

EAST HERTS COUNCIL

ENVIRONMENT SCRUTINY COMMITTEE – 16 JUNE 2009

REPORT BY COUNCILLOR NIGEL POULTON, CHAIRMAN, PLANNING ENFORCEMENT POLICY REVIEW TASK AND FINISH GROUP

5. PLANNING ENFORCEMENT POLICY REVIEW - SCOPE

WARD(S) AFFECTED: All

'D' RECOMMENDATION - that Members consider and endorse the scope of the Planning Enforcement Policy Review as set out in the report

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1.0 Purpose/Summary of Report

1.1 The report seeks endorsement of the scope of the review currently being undertaken by the task and finish group of the planning enforcement policy.

2.0 Contribution to the Council's Corporate Priorities/Objectives

2.1 Planning enforcement is an important function of the Council ensuring that the built and natural environment is protected. A reviewed and up to date policy in this area supports the following Council priorities:

**Promoting prosperity and well-being; providing access and opportunities**

*Enhance the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.*

**Fit for purpose, services fit for you**

*Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.*

**Caring about what's built and where**

*Care for and improve our natural and built environment.*

## **Shaping now, shaping the future**

*Safeguard and enhance our unique mix of rural and urban communities, ensuring sustainable, economic and social opportunities including the continuation of effective development control and other measures.*

## **Leading the way, working together**

*Deliver responsible community leadership that engages with our partners and the public.*

### 3.0 Background

3.1 It was agreed through the formulation of the work programme for the Committee for the 2009/10 year, that the planning enforcement policy would be subject to review. A task and finish group has been established to carry out this work. The membership of this group is

- Cllr Nigel Poulton (chairman)
- Cllr David Andrews
- Cllr Deborah Clark
- Cllr Jill Demonti
- Cllr Peter Ruffles
- Cllr Suzanne Rutland-Barsby
- Cllr John Warren
- With Cllrs Ashley and Gilbert attending as observers.

3.2 To date the group has met three times. Once for an initial consideration of the scope of the review and to consider the need for input into it by third parties. This identified a requirement for representatives of the public generally to be involved and for a professional agent who had acted on behalf of a recipient of the service. In relation to the first of these, Parish Council Members or clerks were considered to provide appropriate representation, and representatives from Thundridge and Brickendon Parish Councils were invited to the second meeting of the task and finish group.

3.3 At the first meeting it was agreed that Mrs J Orsborn, of Prospect Planning, be invited as a professional representative. Mrs Orsborn attended the third meeting of the group.

### 4.0 Scope of Review

4.1 The scoping considerations for the task and finish group are set out in Appendix A (Pages 5.9 - 5.10).

- 4.2 The current enforcement policy is attached as Appendix B (Pages 5.11 - 5.30). Current background and good practice publications have been provided to members of the task and finish group and are not reproduced here. They can be provided to any member of the committee on request.
- 4.3 The following commentary is based on the policy as it currently exists. The policy refers (paras 1-3) to the relevant enforcement background – the Enforcement Concordat and the Council’s own Corporate Enforcement Policy. It introduces the function of planning enforcement and sets out the scope of the service. The task and finish group feels that the policy remains relevant in respect of these matters and little amendment will be required. However, the group felt it would be appropriate to distinguish between criminal and non-criminal offences (such as unauthorised alterations to a Listed Building) early in the policy. The policy will be amended to reflect this.
- 4.4 Members of the group considered that it would be appropriate for the Council to make a statement in the policy about its view of and approach to enforcement. The group, in consultation with the portfolio holder, will formulate this as part of the review. At this stage a suggestion is put forward for discussion as follows:

*“The Council attaches significant importance to the planning enforcement function as a means to protect the built and natural environment in the district. It seeks to take appropriate and proportionate action when normal planning controls are breached. It understands that some transgressions are minor and inadvertent and, in line with national guidance, it will not undertake formal action where acceptable compromise solutions can be found. However, if transgressors are not willing to enter into a dialogue with the Council or the impact of the unauthorised development is significant and harmful, then the Council will proceed to take formal action without undue delay.”*

- 4.5 Section 4 of the current policy sets out the principles of good enforcement by reference to the Enforcement Concordat. The lead government department for the Enforcement Concordat is now the Department for Business, Enterprise and Regulatory Reform (BERR). Since the Concordat was introduced, a review of it has been undertaken (2004: Philip Hampton review). This has resulted in the introduction of a Compliance Code. The Concordat however has not been replaced. BERR intends to consult shortly on revisions to the Concordat to bring it up to date. The Council could

consider whether to await this consultation process before pressing ahead with its own review work or not. It is the officer's view is that we should not. It is important to keep the Council's policies up to date and given that this scrutiny review is now underway, delay to it would not be productive. It will be suggested that further attention be given to the Council's policy when review of the national Concordat has taken place.

- 4.6 Members of the group have been circulated with a copy of the Compliance Code and have been asked to take this document into account in their consideration of the review of the Council's enforcement policy. The Compliance Code is essentially seeking a 'supporting business', positive, proactive and risk based approach be taken to enforcement. However, where transgressions are persistent, it urges proportionate and meaningful sanctions. The Code is mostly directed at business interests, so is not always relevant to the planning enforcement arena.
- 4.7 As indicated above, Section 4 of the Council's Planning Enforcement Policy refers to the principles of good enforcement. In relation to standards, there is some lack of clarity in the policy with regard to those to be applied. It refers to the target timescales at para 6.1 but no explicit standards. However priorities for action are set out at para 5.8. The task and finish group will seek to clarify these points and ensure they are emphasised by appearing earlier in the revised policy.
- 4.8 The policy also requires updating with regard to the reporting mechanism against these standards. The Council's performance indicators (PIs) in this area currently relate only to the number of actions undertaken. The reported PIs are:
- the number of informal actions,
  - the number of formal actions and
  - the number of prosecution actions.
- The Executive is currently considering the work of the PI task and finish group, but no changes to these PIs are currently proposed.
- 4.9 The general approach of national policy and guidance, and the Council's own policy (as it currently stands) is that the service should enable compliance informally and, only when transgressors are uncooperative, should formal action be taken. It would seem appropriate for the task and finish group to consider a set of PIs that reflect this approach and include them as standards in its policy. In the longer term, these could be introduced into the corporate PI

reporting process. The group will consider potential revised PIs as part of its work.

- 4.10 With regard to openness, the current policy does not touch on the restrictions that apply to enforcement information. These are as follows:
- the approach that seeks to ensure that those who request investigation are not put at risk by releasing their names and other details;
  - not jeopardising an investigation by publicising that it is underway (this can lead to transgressors becoming more obstructive)
- 4.11 The task and finish group feel it would be important to amend the policy to highlight these issues, and to remove some of the following text which is more procedural in nature (but to replace it with a separate process guidance note – referred to below). The group also feels that it is appropriate to clarify the approach to anonymous requests. Currently it is anticipated that these will need to be supported by a Local Member or Parish Clerk for these to be investigated.
- 4.12 The next section of the current policy relates to helpfulness, courtesy and efficiency. Details are set out here in relation to site visits and the willingness to work with potential transgressors to assist them. The task and finish group feels it is appropriate to amend the policy in this section by introducing an explanation:
- as to why site visits are made unannounced
  - what powers of entry the Council has (this currently appears later in the policy)
  - how we work with partners.
- 4.13 The next section relates to a complaints procedure. This ordering of the policy is consistent with the Enforcement Concordat. However, it would seem more appropriate to include this information at the end of the document – so that readers absorb all the information in it before they reach a decision that their needs are not being met and a complaint is required.
- 4.14 The Council has recently adopted its revised and updated complaints procedure, so the policy needs to be amended to reflect that. It is probably not necessary to refer further here to the manner of operation of the process – separate information is available – but it would probably be helpful to distinguish between the nature of

complaints in terms of requests for investigation and complaints of lack of service or disagreement with the outcome of it.

- 4.15 The last two sections that relate back to the Enforcement Concordat are based on proportionality and consistency. In relation to the former, the proportionality of action to be applied may be more clearly understood if it is related back to the current or revised priorities. The consistency section relates to all the appropriate legislation etc, but reference back to the standards that are to be reported on would show how this is to be measured. The task and finish group will seek to make these links clearer in the revised policy.
- 4.16 Reviewing the current policy document, the task and finish group feels that para 4.18 onwards (along with the process and options commentary) should be revised and incorporated into a process guidance note. The targets and priorities would be retained in the policy as suggested above.
- 4.17 It is felt that a separate process guidance note of this nature could be used for information purposes (for example, Town and Parish Councils) and sent to those parties who lodge a request to investigate with us and, at an appropriate time, the transgressor. All parties then have clear information on the Council's approach to the matter. At this stage, the task and finish group is of the view that work on this should take place after the policy revision has been completed (to avoid any abortive work).
- 4.18 Recommendations from the task and finish group and a draft revised planning enforcement policy document will be presented in the group's final report to Environment Scrutiny Committee on 15 September 2009.

## 5.0 Consultation

- 5.1 As indicated, Parish Council representatives attended the second meeting of the group. A detailed note has been kept of the discussion at the meeting, but the main issues identified were as follows:
- Lack of updating or further information on stage reached in process following initial report of problem, requirement for the PC to seek further information.

- Serious breaches are met with prompt and effective action, but low level transgressions appear to “get away with it” – acknowledgement of why this is the case
- Experience does not always accord with the policy
- Wider circulation of the policy
- Policy generally appears comprehensive and appropriate
- Procedural steps, probably with a flow chart would assist
- Greater clarity on the review of cases
- Greater use of Planning Contravention Notices (PCNs)
- Explanation of Article 4 process in the policy
- Review of timescales so that they are realistic
- Danger to highway users to be identified as a priority one case

The professional representative, Jane Orsborn attended the third meeting of the group. Again, the main points of feedback are set out below:

- Authority for formal action should remain with the DC Committee rather than be delegated;
- The process is a complex one – be cautious not to lose important detail in any revised policy;
- Scope of the policy is clear, potential for distinction between criminal and non-criminal acts;
- Emphasise the discretionary and proportionate nature of the service;
- Clarify the situation with regard to anonymous complaints;

## 6.0 Legal Implications

6.1 The Legal Services Manager comments at this time relate to cases where the Council is considering formal prosecution proceedings. In these cases he notes that the Council is obliged to consider the provisions of the Enforcement Concordat and the Crown Prosecution Service Guidance before deciding whether to prosecute.

## 7.0 Financial Implications

7.1 Whilst alterations to the Council’s enforcement policy will arise from this work, it is anticipated that it will still be implemented within existing resources. There are no financial implications therefore, but equally it will be the case that it will not be possible to undertake additional significant tasks. The work of the task and finish group may result in realigned priorities however.

8.0 Human Resource Implications

8.1 None apparent

9.0 Risk Management Implications

9.1 The policy will continue to adopt a risk based approach to enforcement, as set out in the priorities that will be reconsidered as part of the process.

Background Papers

PPG18 – Enforcing Planning Control

DETR – Enforcing Planning Control: Good Practice Guide for Local Planning Authorities

Circular 10/97 – Enforcing Planning Control – Legislative Provisions and Procedural Requirements

BERR – Enforcement Concordat

BERR – Regulators Compliance Code

Enforcement Policy for East Herts District Council

Regulatory Services – Development Control – Enforcement Policy – the current policy

RTPI Practice Advice Note 6 – Enforcement of Planning Control

Planning Advisory Service – Managing Planning Enforcement

Draft Review of the Planning Enforcement Function at East Herts District Council – S Davidson (Herts CC)

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