

# **CHESHIRE EAST COUNCIL**

## **REPORT TO: Environment and Prosperity Scrutiny Committee**

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**Date of Meeting:** 21 February 2012  
**Report of:** Development Management and Building Control Manager  
**Subject/Title:** Planning Enforcement  
**Portfolio Holder:** Rachel Bailey

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### **1.0 Report Summary**

- 1.1 This report explores the role of the Planning Enforcement Team and its resources, protocols and workload.

### **2.0 Recommendation**

- 2.1 That Members of the Committee note its content

### **3.0 Reasons for the Recommendation**

- 3.1 The Portfolio Holder has requested information on the resources, protocols and workload of the Planning Enforcement Team.

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All

### **6.0 Policy Implications**

- 6.1 None

### **7.0 Financial Implications**

- 7.1 None

### **8.0 Legal implications (authorised by the Borough Solicitor)**

- 8.1 None

### **9.0 Risk Management**

9.1 N/A

## **10.0 Consideration**

### Resources

- 10.1 The enforcement of planning legislation in Cheshire East is dealt with by a team comprising 8 planning enforcement officers.
- 10.2 In addition to this there is an enforcement officer who currently sits within the minerals and waste team and specialises in minerals and waste enforcement issues including the monitoring of conditions and compliance on minerals and waste planning permissions. This officer covers the whole of the borough.
- 10.3 The 8 officers are split equally between the northern and southern parts of the borough. The northern team cover what was the former Macclesfield Borough Council area. The southern team cover the former Crewe and Nantwich and Congleton districts. Each team is managed by a Principal Planning Officer (Enforcement).
- 10.4 The departmental structure includes two Compliance and Monitoring Officer posts. However, owing to a reduction in planning fees received by the Council during the downturn in the economy, these posts have not been filled to date.
- 10.5 A Section 106 Officer is currently aligned to the Northern Team. This posts deals with the monitoring of S106 Agreements across the whole Borough. .
- 10.6 The enforcement team was significantly under strength until June 2011 after the sudden departure of one officer and the untimely death of another. It was not until May 2011 that the posts were filled. In addition to this, an enforcement officer was seconded to deal with planning applications between April and October 2011 to provide support in this area during a significant period of maternity leave (4 staff).
- 10.7 In addition to this, it should be noted that as well as investigating alleged breaches, Officers also deal with a number of retrospective planning applications and applications for certificates of lawfulness of existing use or development.
- 10.8 After the loss of the Planning Help Desk based in Crewe there is no administrative support for the Enforcement Team. This means that officers undertake tasks including the entry of case details on databases and generating acknowledgement letters themselves.

### Enforcement Protocol

- 10.9 The Council has an adopted Enforcement Protocol which sets out how reported breaches will be investigated and allocates priorities, based

on the level of harm resulting, to categories of alleged breaches. The priorities and site investigation times are summarised below.

## **Enforcement Priorities**

### **PRIORITY 1 – HIGH**

- Works to listed buildings (demolition/alteration/disrepair);
- Demolition in a conservation area
- Works to trees covered by a Tree Preservation Order or in a Conservation Area
- Development causing immediate / irreparable harm to protected
- Ecology or causing serious danger to the public

### **PRIORITY 2- MEDIUM**

- Operational development already in progress;
- Development where potentially immune from enforcement within 6 months
- Development causing serious harm to amenity;
- Breaches of condition/non compliance with approved plans causing serious harm

### **PRIORITY 3 – LOWER**

- Other operational development which is complete;
- Changes of use resulting in some harm to amenity;
- Advertisements;
- Breaches of condition / non compliance with approved plans causing non-serious harm to amenity;

### **PRIORITY 4 – LOW**

- Changes of use resulting in no harm to amenity;
- Untidy land

## **Enforcement Site Inspection Timescales**

Enforcement inspections are undertaken on the following basis

**Priority 1** – Within 1 working day

**Priority 2** – Within 10 working days

**Priority 3** – Within 20 working days

**Priority 4** – Within 65 working days

10.10 It is intended that a review of the priorities will be undertaken by officers within the next 12 months. This review will consider whether the current priorities are fit for purpose. The results will be reported to the Strategic Planning Board in due course and agreement to the adoption of a revised protocol will be sought.

- 10.11 It is important to remember that when a person carries out development without the benefit of planning permission they have not committed an offence, rather it is a breach of planning control. It is not until such a time as the Council has issued a formal notice (e.g. served an enforcement notice) and its requirements have not been met that an offence has been committed (i.e. only then is a breach of planning control an illegal rather unlawful act). It is at this point that the Council may choose to prosecute and/or carry out works in default.
- 10.12 Whilst the Local Planning Authority (LPA) has a statutory duty to investigate the alleged breach, any action is discretionary. Legislation is clear that action should only be taken where it is considered to be expedient. Action should not be taken only to regularise a breach of planning which would ordinarily be granted planning permission had an application been submitted.
- 10.13 The LPA must be satisfied that, should their actions be challenged through the appeal process, they can mount a robust defence. The absence of such may lead to costs being awarded against them.
- 10.14 It appears that appellants are becoming increasingly willing to apply for an award of costs at appeal and the level of those costs can be not inconsiderable. However, it should be noted that no costs were awarded against the Council in 2011 in relation to enforcement matters.
- 10.15 In instances where no breach is found or action is not considered to be expedient, the case officer produces a report seeking authorisation to close that case. This report is considered by the Principal Planning Officer (Enforcement) who either accepts or rejects the request. This provides an audit trail for the investigation and sets out the rationale for the decision to close the case. It also accords with best practice advice from the Local Government Ombudsman
- 10.16 It is essential that planning enforcement directs its limited resources to those cases where demonstrable harm is being caused and that it does not get deflected by minor issues or neighbour disputes. Whilst such matters may constitute a breach, diverting resources to deal with them may have a detrimental impact on the effectiveness of the service and dilute its effectiveness.
- 10.17 The authorisation of enforcement action is delegated to the Area Manager North and South Team. A report is produced by the investigating officer seeking authority to issue a notice. This report, along with a draft enforcement notice, is sent to the Council's Legal Services for their observations prior to it being placed before the Area Manager.
- 10.18 Close liaison with the Council's solicitors is considered to be an integral part of the enforcement process. It is recognised that the solicitors

have many other commitments in addition to planning enforcement cases. However, consideration needs to be given to standardising response times, to ensure that it is possible to predict the timescales involved in taking action.

- 10.19 Should any recipient of an enforcement notice fail to meet with its requirements, prosecution proceedings may be instigated against them.
- 10.20 A report is prepared setting out the offence and considering the public interest test for prosecution. This report, along with instructions to the Borough Solicitor, is sent to the Council's legal department. The final authorisation for prosecution comes from the assistant chief executive.
- 10.21 There are instances where the Council should positively promote action that it has taken. A recent example of this is the direct action was undertaken at Timbersbrook in August. 2011.
- 10.22 The Timbersbrook Project had been operating within the South Cheshire Green Belt for approximately 7 years without the benefit of planning permission. It was an educational and recreation facility which resulted in the erection of numerous buildings, including a classroom facility and various animal shelters. Two planning appeals and an appeal against an enforcement notice were dismissed. However, despite this, the use continued.
- 10.23 There was no realistic expectation that the owner / occupier of the site would comply with the notice (i.e. to cease to use the land and remove all associated buildings and structures). As such, a decision was taken to turn to direct action.
- 10.24 Planning Enforcement Team worked closely with the Communications Team to ensure that any media interest was carefully managed and directed by the Council rather than by the transgressor who was well known for courting the press. This produced a more balanced media response to what was a sensitive matter. The Council's Animal Health and Welfare Team were also an integral part of the process given that before any clearance works could be undertaken by operatives from Streetscape, the animals had to be removed from the site and taken to temporary accommodation. The Portfolio Holder was closely involved in this process and undertook media interviews.
- 10.25 It is important that the Council continues to positively promote action that it has taken. It will do this through press releases produced by Development Management and issued via the Communications Team or, if the case merits it, via media involving the Portfolio Holder.

## Statistics

- 10.26 In the six-month period between April and September 2011, the Council has received 525 reports of alleged breaches of planning control, of which 344 remain open.
- 10.27 In April 2011, planning enforcement migrated 2 legacy IT systems (the former Crewe and Nantwich and Congleton ones) to the Swift System used by the former Macclesfield Borough.
- 10.28 The migration occurred relatively smoothly but absorbed a considerable amount of officer time in ensuring it was fully configured and back office templates were set up properly.
- 10.29 Owing to the migration to one system, it is not currently possible to provide a full statistical analysis of the numbers and types of enforcement cases under investigation. Nor is it possible to provide figures for the numbers of cases closed. However, from historical data, we can say with some certainty that 50-60% of reported breaches turn out not to be breaches at all. They either relate to:
- Development which is permitted under the Town and Country Planning (General Permitted Development) Order 1990;
  - Do not constitute development as defined by S.55 of the Town and Country Planning Act 1990;
  - Are matters which fall to be dealt with by other Council Departments (e.g. Environmental Health, Highways
  - Civil matters which the Council has no jurisdiction.
- 10.30 Steps are being taken to resolve the issue of statistical information. Once it is possible to provide this information, bi-annual reports will be placed before the Strategic Planning Board setting out the performance of enforcement in accordance with the Local Performance Indicators. This report will then filter down to the Northern and Southern Area Planning Committees.
- 10.31 Since 1 April 2011, 6 Enforcement Notices and 1 S215 (Untidy Site) Notice have been issued.
- 10.32 The Council fought 5 enforcement appeals in 2011, all of which were won by the Council.