

PERFORMANCE SCRUTINY PANEL – 11TH APRIL 2017

Report of the Head of Planning and Regeneration

ITEM 10 ENFORCEMENT POLICY AND PERFORMANCE

Purpose of the report

1. To demonstrate how the planning enforcement service relates to the National Planning Policy Framework and the Council's Planning Enforcement Policy and to explain the delivery approach for Planning Enforcement and the monitoring of development in the Borough.

Previous decisions

2. At the meeting of Performance Panel on 14th February 2017 members raised a number of concerns about Planning Enforcement including:
 - a. When development is not undertaken in accordance with the approved plans, amendments are submitted and the developer is allowed to carry on with the development and alter the original design from what has been approved and the developer is guaranteed a favourable response; and
 - b. Conditions appear to be varied from what has been agreed by either officers under the Council's delegation procedures or at Plans Committee by Members.
3. Members went on to resolve that a report setting out current planning enforcement policy and the performance of Planning Enforcement against that policy be scheduled for consideration by the Panel at its meeting on 11th April 2017. In particular the Panel requested additional information regarding the number of retrospective planning applications, the impact of staffing resource on how enforcement is monitored and how compliance with conditions is enforced (minute 48 (2) 16/17 refers).

Legal and policy framework

4. The basis for planning enforcement is contained in the various Planning Acts and in national and local planning policy documents.
5. There is a common misconception that breaches of planning control are a criminal offence and should automatically attract enforcement action¹. Paragraph 207 of the NPPF clearly sets out that enforcement action is a discretionary power and local planning authorities should act proportionately in responding to suspected breaches of planning control. It is therefore for each local planning authority to decide how to determine when action is necessary and the type of action that is appropriate being mindful of maintaining the wider public confidence in the planning system.

¹ It should be noted that some unauthorised works, for eg to a listed building and demolition in a conservation area, are open to prosecution.

6. There is no legal requirement for public consultation on an application to discharge a planning condition. However, there have been cases where a planning condition has been imposed to control a matter of such significant public interest that the Head of Planning and Regeneration has considered it appropriate to enable public consultation on the application to discharge that condition.

Council Constitution

7. The Council's Constitution provides the general principle that all planning applications and applications for advertisement consent, conservation area consent and consent to carry out works to protected trees are delegated to the Head of Service subject to six exceptions. The provisions mean that around 95% of all planning decisions are made by the Head of Planning and Regeneration with the balance being determined by the Plans Committee. This degree of delegation is consistent with the picture nationally. The Constitution also provides the means for ward Councillors to 'call in' applications for determination by the Plans Committee in accordance with the protocol detailed in section 12.12. The provisions of the Constitution apply to all planning applications whether submitted in advance of development taking place or retrospectively.
8. The Constitution delegates to the Head of Service authority to take enforcement action in relation to cases of unauthorised development except where the details have been circulated to the appropriate ward Councillor(s) and they have asked within 2 working days for the item to be referred to the Plans Committee for determination. Authority is also delegated subject to prior consultation with appropriate ward councillor(s) to determine whether it is expedient to take formal enforcement action in relation to unauthorised development where such development is in accordance with planning policies or standards, does not result in a significant loss of amenity to local residents and does not have a significant impact on the character and appearance of the area. Further delegation is given for a range of other powers set out in legislation specifically in relation to taking enforcement action including:
 - Providing rights of entry
 - Serving breach of condition notices
 - Requisitioning information
 - To serve planning contravention notices
 - To remove illegal posters
 - To serve Section 215 untidy land notices
9. In February 2017 Council resolved to amend the Constitution so that any application to remove or vary a planning condition or S106 agreement would need to be considered by the Plans Committee if the Committee had previously made a decision on that application unless following consultation with the ward councillors and the Chair and Vice Chair of the Plans committee the Head of Service is of the view that the variation is minor or non-technical (minute 77.3 16/17 refers).

Planning Service Enforcement Policy 2010 (as amended in 2014).

10. The Enforcement Policy for Charnwood explains why discretionary powers will be used and how the Planning Service will endeavour to uphold the planning system by investigating and resolving planning breaches. It explains how all complaints will be treated fairly and with respect for the rights of all of those people involved. A copy of the Enforcement Policy can be accessed from the Planning Enforcement page on the website [here](#).

Background

11. Planning is a high profile and often contentious service and whilst the planning system affords control over most forms of development, the integrity of that system depends on the enforcement of breaches of planning control. It is however crucial to recognise the fact that carrying out development is not an offence in itself unless it is causing harm to a listed building or to a protected tree.
12. It is often the case that planning permission once obtained, will be subject to planning conditions that should either be complied with before development commences or as part of the development process or in perpetuity. These conditions may be imposed at the time permission is granted by the Plans Committee or by the Head of Planning and Regeneration using powers delegated to him. The conditions are applied where details about the proposal are not available during the determination of the application but can be agreed later as they do not affect the principle of development, common examples include:
 - Before development commences - access, tree protection, construction method statements.
 - During the development process - Requiring details of materials, landscaping, drainage to be used on site.
 - In perpetuity - hours of operation, noise levels, odours, parking spaces.
13. Sometimes during the implementation of the planning permission issues may come to light which suggest that the scheme is not proceeding in accordance with the permission or the developer may legitimately change their mind about an element of the development. In these circumstances the planning system allows for modifications to the planning permission where these are appropriate.
14. There are a number of ways modifications can be dealt with. If the changes are significant a new planning permission will be required. If they are minor an application can be submitted for a 'minor material amendment' or a determination sought that the change is a 'non-material amendment'. Each case must be dealt with taking into account the circumstances of that particular case and having regard to the Development Plan policies and other material considerations.
15. In some cases when a condition has been imposed on a planning permission it is possible for the developer to apply to vary or remove that condition if they do not agree with it or if they later find it is not possible to comply or it is too

restrictive. This is a common occurrence that is provided for in legislation to allow flexibility for the developer. Applications to vary conditions or to remove them are planning applications in their own right and are considered in the same way as 'normal' planning applications having regard to the development plan unless material considerations indicate otherwise.

16. Many of the enforcement cases are a result of non-compliance with conditions and developments not being in accordance with the approved plans. A lot of variations of conditions take place and often as a result of enforcement intervention, a breakdown of cases by category can be seen below in table 1.

Table 1 – Enforcement cases by Breach Category 2011 - 2016	
Unauthorised Development Category	Number of complaints
Advertisements	515
Car Repairs	38
Change of Use	643
Change of use and operational development	26
Householder development	667
Listed Building	42
Works to TPO Trees /Conservation Areas	37
Development not in accordance with approved plans	331
Unauthorised structure	242
Untidy Land	242
Other	319
TOTAL	3,102

The Planning Enforcement Service

17. There are four full time equivalent members of staff in the Planning Enforcement Team: Team Leader, two Enforcement Officers and one Compliance Technician. In addition resources are drawn from the Development Management Service to assist as required.
18. The Council investigates over 600 suspected breaches of planning control each year some of the cases are brought to light by the proactive work of the Enforcement Team (see table 2); however, the majority of the complaints come from members of the public and elected representatives.

Table 2 - Cases Per Year	
Year	number
2011	663
2012	603
2013	649
2014	626
2015	685
2016	596

19. The performance of the service is monitored monthly with the Lead Cabinet Member against indicators contained within the Service Team Plan.

Monitoring development activity

20. The Service proactively monitors developments to check for compliance with approved plans and conditions. It cannot monitor everything that is granted planning permission however major developments and developments where there are a number of pre-commencement conditions requiring compliance are always monitored.
21. In order to proactively monitor, Building Control lists are checked each week for notification of building works starting and whether or not that development has the required planning permission. This can bring to light developments that may need planning permission or may not have complied with pre-commencement conditions. To reiterate and make it clear - it is not an offence not to comply with the planning conditions imposed on a planning permission.

When a breach is discovered

22. When a breach of planning control is established it will be brought to the attention of the developer. The developer will always be informed that if the development continues it is entirely at their own risk. Officers will make a judgement as to the level of harm being caused by the breach of planning control and will assess whether or not the issue can be resolved and by what means.
23. Following the initial investigation a recommendation will be made as to the appropriate course of action. It may be that no breach has occurred or that the breach will be put right by the developer. Alternatively the officer may consider the breach can be regularised by a retrospective planning application.
24. If the breach cannot be remedied and formal action is considered necessary the Ward Councillors will be informed of the details of the case through the ward referral process and a recommendation made as to whether enforcement action is appropriate or whether it is considered not expedient to pursue the breach of planning control. Since 2011 only one case has been referred by councillors to the Plans Committee for a decision to be taken and this was because of the degree of local interest in the case. There have not been any cases of an officer recommendation being overturned by a Ward Councillor.
25. The figures in Table 3 show a breakdown of the outcomes in relation to the complaints received since 2011.

Table 3 – Enforcement Cases 2011 – 2016		
Outcome	No. of cases	%
No Breach	1,523	49%
Retrospective applications received	610	20%

Breach Remedied	876	28%
Not expedient to take action	93	3%
Total Cases	3,102	100

26. A total of 194 cases since 2011 have been referred to Ward Councillors and 93 have been recommended as not being expedient to take any further action (see table 4). The reasons for this decision would be explained in the Ward Referral report.

Table 4 - Cases with formal decision 2011 - 2016	
Type	Number
Planning Contravention Notices	57
Breach of Condition Notices	7
Enforcement Notices	30
Untidy Land (Section 215 action)	3
Temporary Stop Notice	1
High Hedge Notice	3
Not Expedient (of all type)	93
Total cases	194

Taking formal action

27. There is nothing in the legislation that stipulates enforcement action will be taken in every case; rather, the powers are discretionary and it is necessary for the council to be reasonable, proportionate and expedient in the wider public interest. However, if development is taking place and is causing immediate severe and irreparable harm, then action can be taken to stop that development.
28. Formal action can take a number of forms depending on the nature and type of the breach and the harm caused. Sometimes the developer can be unwilling to work with officers or be obstructive. In these circumstances the following tools are available:
- **Planning Contravention Notice (PCN)** – Sometimes it may be unclear if there is a breach of planning control and one means of obtaining information can be gathered in a formal manner is to serve a Planning Contravention Notice. It is not too prescriptive and it is an offence not to respond or to falsify information. The requested information can be tailored to the particular case.
 - **Section 330 notice** - is a precursor to formal action and is a requisition for information in respect of ownership details and interested parties. Again it is an offence and carries a fine for non-response and is more specific than the Planning Contravention Notice. Quite often the service

of a Planning Contravention Notice or a S330 Notice will elicit compliance from the developer.

29. This action can lead to a number of outcomes including:
- a. **Breach of Condition Notice** – compliance is required within 28 days and has no right of appeal. It is an offence not to comply with a Breach of Condition Notice
 - b. **Temporary Stop Notice** – This has no right of appeal and can only be challenged by judicial review. It is an offence to not comply.
 - c. **Enforcement Notice** – this takes 28 days to come into effect and there is a right of appeal to the Planning Inspectorate. Non-compliance with an enforcement notice is an offence.
 - d. **Section 215 Notice** (untidy land) – there is a right of appeal in the Magistrates Court.

Retrospective applications – do they always get permission?

30. Where unauthorised developments are capable of being recommended favourably for planning permission, a retrospective planning application will be requested. This approach ensures that a proportionate and expedient response is being given in accordance with the NPPF. Officers will not invite an application if it is considered that the development as built, or as taking place (if it is a use), is unacceptable. In these cases enforcement action is always pursued.
31. If a retrospective application is invited, depending on the level of harm, the developer will be asked to cease the use or stop the build whilst the application is considered. In most cases this is sufficient warning to the developer of the risks ahead of non-compliance. There are however some instances where a developer will insist on carrying on and this is entirely at their own risk. If the application is subsequently refused planning permission then the development will have to be reversed or the developer may be prosecuted.
32. In cases where a development has been built or the use is being carried out and it appears to be acceptable in planning terms, it may be necessary to impose conditions on a subsequent grant of planning permission in case there are changes in ownership or circumstances in future, to protect residential amenity from potential changes to the development that may lawfully take place without a further planning application. However, as mentioned above it is open to anybody to apply to vary or remove those conditions at a later date.
33. As a result the approach to unauthorised developments through the retrospective application process may appear that every time an application is submitted for development that is not in accordance with an approved plan, it is granted planning permission. The figures in tables 5 and 6 below show that this is not the case.
34. Sometimes a case is referred to as a ‘technical breach’ for example, the developer has not submitted the details of materials to be discharged but the materials they are using are acceptable. If the breach is not resolved it does

not mean the development is unacceptable, it does however leave the developer with a matter that has not been formally resolved. This may delay the sale of a property in the future if this is ever brought into question. Developers will always be advised of the situation and the options available to them.

Table 5 - Retrospective planning applications	
permission	Number
Permission Granted	582
Permission Refused	46
Total	628

Table 6 - Retrospective planning applications subject to appeal	
Appeals	number
Appeals submitted	12
Appeals Allowed	4
Appeals Dismissed	8

35. In dealing with breaches of planning control 628 retrospective applications have been submitted following enforcement interventions since 2011 resulting in £160,964.50 of fee income.
36. If a retrospective application is refused planning permission it is usually the case that formal action will be taken at the same time and if an appeal is submitted then they can be joined to save time and expense for all parties.

Background papers: Enforcement Policy – see website
https://www.charnwood.gov.uk/pages/planning_enforcement

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