in respect of Planning Enforcement and unauthorised development.

RECOMMENDATIONS

The Committee is asked to:

1. Note the update provided in respect of Planning Enforcement and unauthorised development.

Issues

1. The OSC meeting on 15 March 2018 considered the findings of the Planning Enforcement Review that took place during 2017. The report also made Members aware that following the MTFP review, further funding for the Planning Enforcement Team was not to be made available. The Planning Enforcement Plan was redrafted to take account of the recommendations and suggestions made by the Planning Enforcement Review and a Member Protocol was introduced.
2. At the meeting of OSC on 22 November 2018 a verbal update was provided to several queries raised by a Member at the previous meeting on the 13th September 2018. It was subsequently agreed that an update in respect of Planning Enforcement and unauthorised development would be provided and is the subject of this report.

Staffing Update

3. The recommendations of the Planning Enforcement Review included that in the absence of a full-time Planning Enforcement Team Leader, responsibilities be shared across the team and measures introduced to ensure staff cover. The part-time team leader vacated the post in June 2018 and the Head of Service, Jennie Selleys, has been covering this post in the interim. Following external recruitment, a new full-time Team Leader is expected to start on 25 February 2019.
4. At the OSC meeting on 22 November it was reported that monies were available within the reserve immediately to fund two temporary Planning Enforcement Officer posts as an interim solution for permanent recruitment of the Gypsy & Traveller (G&T) Unit within the Community Services Directorate. One temporary Planning Enforcement Officer started within the Planning Enforcement Team on 18th December and is dealing with the backlog of outstanding priority enforcement cases. One further temporary officer will also be recruited shortly.
5. Two new Compliance Officer posts have been created in order to monitor compliance for strategic scale developments and will be advertised shortly. These posts will also increase capacity of existing Planning Enforcement Officers within the team to enable further work in respect of unauthorised developments.

Unauthorised Development Update

6. Action against unauthorised developments continues to be taken where it is deemed appropriate to do so in accordance with the Planning Enforcement Plan (**Appendix A**, pages 13-15). The Plan was updated following the recommendations of the Planning Enforcement Review and will be reviewed again by the new Team Leader. This will include a review of the priorities for investigation (page 9) and action to be taken (pages 14 & 15).
7. Wherever possible we will try to resolve any breach of planning control through negotiation if a planning application is unlikely to be successful but where this fails and it is in the public interest, action will be taken in liaison with the CBC Legal Services provider (Planning Enforcement Plan, para 5.10). The following are examples of recent action taken by Planning Enforcement:

Flitton Road, Greenfield: A Hedgerow Replacement Notice was served in November 2018 following unauthorised removal of a hedgerow protected under the Hedgerow Regulations. Notice to be complied with by replanting a replacement hedge by end of January 2019. Prosecution for the removal of the hedgerow was scheduled for the 11th December 2018 at Luton Magistrates' Court for a first hearing.

Court Road, Cranfield: A breach of condition notice was served in October 2018 against the use of a private swimming pool for swimming lessons outside the

hours permitted by condition of the original planning permission. A subsequent planning application to regularise the unauthorised hours has been refused and Planning Enforcement Officers continue to monitor the hours of use of the pool.

Land at Kingswood Nursery, Tilsworth: Four Enforcement Notices were served in September 2018 in respect of unauthorised additional caravans, change of use from paddock land, hardstanding area and siting of a portacabin. Appeals have been lodged in respect of these Notices and a start date is awaited from the Planning Inspectorate, who have yet to indicate when a hearing will be held. In the meantime, additional caravans have moved onto the site. Letters were issued by Planning Enforcement in late November 2018 requiring the occupiers to vacate the site within 7 days. A number of caravans have now been removed and for the remainder, which are not subject of the Enforcement Notices, a High Court injunction is being sought to require their removal.

8. Pursuing action against unauthorised developments takes considerable time and officer resource and is often significantly prolonged when an appeal is lodged, as demonstrated by the Kingswood Nursery example above. In that case although the appeals against the 4 Enforcement Notices were received on 11th October 2018, a start date has yet to be received from the Planning Inspectorate and therefore deadlines for the Council's appeal statements and a date for any hearing have yet to be set. Given recent experience, any hearing is not likely to be held until Spring 2019 at the earliest and these delays in respect of planning appeals are common across all types of development. The lodging of a planning appeal effectively 'stops the legal clock' in that the Council would not be seen as reasonable in pursuing any action pending the outcome of the decision of the Planning Inspector.
9. In cases around unauthorised residential occupation of a site, there can also be complex issues that have to be taken into consideration including human rights issues, health and education of children and health of any other residents. This significantly adds to the time taken for evidence gathering and provision of legal advice as information has to be entirely accurate and up to date. For ethnicity and cultural reasons these issues are most likely to arise in the case of unauthorised Gypsy and Traveller developments. To demonstrate the amount of Officer resource required in taking action, the legal planning framework in which action must be carried out and how any action impacts on other Council services a timeline of investigations and action taken against the unauthorised development at Kingswood Nursery is attached at **Appendix B**.
10. Planning Enforcement action is also often delayed as Officer time is taken up by redirecting or responding to complaints about non-planning issues which fall outside the scope of planning legislation and include the following:
 - Encroachment onto private property: This is private matter to be dealt with by the property owner.
 - Excessive noise and smells: These are matters dealt with by other legislation, notably CBC Public Protection;
 - Burning of waste and fly tipping: These are matters dealt with by other legislation, notably CBC Public Protection and the Environment Agency;

- Alleged thefts, intimidations and ASB; These are breaches of criminal law which are dealt with by the Police;
- Rubbish thrown on local roads: These is a breach of criminal law which is dealt with by the Police;
- Site occupants' horses escaping from field: This could potentially cause a breach of criminal law and would be dealt with by the Police;
- Quad bike racing: This is a potential breach of criminal law which would be dealt with by the police.
- Site licensing: This is dealt with by the Council's Licensing Team;
- Children not attending school: This is dealt with by the Council's Education Team.

11. In taking action against unauthorised developments, Planning Enforcement Officers work collaboratively with other Council services to ensure that the above issues are addressed, that action is taken at the appropriate time and that there are no adverse impacts on other services provided by the Council. For example, the need to re-house non-Gypsy and Traveller residents who are removed from sites as a result of action. The re-housing of residents can have a significant impact on colleagues in Housing and this need must be managed carefully. In addition, as mentioned earlier the human rights and welfare of those occupiers must be carefully considered.

Council Priorities

12. The improvement of the Planning Enforcement Service in dealing with unauthorised development directly addresses the Council's priority of Enhancing Central Bedfordshire and ensuring a more efficient and responsive Council.

Legal Implications

13. There are no direct legal implications arising from this report.

Financial and Risk Implications

14. There are no financial implications.

Equalities Implications

15. 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: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Planning complaints (on average 600 a year) cover a wide range of issues and the major type of cases handled include:

- New building works (extensions, sheds, fences) = 36%

- Changes of use (land, buildings) = 25%
- Non-compliance with approved plans/permissions = 26%
- Display of advertisements = 7%
- Untidy land/premises = 2%
- Mineral & Waste issues = 2%

This report highlights the additional complexity involved when dealing with cases where appeals are launched or where statutory health, education or human rights issues must be investigated.

Conclusion

16. The Committee are asked to note the update provided in respect of Planning Enforcement and unauthorised development.

Appendices

Appendix A: Central Bedfordshire Planning Enforcement Plan – July 2017 – provided via the following link:-

<http://www.centralbedfordshire.gov.uk/planning/enforcements/breaches.aspx>

Appendix B: Kingswood Nursery Planning Enforcement Timeline

Background Papers

None

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