

Enforcement Panel Final Report

Report of the Head of Planning & Building on behalf of the Planning Enforcement Panel.

Recommended:

That Overview and Scrutiny Committee note and endorse the findings of the Enforcement Panel and including the actions recommended as set out below:

- **A new panel is appointed in the new corporate year to oversee a review of the Council's Local Enforcement Plan 2019 with a view to new Plan being put in place by the end of 2023.**
- **The Head of Planning & Building arranges a report for members relating to current enforcement cases or, as an alternative, will explore the possibility and appropriateness of providing on-line access for members to see enforcement cases.**
- **Head of Planning & Building considers what information it might be possible to share with parish councils regarding enforcement activity in their areas.**
- **Members are informed in advance of enforcement cases in their wards where the Council intends to take formal enforcement action.**
- **Settings on the Council's website be changed so details remain accessible to the public once planning appeals have been determined.**
- **Head of Planning & Building arrange for enforcement to be included in new member induction training.**
- **Head of Planning & Building arrange for parish/town council training on planning enforcement in 2023.**
- **Planning Enforcement Manager to up-date the standard non-expediency report to include all relevant case dates and to ensure interested parties are informed when an enforcement investigation is closed.**
- **Enforcement Officers, when communicating with parties responsible for alleged breaches of planning control, will consider the individual circumstances of a case and adopt a balanced, proportionate and consistent approach explaining why an investigation is being undertaken in the first instance and enforcement action is being considered where appropriate. This accords with the approach recommended for other TVBC official communications by the OSCOM Communications Panel.**
- **Head of Planning & Building to look at reintroducing quarterly enforcement monitoring reports.**

SUMMARY:

- In 2021 OSCOM agreed to set up a panel to look at how the Council was delivering its planning enforcement service taking into account a range of factors including the policy and legislative framework of enforcement and the Local Enforcement Plan 2019, the application of public interest/expediency tests, performance, and to see how the Council's resourcing of the service compares to other authorities. A copy of the full scope of the work to be undertaken is attached at Annex A.
- Six sessions of the panel were held to look at the matters included within the scoping document. It is considered that the panel were able to generally gain a good understanding of how the Council provides its planning enforcement service, including the wider context, based upon the limited information available from other authorities and the statutory framework.
- The panel considered that a number of actions should be taken which would help to improve the way the service is delivered, and its performance, as set out in the above recommendations. These actions cover a number of topics including better means of communication with stakeholders, and particularly members and parishes, and specialist training for members and parish councils. A further key conclusion reached by the panel was that the Council's Local Enforcement Plan dating from 2019 should be reviewed. This is fundamental to the enforcement process because it sets out the way the service is delivered by the Council, including prioritisation of planning breaches, and it can also identify performance standards.

1 Introduction

- 1.1 In 2021 OSCOM agreed to appoint a panel to review how the Council delivers its planning enforcement service. The panel has now met on six occasions since August 2021 and is in a position to report its findings and to identify a number of actions to revise how the enforcement service operates, designed to improve its performance and effectiveness, whilst also recommending that further work should be undertaken in the form of a review of the current Local Enforcement Plan with a panel appointed in the new corporate year to oversee this process.

2 Background

- 2.1 The full scope of the review was agreed by the panel at its first meeting held on 11 August 2021 and is attached at Annex A. The key points of focus were to understand the legislative and policy framework in which the service operates, including when it is expedient to take enforcement action and how the public interest test is considered in each case. The panel also looked at how the Council's service compares to other local authorities in terms of measuring performance, resourcing and costs, as well as going on to consider the effectiveness of the service in relation to communications with members, parish councils and other stakeholders. Training opportunities and support for parties interested in the planning enforcement were also considered.

- 2.2 The panel considered a substantial amount of information relating to both how the Council provides its service locally, and how this compared to the wider context, and took into account feedback provided by parish councils and agents across its six meetings which collectively has informed the recommendations set out above.

3 Corporate Objectives and Priorities

- 3.1 Enforcement is a key and sometimes high-profile element of the Council's planning service. Delivering effective enforcement is important because it supports development management and, by extension, influences confidence in the planning system locally. Providing good enforcement underpins the Council's adopted Local Plan, aligns with National Planning Policy Framework and practice guidance and reinforces our values set out in Corporate Plan, particularly in regard to accountability and integrity, as well as ensuring the Borough's environment is protected from harmful development.

4 Consultations/Communications

- 4.1 As part of the panel's review consultation took place with parish councils.
- 4.2 The Planning service also runs an agent's forum which is comprised of a number of professional practitioners and practices that have an interest in planning matters in Test Valley. They were given an opportunity to provide comments regarding how the Council provides planning enforcement by completing an on-line questionnaire but only two responses was received. This feedback has been considered by the panel.

5 Review Findings

- 5.1 The panel considered a wide range of information presented by the Heads of Planning & Building, Legal and Democratic Services and Strategy & Innovation as well as the Planning Enforcement Manager and other officers which covered the topics identified in the scoping document. In summary the following key areas were looked at by the panel and a series of actions suggested which are incorporated in the recommendations set out above
- 5.2 Legislative and Policy framework:
- 5.3 The council operates its enforcement service in the wider setting of national regulation (town & country planning and other acts/statutes) and policy in the form of the NPPF/PPS which provides guidance about how local authorities should approach enforcement. Locally, the way which the Council delivers this service is set out in our Enforcement Plan 2019 and enforcement case decisions take into account the policies included in adopted Local Plan.
- 5.4 Generally speaking, it was considered that the Local Enforcement Policy which articulates how we provide this service by setting out the Council's approach, prioritisation of different types of planning breaches relating to their severity/impact and overall performance based on closing 80% of investigations within 42 days of receipt is in line with the national guidance and policy.

- 5.5 However, the plan was adopted in 2019 and the panel considered that it would be opportune to review the document to see if it could be updated and improved. Whilst only a small number of responses were received to the on-line consultation undertaken with planning agents the representations made were critical of some aspects of enforcement including a perceived lack of consistency of approach and in relation to how the Council decides whether or not it is expedient to take action. The full written response received, with permission to publish as part of the report, is attached at Annex B along with a completed survey questionnaire. As a result, the panel agreed that the plan should be reviewed and the process overseen by the appointment of a panel in the new corporate year (bullet point 1 within the Recommendation). The review should involve extensive stakeholder/public consultation enabling all interested parties to have an input into the formulation of a new plan prior to its adoption. This would enable the Council to develop a plan that takes into account a variety of local views which would be useful in finalising a new document.
- 5.6 The panel were also interested to explore how enforcement case decisions are made in terms of expediency and public interest. This was specifically addressed at the panel's fifth meeting but it was established that this is not a straightforward matter. The way planning breaches are assessed before deciding whether enforcement action is appropriate has to be considered on a case-by-case basis taking into account a range of factors including the Local Enforcement Plan and national policy/guidance, local planning policy and any other relevant planning issues. This means it is difficult to be too prescriptive as every case is different, but the Local Enforcement Plan attempts to address this as far as possible. However, there may be opportunity to revisit this in the context of the review of the plan. The panel were also keen to see that when officers make decision on cases, including those where no further action is being taken, the non-expediency reports are used in all cases so the reasons for the decision are clearly recorded, as is now the practice within the Enforcement team, but with all dates included (bullet point 8 within the Recommendation). Also, relevant parties need to be informed of the outcome.
- 5.7 The panel also looked at the drafting of enforcement notices as there had been some instances where notices needed to be withdrawn by the Council and re-issued. Since 2019 the Council has issued some 30 enforcement notices (please see Annex C for case data) and, in 3 cases, it was necessary for the Council to withdraw the original notices, because of technical issues raised, and new notices were subsequently issued. This can happen when notices are subject to appeal and the Planning Inspector dealing with the cases is unable to correct a notice without injustice to an interested party. It is therefore important to ensure that notices are carefully produced in the first instance to minimise the risk of any issues after it has been issued. Invariably however, there may be cases where further information comes to light, after a notice is issued, and occasionally the only way to address the problem is to withdraw and re-issue the notice suitably amended.
- 5.8 There are particular legal tests that need to be applied when the Council is considering certain formal actions, like court prosecutions, and this includes planning breaches. As such, the Head of Legal and Democratic Services will review each case where such action is being contemplated before a decision is made to proceed.

5.9 Performance & Resources

- 5.10 Another session considered the Council's performance and resourcing both in terms of how it measures itself and the wider context looking at other comparable councils that were prepared to share their data. What was established is that currently there are no national KPIs so each council decides how to deliver its service. However, Government is considering whether to introduce such metrics based around average number of weeks taken to respond to suspected breaches of planning and determine the appropriate course of action, average number of weeks to take action where a breach of planning has occurred, having decided it is expedient to do so and total number of cases over 6 months old as percentage of all open cases. An overview of enforcement activity since 2019 is included at Annex C which covers the various types of notices issued by the Council in this time period.
- 5.11 The Local Enforcement Plan stipulates that overall the Council aims to register new complaints in 3 working days, visit sites within 1- 10 working days , depending whether the breach is in category 1, 2 or 3, and to close 80% of cases inside 42 days. What was clear from looking at the data for the last few years is that despite the number of complaints remaining fairly steady between 2017/18 and 2021/22 (between c570 and 670) the service has struggled to meet the 42 day target (60-70%).
- 5.12 This being the case it seems sensible, as part of the review of the plan, to look again at these targets to see if they are appropriate and align with the overall aims of the service and levels of resourcing available taking into account any national KPI's introduced by Government. The panel also investigated how the service undertakes monitoring of development. Currently, there is no specific post dedicated to compliance and monitoring within Planning and Building so this work is generally picked up by the Enforcement team and planning officers in number of teams in Planning & Building and Planning Policy and Economic Development Again, this is a matter that can usefully be looked at as part of the review of the plan and is already being considered by the Head of Planning & Building including how this activity might be resourced moving forwards.
- 5.13 Councils across the country take various approaches to enforcement both in terms of their policy and resources. Only three other authorities responded to our request for information; Harborough, Sevenoaks and Stratford-Upon-Avon. The size of enforcement teams varied from only 3 officers in the case of Harborough to 6 at Stratford –Upon- Avon. Caseload also varied from around 440 per year to 680. The make-up of team was not uniform with some including chartered town planners and support staff whilst others had no dedicated administration officers in their teams.
- 5.14 Currently, Test Valley has an Enforcement Team consisting of a Manager, 4 Planning Enforcement Officers and support officer. None are chartered town planners and therefore planning advice is provided by officers in the North and South Area teams.

5.15 There are pros and cons with including chartered town planners in enforcement teams as is the case in some councils. Whilst this enables those teams to undertake planning assessments within the team, when deciding on appropriate courses of action for each breach including expediency, the advantage of the Test Valley structure is that the Enforcement Team has a large pool of planners that are available to provide them with support for their work. Broadly speaking, when fully staffed, officers are content that the enforcement resource is adequate to deal with the typical workload. However, there has been significant turnover of staff in the team over the last couple of years. This will affect performance and it is acknowledged that the type of staff that have tended to join the service may not have direct previous experience of planning let alone planning enforcement. This means new joiners will require support and training which takes time and other resources. However, this issue is not peculiar to enforcement and is a broader corporate issue, particularly relating to areas of activity which involve specialist expertise, and the Council is looking at ways to address this.

5.16 Training and Support

5.17 During the course of the panel's consideration of a number of areas within the scope of the review it became apparent that given the sometimes complex nature of planning enforcement, taking into account the statutory and policy framework mentioned above at 5.3 to 5.7, specialist training for members and parish councils would be beneficial to increase understanding of how enforcement works and is delivered locally by the Council. The panel therefore recommended that dedicated enforcement training should be provided for members as part of their induction and parishes in 2023 (bullet point 6 and 7 of the Recommendation).

5.18 Role of Members

5.19 As recognised above at 3.1 enforcement is sometimes high profile for the Council and is often of interest to members particularly where cases are located in their ward. Consequently, the panel considered the role of members in enforcement and concluded that it could be improved by better communications which would keep them informed of progress. It was therefore recommended that ward members be informed of the intention of officers to pursue formal enforcement action in respect of a case before this action is taken (bullet point 4 of the Recommendation) and that the Head of Planning & Building be asked to look at reinstating regular up-date reports or whether, as alternative, it might be possible/appropriate to provide member access to enforcement information held on the Council's system (bullet point 2 of the Recommendation).

5.20 Communications

5.21 Given the fact that enforcement can be of wider interest, and parish councils are a key stakeholder in the planning process across the Borough, the panel asked officers to look at how they could be kept informed of cases in their area (bullet point 3 of the Recommendation). This may be possible but recognising that enforcement information is often sensitive and includes details should not be shared more widely outside the council. Furthermore, officers will look at reinstating the former quarterly report which was published on the Council's

website that provided an overview of enforcement activity and performance across the Borough (bullet point 10 of the Recommendation).

- 5.22 The panel also considered that the content of the Council's enforcement and other planning webpages be reviewed and up-dated as appropriate, and in particular, maintaining public cases to cases where appeal decisions have been made (bullet point 5 of the Recommendation).

6 Conclusions

- 6.1 The panel has undertaken an extensive review of enforcement and how the Council's delivers this important service. They have identified a number of actions reflected in the recommendations set out above which are intended to improve how this activity is provided by Planning & Building.
- 6.2 However, there was a consensus of the panel that there were still some areas relating to enforcement that would benefit from further consideration and work. The panel considered how best this might be progressed and concluded that much of the areas that warrant additional consideration could be dealt with as part of a review of the Local Enforcement Plan (bullet point 1 of the Recommendation) as this document defines how we will provide this service in future and creates opportunity for all our stakeholders to express their views as part of the process. This feedback can be used to inform the new version of the plan.

<u>Background Papers (Local Government Act 1972 Section 100D)</u>			
Local Enforcement Plan 2019 https://www.testvalley.gov.uk/planning-and-building/guidance/enforcement-planning-control			
Technical consultation: Stronger performance of local planning authorities supported through an increase in planning fees Published 28 February 2023 https://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation/			
<u>Confidentiality</u>			
It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.			
No of Annexes:	Annex A Scoping document, Annex B Survey responses, Annex C Enforcement data		
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