

**INVESTIGATION & REVIEW SCRUTINY COMMITTEE**  
**26TH MAY 2010**

**Report of the Director Development**

**ITEM 6      REVIEW OF ACTIONS AGREED BY CABINET – DEVELOPMENT  
CONTROL ENFORCEMENT PANEL**

Purpose of Report

To report on the current status of the actions agreed by Cabinet in response to the recommendations of the Scrutiny Panel on the Council's Development Control Enforcement Procedures

Action Requested

To note the progress to date on the agreed actions and provision of service.

Policy Context

The Corporate Plan commits us to review and improve our approach to the delivery of services to ensure we are constantly working to achieve a better service providing better value for money and enhancing the performance and commitment to service delivery.

Background

Cabinet, at its meeting on 9<sup>th</sup> July 2009 received a report setting out the actions to be taken in response to the recommendations of an Investigation and Review Scrutiny Panel following its in depth scrutiny of the Planning Enforcement service within the Development Control Division of the Development Directorate. This report is an update of the actions taken in response to those recommendations.

**Recommendations (REC), Responses (RES) and Current Status (CS)**

The following are the recommendations of the Panel (in italic) and the responses to the recommendations. The current status is shown in the text boxes.

**Recommendation 1.** *“Development and training meetings for both Lead member and director to establish roles and priorities”*

Lead Member was asked to give her view of the department [The Lead Member at the time was Councillor Hilary Fryer but her brief was taken up by Councillor David Slater in May 2009]. The Lead Member has a clear understanding of the processes of the department but the strategic view and Direction of Travel was not touched on. There was a lack of an audit trail; no evidence to support what monitoring or challenge had taken place or any SMART target setting. The Cabinet member would only be briefed on high profile cases mainly relating to planning applications and the Local Development Framework. The Cabinet Member should be briefed on all cases and then decide what is significant.

**Response:**

The enforcement team receive approximately 700 complaints each year and an acknowledgment letter is always sent to the complainant (77% within 3 working days). The site is then visited to establish whether a breach of planning control has occurred (90% within 10 working days) and the complainant is advised of our initial findings (81% within 15 working days). If a breach is found a case to investigate further is generated (300 per year) (all figures above are for 2008/9).

A list of all current cases in Ward order is now sent to all Councillors (see response to Recommendation 7 below). That list will ensure that the Lead Member also is apprised of all current cases although it is considered prudent that the Director of Development might usefully continue to direct attention towards those cases which might provoke wider concern or media interest.

Officers have a full range of enforcement powers available to them to establish whether a breach of planning control has taken place. They question what harm is caused as a result of the breach and how to remedy the situation. They negotiate with owners and seek, in appropriate cases, retrospective applications. However, where harm is evident, swift and firm action will be taken against individuals or companies that ignore planning controls. Officers seek to resolve cases and aim to report matters to ward members and ultimately the planning committee where action is required within 28 days. Formal action however invariably requires a significant amount of evidence gathering and legal notices serving to identify exactly what the breach is or who has committed the breach.

We are currently preparing to consult on an up to date Enforcement Policy and will report to cabinet following the receipt of comments. That policy will make very clear the strategic role of the Enforcement function and define its priorities and measures for success assisting in the clarification of the Direction of Travel.

The recommendations of the Panel have given renewed emphasis to a number of service enhancements which, at the time of the review, were in the early stages of development. Improvements have since been made in the monitoring processes required to ensure that the targets defined in the Team Plan can properly be measured on a regular basis to meet the expectations of a genuinely SMART target. Further details are set out in the response to Recommendation 3 below.

**CS Bullet 1:**

Regular contact is maintained with the Lead member in respect of Planning Enforcement issues. Meetings are held with the lead member to discuss progress on cases and Committee items. A list of current enforcement cases is sent to all members and to the Parish Councils in Ward order so they can monitor progress of any breaches of Planning Control. Feedback has been very positive in respect of this procedure and officers feel this has developed closer lines of communication with Parish Councils and Members.

**CS Bullet 1: cont....**

A list of current cases authorised for enforcement action is currently available on the Intranet but this has proven time consuming in respect of updates to the system and issues with access for Legal Services who are currently reliant on enforcement officers to update the report. A new intranet site is currently under construction which will enable all officers within the Enforcement Team and Legal officers to update the records. The system will be live and will record all cases authorised for formal action through delegated powers or Committee authority. The system will also show resolved cases and again, Members will be able to gain access to check progress and which cases in their Ward areas have been resolved. Access to view the list of cases will be provided for members and should prove to be a useful tool to monitor progress on the service and enforcement of formal notices.

Extensive consultation has taken place on the current draft enforcement policy and the policy has been subject to an equality impact assessment. The next stage in the procedure to adopt the policy is a report to Cabinet which is currently being prepared and this is expected to be reported in June. The policy will assist in defining the enforcement functions and informing the public and managing their expectations of the service by outlining target and procedures.

**Recommendation 2:** *“The regular meeting of the Lead Member and Director with or without the management team must be minuted. All meetings within the department should be minuted”*

**Reason:**

The difficulty of understanding the working of the department was hampered by the paucity of paperwork. It should be standard practice to have the regular meetings between Lead Member and Director minuted. This should also be standard practice of any meetings, even those which do not necessarily have an outcome or decision ie. Blue Sky meetings. It is impossible to monitor and hold to account anything which has happened without paperwork.

**Response:**

It is the view of both the Lead Cabinet Member and the Director of Development that the regular lead member meeting should provide an informal opportunity for the exchange of information, advice and guidance. Formal minuting of the meeting would be likely to inhibit the open exchange of views upon which an effective partnership is founded and add significantly to the administrative burden upon the service. The practice of working to a standard agenda is to be revived with agreed action points recorded at the end of each Lead Member meeting.

**CS Bullet 2:**

There are regular meetings between the Lead Cabinet member and the Director of Development. There is a standard agenda and agreed action points are recorded at the end of each meeting.

In addition, there is now a monthly meeting between the Chair/Vice Chair of Plans Committee, the Cabinet Support Lead Member and the Head of Development Control. These meetings work to a standard agenda.

**Recommendation 3:** *“All targets should be SMART targets, including performance, response and budgets. There should be proper (dated) recording of the processing of every action from the first raising of a complaint to the final decision.”*

**Reason:**

All targets should be SMART ones. Targets should be agreed by everyone in the department.

The Lagan system has not been shown to work. There have been consistent reports to officers about its efficacy and nothing has seemingly been done to rectify the problem. Indeed, without any evidence, the system still is not fit for the purpose. The case record should be available to Ward Councillors, Parish Councils etc. who wished to follow the complaint. Summary data showing all actions and their progress should be available.

**Response:**

As stated in the response above targets have been set which all staff have agreed to, these are considered to be SMART targets. They are included in the team plans and they are also to be incorporated in the Enforcement Policy. The targets are measured on a monthly basis by management and reported to the Lead Member, they are also reported in the TEN performance system quarterly. The recent results are shown below.

	Jan	Feb	Mar	Apr	May	Target
No of complaints received	86	62	65	56	53	
Acknowledged in 3 Days	79 (92%)	61 (98%)	65 (100%)	56 (100%)	52 (98%)	90%
Visited in 10 Days	81 (94%)	61 (98%)	63 (97%)	55 (98%)	52 (98%)	90%
Initial findings in 15 days	67 (77%)	44 (70%)	24 (36%)	25 (44%)	25 (47%)	90%

The enforcement team do not currently use the Lagan system although this is being investigated at present to enable telephone calls to be handled by the contact centre and it is envisaged that responses to calls will be recorded and monitored through the Lagan system. There is therefore no question as to whether the system works or that it is not fit for purpose.

A list of complaints under investigation, breaches and related enforcement action is now sent electronically on a monthly basis to Ward Councillors. Details of breaches and enforcement action taken are also sent to Parish Councils. The progress of investigations into complaints can be information sensitive and therefore it is not considered appropriate to forward details to Parish Councils until a breach has been confirmed and the Council has agreed to take action.

















**CS Bullet 3:**

A list of current breaches of planning control; 'cases', is now regularly sent to all Ward Councillors and Parish Councils for information purposes. Feedback on the list has been positive although issues with formatting have been difficult to resolve. The implementation of the new M3 planning database will alleviate these issues and will provide specific monitoring packages and reporting systems that will enable reports to be produced more readily and with detailed information for interested parties. As mentioned in CS Bullet 1 (above) – a new working document is currently being compiled showing all enforcement cases that have been authorised for formal action or are under consultation/consideration with legal services. This list will be live and will be updated by both Enforcement officers and the legal team. Members will have access to the list to view the current cases and to check for updates on progress of those cases. This is an enhancement of the list that was provided on the Intranet site and the list has many features that may be utilised for the benefit of officers, and in the future to enhance the service provided to members.

Further Targets have been created as part of the Tens system of monitoring and are now being used to monitor customer contact which was highlighted by the scrutiny panel as requiring attention. A 15 day target has been implemented to inform complainants of the initial findings on a complaint and this is being monitored for effectiveness.

Last year complaints to the Council on planning related matters rose by 27.4%

Below is a table that shows the latest performance figures from Tens:

		Q1		Q2		Q3		Q4		Annual Target	Est. Outturn		Annual	
C 51	Percentage of enforcement complaints acknowledged within 3 working days	97%		98%		99%		99%		90%	95%		99%	
DC 52	Percentage of enforcement site visits undertaken within 10 working days of complaint being received	94%		95%		98%		98%		90%	94%		96%	
DC 53	Percentage of progress reports on enforcement complaints sent to the complainant within 15 working days of a complaint having been received	92%		95%						90%	92%		97%	

**Recommendation 4:** *“Monitoring should be regular and reported.”*

**Reason:**

Targets and performance against them should be regularly checked. Progress reported with perhaps a traffic light system to highlight effectiveness. Regular reports should go to Scrutiny.

The systems for reporting are poor. The Panel was pleased to hear from Steve Lewis Roberts that new software has been ordered and will be in place by July 2009. The M3 system will address the former reporting shortcomings. M3 is a tracking system from the initial complaint to the decision of the Enforcement Officer. There was some question as to the link between the Lagan system used by Contact Centre and M3 system.

**Response**

With the introduction of the TEN reporting system and SMART targets adopted by the enforcement team the monitoring of performance will be clear and open to scrutiny. TEN incorporates a traffic light system for highlighting effectiveness. The upgraded M3 software system is expected to be in place by the end of the year. The project has been delayed due to protracted negotiations in agreeing the details of the contract while the software suppliers are also committed to carryout similar

work at other authorities. This upgrade will result in improvements to performance monitoring of the whole enforcement process.

The Lagan system and M3 systems are supplied by competing companies and there are therefore no direct links at present between the systems. The systems use similar data for different purposes. Such links will require further investigation and the benefits weighed against the costs of providing such links. It is suggested that this be investigated if a need is established for such links once both systems are being used by the enforcement team. This may also be required for Development Control.

CS Bullet 4: The new M3 system has been further delayed; implementation is not expected until October 2010.

The process of scrutiny has highlighted the importance of monitoring and providing a baseline for performance. As a further check on performance and customer perception a Customer Satisfaction Survey is currently being compiled. This will be the first consultation to have taken place in respect of the Enforcement function. Information received in response to this consultation process will be used to further enhance the service and identify any areas for improvement. Obtaining fair and just feedback on a service such as enforcement can prove fraught with difficulties as many of the customers will be unhappy with the fact the Council may have taken enforcement action or may have been unable to assist in terms of some neighbour complaints but it is hoped that the survey will address this and will show that despite these factors the service received was in line with the aims and objectives outlined for the Planning Enforcement service.

Also being undertaken at the present time is a review of the Planning Enforcement Policy. Consultation has taken place in respect of the reviewed policy and an Equality Impact assessment has been carried out as part of that process. It is hoped a report will be put to Cabinet for the policy to be formally adopted in July 2010. Once adopted the policy will form an aid to manage customer's expectations, and provide guidance on the procedures and legislation in relation to planning enforcement. The Policy will assist Members in promoting the services of the Council and in disseminating information to their constituents.

**Recommendation 5:** *"There should be management training and career development opportunities."*

**Reason:**

Managers should be encouraged to be on management courses, both internal and external ones.

Managers were members of and attended the East Midlands Enforcement Forum. This forum gave the opportunity for officers to exchange views and to hear ideas from other areas. Members also were helped by the LRIP (Leicestershire & Rutland

Improvement Partnership). It was noted that the Enforcement Team was now up to numbers required. Christine Taylor reported that the Legal Team had been short of a permanent officer with training in planning for the last few years but a new appointment had been made. Managers will have their performance assessed and feedback given. Because of the new rules of planning procedure, it is more likely that there will be pressures on the Enforcement team and slightly less on Planning. Training is a management decision. Whilst PDRs are used within the department, training seems to come through a relevant PDR whilst it should be a corporate decision. Management training should be given as part of Learning and Development with a strategic aim to support:

- a) Leadership capacity for change and transformation;
- b) Developing workforce skills, capability and capacity.

**Response:**

Training and development needs are assessed and agreed with staff through the Performance and Development Review (PDR) process on an annual basis. Where staff has management responsibilities they are encouraged to take advantage of management development opportunities.

The service has a particularly good record in the training and development of planning enforcement staff, many of whom have used the post as a means of entry to the planning profession with the Borough Council funding a course of study leading to Royal Town Planning Institute accreditation.

Corporately a new management competency framework is currently under development, the purpose of which will be to assist managers in the identification of training and development needs to support defined behaviours. It is intended that that procedure, representing one string of the "One Charnwood" theme, should be completed by October / November 2009 with recognised training and development needs being addressed through a programme of training opportunities, on the job learning, support and mentoring as appropriate.

**CS Bullet 5:** The Senior Enforcement Officer is a committee member of the East Midlands Enforcement Forum. The latest Enforcement Forum was hosted in January 2010 by Charnwood Borough Council and as a result provided the opportunity for some members to participate in the forum and to witness for themselves the professionalism of the group and the quality of learning opportunities the forum provides.

Internally a further forum has been set up of officers within Charnwood BC who are involved in Enforcement to share information and experience amongst themselves. This has already proven a success with a coordinated programme of training that was instigated for all enforcement officers. A training matrix was compiled and specialist enforcement training was identified by each department, much of the training requested was common to all departments and as such a programme of events was set up which allowed a sharing of information amongst officers and also a sharing of the costs of the training. Whilst each enforcement section has specialist knowledge in their own field, it is acknowledged that some of the issues experienced by officers are common across the board. This forum will continue in the future and it is hoped will share knowledge and experience and provide a coordinated approach to enforcement .



### **CS 5 Bullet Cont...**

Training continues within the team in the form of on the job training and shadowing on complex cases where necessary. Experiences are shared through regular contact with other authorities during forums and contact with a network of East Midlands Enforcement officers.

The Personal Development Review process ensures that training is considered on a formal basis each year and throughout the year further training opportunities can be identified. The Enforcement team work closely together to share knowledge and to assist each other in the provision of the service. Opportunities are always taken to train and develop staff for the future; for example case work is allocated in order to allow officers the opportunity to develop further skills and knowledge ie: working on Listed Building cases, TPO issues and prosecutions.

Of crucial importance to the service is the provision of timely and reliable legal advice in respect of formal action proposed. It was highlighted during the process of scrutiny that in the past there had been issues with the provision of legal advice which had an adverse impact on the efficiency of the enforcement service. It was also confirmed Legal services are now fully staffed and expectations were high in relation to the service provision. Reliance upon the Legal team meeting targets and following the existing protocol between the two services is integral to the success of the Planning Enforcement Team.

### **Recommendation 6:** *“Department service plans should be embedded.”*

#### **Reason:**

The Panel was disappointed that there are no departmental service plans. The Panel was pleased to learn that this will be introduced presently and was welcomed by management. The plan should include current information as well as looking at specific priorities for the next year. Any subsequent action plans can be matched with the three year budgeting process. Risk Assessment and Value for Money Assessment are a must. The plans should not be stand alone but should link in with other plans and should be monitored regularly.

#### **Response**

There would appear to be some confusion here. At the time of the Panel review there was in existence an approved Service Delivery Plan covering all aspects of service delivery within the Development Directorate. The approved Service Delivery Plan included specific targets for the monitoring of breaches (D/14), for the completion of initial investigations within 15 days (DC 6) and for the percentage of breaches converted to active cases for reports within 8 weeks (D/13). Regular monitoring of performance against targets, admittedly, was not well developed but measures have since been put in place to permit monthly monitoring as reported above.

The targets are now embedded in the Development Control Team Plan and are acknowledged and agreed by the staff responsible for their delivery. The Team Plan includes consideration of risk assessment and value for money across the whole Development Control Service.

**CS Bullet 6:** Whilst it was acknowledged during the process of scrutiny target monitoring was not well developed team members were committed to providing an efficient and effective enforcement service. Monitoring of the targets now provides the evidence to show that this is the case. Last years annual figures (Shown in Bullet 3) relating to the targets set in the Service Delivery Plan confirm the situation.

Further work is currently being undertaken into the monitoring of activities and the cost of providing the Development Control Service in line with this Planning Enforcement will be able to collate information gathered to assess value for money in the service provision. Along with the consultation process to be undertaken this will provide assurances the service is value for money and is progressing to address customers needs first and foremost.

Recent changes to legislation in respect of 'Permitted development' rights and changes to the Use Classes order are felt to have increased the number of complaints. It is anticipated the changes to the Use Classes Order (6<sup>th</sup> April 2010) Class C4 Houses in Multiple Occupation, is going to create an increase in cases. Levels of complaints will continue to be monitored in order to identify any significant increase and the impact this may have on the provision of the service. At the present time the full impact and understanding of this legislation cannot be appreciated until tested through appeals and case law.

**Recommendation 7:** *“Communication. There needs to be a better system of communication with Councillors, Parish Clerks and interested parties.”*

**Reason:**

Communication to interested parties is not full enough. Management accepted that Councillors and Parish Councils needed to be updated on where the case was in the system. Whether it was under review or action had been taken and was therefore ongoing. If the complaint had been turned down, it was essential for the local Councillor to know why. If not, the Councillor could not reply to questions from his electorate and it was also difficult to know why there was apparent inconsistency. Some of this information could be on the Web but fuller information could go out as a Yellow Paper/MIS.

**Response**

Poor communication on the progress of enforcement cases to all interested parties was a recognised shortcoming in the systems and the Panel's recognition of that again provided greater impetus for development of a solution. Remedial measures have now been put in place with the production of a monthly list in Ward order that

is sent to all Councillors detailing outstanding cases with an account of recent action taken.

As reported above, details of proven breaches and related actions are also reported to Parish Councils on a monthly basis.

**CS Bullet 7:** It is to be noted that no breach of planning control has been or will be 'written off' without the prior consultation with Ward Councillors, the Lead Member and Chair. Consultation on enforcement matters that in some circumstances, whilst a breach of planning control, are not expedient to pursue, are referred under the ward referral procedure to Councillors for consideration. Each case is decided on its own merits and whilst in some circumstances a development may be acceptable, in others that same type of development may result in formal action. The consideration of the planning matters will be provided by officers to Members in the same way as a delegated decision on a planning application. In this way Members will always be aware when a decision to take no further action has been made.

In all other circumstances decisions to take formal action will be referred to Planning Committee or delegated in accordance with the Constitution. Any case authorised for formal action will be included in the 'live' list on the intranet until resolved, Members will be able to view progress on these cases at any time.

All other breaches of planning control are resolved by negotiation or following submission of a retrospective planning application. By far the vast majority of cases dealt with by the team are resolved through negotiation to remove/cease the breach of planning control.

As stated previously to note is the new enforcement list of cases currently being populated which will provide a live list of authorised enforcement cases for members to monitor progress on the service and compliance of enforcement notices. With the implementation of the new M3 system will be the opportunity to enhance the information provided to members and to the Parish Councils on progress or the results of cases closed.

**Recommendation 8:** *"Time should be made for Blue Skies meeting"*

**Reason:**

There should be an opportunity for the Team to have an away day. Not for a bonding time but to take time out to think how the department can deliver its service in perhaps a more efficient way. The focus should be on how a service is delivered rather than the service itself. The structure of the Department could be revisited ie. To have an integrated service with joint budgets. More work that is

done by Borough Council is linked into other local Authorities, not only Charnwood Together.

### **Response**

Members of the enforcement team, and indeed all staff, are encouraged to consider at every opportunity how service delivery might be improved. Members are actively engaged in that process through the regular Plans Committee workshops. One officer within the division is specifically charged with responsibility for supporting service delivery and works closely with the Planning Enforcement Team in that capacity; much of his effort currently is directed towards the procurement of an upgraded computer system (M3) which will facilitate improved monitoring of the team's performance and that of the remainder of the Development Control service. The opportunity for "blue sky" thinking has been provided through the process of preparing the Service Delivery Plans and could be applied again when the current cohort of Team Plans come forward for review in the autumn.

The Enforcement team is effectively an integrated component within the Development Control Service and all staff co-operate closely. The principal external dependency is that with the Legal Services Team. Staff retention difficulties and a resultant lack of continuity in the provision of legal support has, in the past, inhibited the delivery of a fully effective enforcement service. However, those problems have been resolved and regular surgeries attended by representatives of the teams concerned ensure effective co-operation in the delivery of the service.

Undoubtedly there will be areas of work across the Borough Council where close linkages with other local authorities will be advantageous. Planning Enforcement has not to date fallen within the scope of such joint local authority initiatives but such opportunities for co-operation are constantly under review with a view to enabling service improvement and efficiency.

#### **CS Bullet 8:**

Procedures and practices are constantly under review in order to improve the effectiveness and efficiency of the team. As mentioned above in Bullet point 7, Enforcement staff have regular contact with other authorities and share knowledge and practices. This ensures good practice is achieved and best practice shared between enforcement officers across the East Midlands and beyond.

### **Financial and Legal Implications**

There are no financial implications (outwith existing budget provision) associated with this report, nor are there any legal implications.

## Risk Management

The risks associated with the options available and proposed actions to mitigate those risks are set out in the table below.

Risk Identified	Likelihood	Impact	Risk Management Actions Planned
1. Efficiency of the team would be affected with a further increase in the number of complaints. Changes in legislation may produce an increase in workload.	H	M	Ensure the levels of staff within the team are maintained at their present levels as a minimum.
2. Implementation on M3 delayed further	M	M	Ensure the programme of implementation is given priority
3. Lack of timely and reliable legal support	M	H	Ensure service provided by Legal services meets targets and is reliable.

Background Papers: None

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