

WILTSHIRE COUNCIL

CABINET

23 MARCH 2010

Subject: PLANNING ENFORCEMENT STRATEGY

Cabinet member: John Brady – Economic Development, Planning and Housing

Executive Summary

Cabinet is being asked to adopt a planning enforcement strategy, to replace those of the former authorities.

Cabinet deferred a report on a planning enforcement policy on 22nd September 2009, to allow the views of parish and town councils and all Division Members to be sought and taken into account.

That exercise has now been completed and the views and comments expressed have been analysed and where appropriate incorporated into the revised enforcement strategy, which has largely been re written as a result to produce a more focussed and straightforward to use document.

The strategy sets out service standards and priorities. It explains the purpose of planning enforcement so that all sections of the community know what standard of service they can reasonably expect. It will also ensure that resources are used efficiently and effectively to deal with what are regarded as the most serious breaches of planning control in a robust and proportionate manner.

Proposal

That Cabinet adopt the enforcement strategy in accordance with the text in the appended document.

Reason for Proposal

To ensure a high quality, cost effective planning enforcement function with consistent, measurable performance, is delivered across the authority.

Brad Fleet
Service Director, Development Services

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Purpose of Report

1. To seek Cabinet's views on and endorsement and adoption of, the Council's revised draft planning enforcement strategy.

Background

2. Following deferral of consideration of the original draft policy document in September 2009, Officers have carried out a consultation exercise with Members, Parish Councils and other users of the enforcement service, as follows:
 - **Enforcement seminars for Members and Parish Councils held in Trowbridge, Salisbury and Devizes;**
 - **Feedback through questionnaires completed at the above seminars;**
 - **E-consultation with Parish Councils on the original policy document;**
 - **Service user consultation based on a random sample of ten recently completed enforcement cases in each hub. Those surveyed included the enquirer and persons allegedly breaching planning control.**

Analysis of the responses received as a result of the consultation exercise have been fed into a revision of the original policy, which has consequently evolved into a more focussed strategy document, as follows:

- **Priorities in the enforcement strategy have been brought into line with what Parishes and Members regard as very important.**
- **The strategy is more concise, with use of plain English, avoiding jargon as far as possible and incorporating a simplified chart of the enforcement process.**
- **The strategy addresses concerns over the length of the enforcement process (which is often beyond the Council's**

control) by undertaking more regular updating of enquirers.

- Overall, the strategy will help to increase the transparency of the enforcement process, in particular to enquirers.
- A companion leaflet to accompany the strategy has been produced.

Cabinet should also note that:

- In response to consultation there was support for rolling out the proactive approach operated in the southern hub (i.e. to monitor ongoing developments and not solely react to enquiries) to other hubs without compromising resources for 'traditional' reactive enforcement activity.
- In response to consultation there was clear support for also regularly updating Parish Councils and Members with regard to ongoing enquiries. Officers are exploring how this can be achieved in the context of IT and other resources available to each hub, however this is a separate exercise to the strategy.
- At all the seminars a number of participants also queried why the Council does not give more publicity to successful enforcement cases as a way of raising the profile of enforcement and deterring would-be offenders.

The planning enforcement strategy is necessary in order that it is clearer to stakeholders, including the public, Parish Councils, Councilors and developers as to when and why the Council has decided to enforce planning controls, to clarify the procedures followed in such cases and to ensure that the majority of resources are focused on what the Council regards as the most serious breaches.

Planning enforcement is a discretionary activity. Nevertheless robust and effective enforcement is recognised as an important part of the planning process, which assists in securing quality in the built environment as well as safeguarding the natural environment and the quality of life of residents. Local residents, communities and division members have all been supportive of a high quality enforcement function. The new Council is therefore increasing the emphasis given to delivery of effective enforcement.

The government's 1997 publication "*Enforcing Planning Control: Good Practice Guide*" recommended that all authorities produce a clear statement of enforcement policy to provide a decision making framework, which includes an explanation of the Council's enforcement practices and procedures.

The former authorities had, by and large, prepared and adopted enforcement policies which had regard to the guide. Each enforcement team varied in available resources and had slightly different procedures

and priorities as a result. Additionally each team was monitored against different performance standards.

The Council's new enforcement strategy will create the broad framework for a consistent set of service standards, procedures and enforcement priorities across its administrative area which will be embedded in all the area enforcement teams. It will also set out a series of performance targets against which the quality of the service provided can be judged. However Members should note that three hubs are currently carrying vacancies in key posts which inevitably will have some effect on performance.

A copy of the revised draft strategy is attached as an appendix. If Members endorse the strategy, it is intended to forward the final version to all Members and Parishes electronically for their information and as a handy reference.

Main Considerations for the Cabinet

3. Cabinet is asked to consider the following;

- Overall, whether the revised document has addressed the comments of Cabinet and other Members expressed at the September 2009 meeting.
- In particular whether the revised document is more 'customer friendly' in terms of content, language and length whilst providing a good level of information about the enforcement process.
- Whether the service priorities and targets, which take full account of the responses to the above consultation exercise and amongst other things, the Good Practice Guide, government guidance in Planning Policy Guidance Note 18 and good practice in the former authorities; will represent excellent customer service, having regard to the available resources for enforcement.
- Whether the priorities for investigations are a fair reflection of what could be regarded as the relative seriousness of breaches of planning control and the resulting allocation of resources to pursue enforcement action.
- Whether resources in each hub should be devoted to proactive enforcement.
- The degree to which successful enforcements should be publicised.

Environmental Impact of the Proposal

4. Adoption of the strategy would be beneficial to the environment as it would ensure that enforcement resources are targeted where there is most significant environmental harm and that adverse impacts on the environment are remedied as far as possible in a timely fashion.

Equality and Diversity Impact of the Proposal

5. The strategy seeks to eliminate any potential discrimination and promote good community relations/cohesion, by setting an objective set of standards for enforcing planning control, with priorities based on potential harm to the environment, which are capable of being implemented consistently and are applicable to all sections of the community. As a result it is considered that there would not be any direct or indirect discrimination of any sections of the community.

Risk Assessment

6. Adoption and proper implementation of the strategy will reduce the following risks, which could arise as a result of not having a policy:
 - Excessive resources being focused on small -scale issues where there is limited harm but vociferous complaints;
 - Ombudsman complaints being upheld- the Council's policies and procedures will be clear and consistent.
 - Awards of costs in appeals-should be reduced.
 - Challenge to decisions on grounds of inconsistency. This could be between individual decisions in the same or other area offices or the practices and procedures in the area offices.
 - Challenge to decisions on equality grounds.
 - Increased complaints about customer service.

Financial Implications

7. Pursuit of enforcement action is a labour intensive activity and the Council can incur significant costs in defending appeals and taking court action or carrying out direct works. Additionally aggrieved defendants can seek to recover their own costs from the Council where it has been determined that it has acted unreasonably.

Adoption of the strategy will provide the Council with a platform for efficient and effective use of resources and a stronger basis on which to resist claims for costs where it has followed its own practices and procedures.

More efficient and effective enforcement including adopting a consistent, proactive monitoring role across the authority, may require additional resources allocated to the enforcement teams over that already committed. However as a first step Officers will investigate redistributing existing workloads/posts and using efficiency savings obtained as part of the LEAN review of processes in development control.

In the initial circumstances, there will be no financial implications apart from the filling of any vacant posts and re-distributing workload. All other costs are to be found from within existing resources and with the proposal for a new IT system to be introduced across the service, should help harmonise the workings across the hubs and therefore help towards the creation of efficiencies.

Legal Implications

8. Planning enforcement has a statutory basis under the Planning Acts. It is perhaps one of the most litigated areas of planning law. Adoption of the policy itself has no direct legal implications. However it is important that the Council has an adopted strategy for purposes of fairness, consistency and proportionality when it is defending any decision taken. In particular, the strategy will assist the Council in demonstrating that where its decisions interfere with individuals' Human Rights, that such interference has a legitimate basis and is justified and proportionate.

Options Considered

9. The option of not preparing and adopting a strategy was not favoured, for reasons including the risks largely identified above.

Preparing a more extensive and detailed policy document which also dealt with prosecution of planning offences. However, on balance it was considered that such a document could be difficult to follow for the majority of users and not customer friendly. It would also not show a true picture of the majority of enforcement activity.

Conclusion

10. That the enforcement strategy should be adopted in accordance with the text in the appended document.

Brad Fleet
Service Director, Development Services

Report Author
Stephen Hawkins, Lead Principal Enforcement Officer
Telephone: 01722 434691
email: developmentmanagementsouth@wiltshire.gov.uk

Background Papers

None

Appendix

Draft Enforcement Strategy.