

Item

## **PLANNING ENFORCEMENT UPDATE AND REVIEW OF OFFICER DELEGATIONS**



**To:**

Planning Committee 28/03/2018

**Report by:**

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**Wards affected:**

All

### **1. Introduction**

- 1.1 This report serves two functions which are to provide an update on the planning enforcement activity by the City Development Management team in 2015/2016/2017 and to review the existing arrangements for committee/officer decision making (the 'Delegation Scheme') and make recommendations in relation to planning enforcement decision making.

### **2. Recommendations**

- 2.1 That Planning Committee
- (i) notes the information contained in the report and;
  - (ii) approves the delegations in relation to decision making on planning enforcement matters set out in 8.1.

### **3. Background**

- 3.1. This Committee considered a review of the Council's Planning Enforcement Policy in December 2014. This led to the publication of the new Policy early in 2015. It is likely that a new joint Planning Enforcement Policy will be adopted as the Shared Planning Service is implemented.
- 3.2 At the same meeting the Committee received an update report which provided statistics for 2013 and 2014. The Committee also received an update report in December 2015.

### **4 Analysis of planning enforcement caseload 2015 to 2017**

- 4.1 I have set out at Appendices One and Two the workload statistics for 2015, 2016 and 2017 (Workload and Notices Served). An analysis of these statistics over the past 3 years shows that the overall workload has increased. The number of Enforcement Notices served has also increased and we have started to use Temporary Stop Notices and Stop Notices.
- 4.2 Appendix Three sets out the volume of enforcement caseload which has been taken to Planning Committee. An examination of the work of the Planning Committee over the last 3 years in terms of planning enforcement demonstrates that the highest volume of work relates to authorisation of Enforcement Notices. It also highlights the adverse impact of staff changes in 2016 at a time when both experienced enforcement officers in the team left the Council. There has been a marked improvement in 2017 and this needs to be seen against an overall increase in workload.
- 4.3 Appendix Four sets out the reasons for decisions on planning enforcement cases for 2015, 2016 and 2017. This includes the average time taken between the case being logged and the decision being made. This provides useful comparative data going forward.

## **5 Current arrangements for delegation of decision making to officers**

- 5.1 The Planning Scheme of Delegation forms part of the Council's Constitution. In essence it explains which decisions officers can take and which decisions need to be made by Planning Committee. The part of the Scheme which relates to decision making on planning applications is written as an 'exception' based scheme i.e. a decision falls to be made by an officer unless it falls into a list of 'exceptions'. In all cases there is the option for the officer to make a decision to take a 'delegated' matter to Committee and for a Councillor to exercise his/her power to 'call-in' for a Committee decision on an otherwise delegated matter.
- 5.2 The Delegation Scheme insofar as it relates to decision making in connection with planning enforcement is not an 'exceptions' based scheme. The decisions that may be made by officers are set out and are as follows:
1. To serve Requisitions for Information, Planning Contravention Notices, Breach of Condition Notices, Notices of Intended Entry, Section 215 Notices, and Discontinuance Notices for advertisements (subject to prior consultation with the Head of Legal and Democratic Services).
  2. To instruct the Head of Legal Practice to commence prosecution proceedings for the display of illegal advertisements (including fly posting) and for non-compliance with any formal notices issued.
  3. To instruct the Head of Legal Practice to serve enforcement notices under S172 of the Town and Country Planning Act 1990 to remedy a breach of planning control following the refusal of retrospective planning permission
  4. To instruct the Head of Legal Practice to serve Listed Building Enforcement Notices under S38 of the Planning (Listed Buildings and Conservation Areas) Act 1990
  5. To instruct the Head of Legal Practice to serve notices requiring urgent works to unoccupied Listed Buildings under S54 of the Planning (Listed Buildings and Conservation Areas) Act 1990

6. To decide whether to serve a Remedial Notice under Part 8 of the Anti-Social Behaviour Act 2003 where there are no third party representations that are contrary to the officer recommendation (subject to prior consultation with the Head of Legal and Democratic Services) and to instruct the Head of Legal Practice to commence prosecution proceedings for non-compliance with a Remedial Notice or to carry out works in default
7. To make representations as a 'responsible authority' on applications for public entertainment licenses under the Licensing Act 2003.
8. There is also reference in the Enforcement Policy to Senior Officer being able to sign off closure reports

5.3 The other notable difference between delegated powers for dealing with applications etc and planning enforcement is that Members have no right to call in the latter. However, officers do have the overarching provision to take any 'delegated matter' to Committee for approval.

## **6 Potential for changes to the Scheme of Delegation (Planning Enforcement)**

- 6.1 I have set out my assessment of how the Delegation Scheme could be amended to make it more responsive and relevant to the key elements of our workload below. However I am mindful that moving from a system where Planning Committee makes decisions on formal planning enforcement action to one where these decisions are taken only by officers could be seen as representing too significant a change in comparison with current practice. In my opinion incorporating the potential for member 'call-in' into the planning enforcement approval process could address this issue.
- 6.2 I have worked with other officers to establish that it would be possible to produce a 'weekly list' of new enforcement cases which in itself would be beneficial in raising awareness of Ward Councillors about enforcement cases. However unlike the weekly list of planning applications it would not be effective to set a time period within which a

Councillor can effect 'call in'. This is because it is not generally until much later in the process that a decision is made about the necessity for formal action following research and site visits.

- 6.3 My recommendation is therefore that before any decision is made to issue an Enforcement Notice (other than that associated with a Stop Notice) the enforcement case officer will notify the Ward Councillors and Chair, Vice Chair and Spokes. They will be given the chance to 'call-in' the case to Committee within 5 working days of notification.

## **7 Justification for changes to the Delegation Scheme (Planning Enforcement)**

- 7.1 The majority of reports to Committee related to Enforcement Notices. This is because with the exception of enforcement notices relating to a breach of planning control following the refusal of retrospective planning permission, all other decisions on Enforcement Notices had to be made by Planning Committee. There is no flexibility in the current Scheme therefore such decisions include making changes to the Draft Notice. The amount of planning enforcement work being brought to Committee could be reduced and action taken more efficiently if delegated powers were broadened. I have recommended that the Scheme of Delegation be amended to delegate the power for signing, service, varying or withdrawing of Enforcement Notices except in those cases where a member call-in has been activated.
- 7.2 Stop Notices and Temporary Stop Notices are normally needed in a short timescale and practice has now developed whereby such notices are the subject of decisions under Urgency Powers. A report is prepared for approval by the Director of Planning and Economic Development in consultation with the Chair, Vice Chair and Spokes of Planning Committee. A verbal update is provided at the next available committee meeting. When the notice is withdrawn the same process is followed. In order to make the process of serving and withdrawing Stop Notices more efficient I would recommend changing the Scheme of Delegation to delegate the power for signing, service, varying or withdrawing Temporary Stop Notices and Stop Notices to officers.

- 7.3 We have not used our powers in terms of either 'direct action' or the serving of an injunction in the last few years. Under the current arrangements officers would need to bring a report to Committee before initiating such action. I have recommended that officer delegation be extended to these actions also. Similarly commencement of prosecution proceedings is a matter that currently needs to be agreed by Committee. This can result in a delay in addressing a situation where it is clear that a Notice has not been complied with. In the interest of efficiency I have recommended that prosecution proceedings be a matter for officer decision making.
- 7.4 To date we have not used powers provided under the Proceeds of Crime Act in respect to planning enforcement. This allows us to serve a Confiscation Order to seize assets that have been acquired as a result of illegal actions. I have recommended that officer delegation be extended to this action also to allow this potential to be explored.
- 7.5 I am mindful that taking direct action, pursuing a prosecution, issuing an injunction or seeking to seize assets are very serious undertakings in terms of both the reputation of the Council and legal costs. For this reason I have recommended that the authority for these actions be vested in the Shared Director of Planning and Economic Development only and that under the terms of the Scheme he consults with key members and the Head of Legal Practice. In practice this will mean that officers will prepare a report for the Director to sign off as opposed to any other senior officer.
- 7.6 For all other planning enforcement work, including Enforcement Notices and Stop Notices I have recommended that delegated powers be vested in the Enforcement and Monitoring Officer, the Delivery Manager (Development Management) and the Delivery Manager (Strategic Sites).

## **8 Proposed revisions to the Delegation Scheme (Constitution)**

8.1 My proposals for revisions to the Delegation Scheme are as follows:

Delegation to Shared Director of Planning and Economic Development (in consultation with Head of Legal Practice and Chair/Vice Chair/Spokes of Planning Committee):

A To take direct action or works in default as required in relation to Section 178 (Non Compliance with an Enforcement Notice) and Section 219 (Non Compliance with a Section 215 Notice) of Town and Country Planning Act 1990 (as amended) and to recover from the person who is then the owner of the land any expenses reasonably incurred by the Council in undertaking this work under Regulation 14 of the Town and Country Planning General Regulations 1992

B For commencement of prosecution following non-compliance with an Enforcement Notice under Section 179 or Planning Contravention Notice under Section 171D of the Town and Country Planning Act 1990 (as amended)

C To seek an injunction to restrain a breach of planning control under Section 187B of the Town and Country Planning Act 1990 (as amended)

D To make an application for a Confiscation Order under the Proceeds of Crime Act 2002 (as amended)

Delegation to Shared Director of Planning and Economic Development, the Enforcement and Monitoring Officer, the Delivery Manager (Development Management) and/or the Delivery Manager (Strategic Sites)

Subject to a valid request for 'call in' to Planning Committee, To issue and serve Enforcement Notices under Sections 172 and 215 clearance of untidy land and Listed Building Enforcement Notices under Section 38 Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 of the Town and Country Planning Act 1990 (as amended) after consultation with the Head of Legal Practice. Authority to include signing, service, varying or withdrawing Enforcement Notices.

To issue and serve Temporary Stop Notices under Sections 171E to 171H and Stop Notices under Section 183 of the Town and Country Planning Act 1990 (as amended) and associated Enforcement Notices after consultation with the Head of Legal Practice. Authority to include signing, service, varying or withdrawing Temporary Stop Notices and Stop Notices.

Delegation to the Enforcement and Monitoring Officer, the Delivery Manager (Development Management) and/or the Delivery Manager (Strategic Sites)

All other enforcement related tasks, investigations, operational decisions, investigations and service of notices relating to development, trees and hedges, the historic environment, advertisements, and hazardous substances, all under the relevant legislation and to close cases where it is not expedient to pursue enforcement action.

## **9 Publication of Enforcement Reports**

9.1 Under the terms of Part 1 of Schedule 12A of the Local Government Act 1972 as amended the Committee can resolve to exclude the press and public to enable discussion of information that is exempt from public access provisions. Schedule 12A sets out descriptions of exempt information which includes:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information)
- 6 Information which, if disclosed to the public, would reveal that the authority proposes
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (b) to make an order or direction under any enactment.



- 7 Information relating to any action taken or to be taken in connection with the prevention investigation or prosecution of crime.

In addition, Part 2 of Schedule 12A provides that information which may be exempt under the Part 1 categories is only exempt if on balance the public interest in maintaining the exemption outweighs the public interest in disclosing that information to the public.

- 9.2 Our standard practice has been to put Planning Enforcement Reports into the public domain. This has presented some problems in terms of revealing the identity of complainants during public speaking. There is also conflict with this approach in terms of revealing information about an action by the Council which relates or could relate to investigation and prosecution of crime. My proposition going forward is that when we bring Planning Enforcement Reports to Committee we will be asking for these to be treated as exempt information under one of the Part 1 categories and that it is in the public interest for the public/press to be excluded. It will be necessary for the Committee to vote on a resolution to this effect before the agenda item is discussed.
- 9.3 In terms of public speaking, it is recommended that this is not permitted on enforcement reports except for ward councillors (city or county) appearing in their capacity as council members (i.e. not speaking as members of the public or residents)

## **10. Implications**

### **(a) Financial Implications**

None

### **(b) Staffing Implications**

None

### **(c) Equality and Poverty Implications**

An Equality Impact Assessment has not been conducted because under the terms of the revised Scheme of Delegation Councillors will still be able to call a report in for Committee decision and a vote will be taken on every occasion regarding exclusion of the press/public.

**(d) Environmental Implications**

None

**(e) Procurement Implications**

None

**(f) Community Safety Implications**

None

**11 Consultation and communication considerations**

I have notified all Councillors that this report is on the Agenda for Planning Committee.

**12 Background papers**

None

**13 Appendices**

Appendix One Planning Enforcement Caseload (2015 to 2017)

Appendix Two – Planning Enforcement Notices served (2015 to 2017)

Appendix Three - Volume of enforcement caseload which has been taken to Planning Committee (2015 to 2017)

Appendix Four – Reasons for closure of planning enforcement investigations (2015 to 2017)

**14 Inspection of papers**

To inspect the background papers or if you have a query on the report please contact Sarah Dyer, City Development Manager, tel: 01223 - 457153, email: [sarah.dyer@cambridge.gov.uk](mailto:sarah.dyer@cambridge.gov.uk).