

CABINET

23 JUNE 2023

REFERENCE REPORT FROM THE RESOURCES AND SERVICES OVERVIEW & SCRUTINY COMMITTEE

A.3 SCRUTINY OF PLANNING ENFORCEMENT

(Report prepared by Keith Durran)

BACKGROUND

On 13 March 2023, the Resources and Services Overview and Scrutiny Committee (“the Committee”) heard that the Planning Enforcement Task and Finish Group (T&FG) had conducted an enquiry into the Council’s Planning Enforcement function in relation to current powers, policies, procedures, data on the use of current enforcement powers, effectiveness of approach and assessment of how cases should be prioritised.

Members of the Committee heard that effective regulation and enforcement was one of the key priorities in the Council’s Corporate Plan 2020-2024, under the heading of ‘Delivering High Quality Services’. The decision to include Planning Enforcement as a subject for a Scrutiny review had arisen following concerns being raised by a number of Councillors in different parts of the District about its effectiveness in responding to a range of different planning enforcement related matters. Having drawn on the key headings within the terms of reference for the Task & Finish Working Group, the aims and objectives of the inquiry had been developed through discussion at the group’s inaugural meeting held on Monday 3rd October 2022 and had evolved as the enquiry proceeded.

The aims and objectives had been summarised as follows:

Current Powers

- *“To review the full set of powers available to the Council for the carrying out of planning enforcement, having regard to the fact that any action is discretionary on the Council and is always expected to be proportionate and appropriate.*
- *To gain a better understanding of the range of tools available to the Council’s enforcement team to resolve complaints – ranging from no action, negotiation or minor interventions, through to formal enforcement action and legal prosecution.*
- *To explore how the powers and tool available to the Council can be better communicated to those with an interest, including District Councillors, Town and Parish Councils and members of the public”.*

Policies

- *“To review the Council’s Planning Enforcement Policy which sets out the available powers and the approach that the Council will take when receiving, investigating and, where appropriate, taking action against alleged breaches of planning control.*
- *To review the associated ‘harm risk assessment’ which is used by Officers to prioritise the investigation of cases and to inform decisions about appropriate levels of action going forward.*
- *To recommend improvements to the Planning Enforcement Policy and harm risk assessment as deemed necessary to improve the effectiveness of approach”.*

Procedures

- *“To review the full process of dealing with enforcement complaints including the initial receipt of a complaint, responding to the complainant, visiting the premises, identifying and establishing any breaches, carrying out harm risk assessment, choosing a course of action and formal processes thereafter.*
- *To review the approach to communication with complainants, those the subject of action and other interested parties; and how this might vary depending on the nature of the issue.*
- *To explore how third parties, such as Town and Parish Councils, might be able to assist the District Council by exchanging information at a local level.*
- *To recommend improvements to procedures with the aim of improving the effectiveness of approach”.*

Data

- *“To gain an understanding, through the interrogation of data, of the scale and nature of enforcement issues in Tendring, including number of complaints/cases received, resolved or outstanding and how they are recorded and monitored – both for internal purposes and for public reporting.*
- *To develop and recommend a framework for reporting enforcement data and performance to the Planning Committee”.*

Effectiveness of Approach

- *“To invite honest feedback from Councillors and other interested parties on the effectiveness of the planning enforcement function based on experiences and issues in their areas.*
- *To review the resources available to the planning enforcement team when set against the scale and nature of the task – particularly in relation to management structure, number of Officers and skills, knowledge and experience.*
- *To explore and identify areas where improvements can be made to the effectiveness of the approach and to consider alternative ways in which the enforcement function could be undertaken”.*

Prioritisation of Cases

- *“To review the approach to prioritising the inspection of alleged breaches of planning control and determining the level of action required thereafter – having regard to the harm risk assessment.*
- *To recommend improvements to the harm risk assessment and the approach the Council takes in determining priorities for action.*
- *Reviewing the decision-making process and the level within the Council that key decisions are taken”.*

RESOURCES AND SERVICES OVERVIEW & SCRUTINY COMMITTEE'S RECOMMENDATION(S) TO CABINET

That Cabinet be requested -

- 1) **To note that, in recent months, following the establishment of the Working Group and the introduction of a new Planning Manager and a new Planning Enforcement Team Leader, and with the full cooperation of the Planning Portfolio Holder and key Officers, notable improvements in the Council's**

planning enforcement function have already been made in response to issues raised and suggestions put forward. These include:

- the update and subsequent adoption of a new Planning Enforcement Policy and associated harm risk assessment to replace the previous version that had not been reviewed or updated since 2010;
 - an initial review, update and tidying of the Council's database of live enforcement cases to remove cases that have been closed, incorrectly recorded or otherwise superseded by events in order to establish a more accurate baseline of information;
 - more positive engagement of Planning and Planning Enforcement Officers in the Council's Corporate Enforcement and Operation Enforcement Groups to improve working across services on a wide range of enforcement matters;
 - a notable improvement in the willingness of Officers to engage and communicate with Councillors, members of the public and other interested parties in recognition of the concerns raised previously;
 - a notable reduction in the Planning Enforcement Team's reliance on the Council's legal Officers for advice and assistance in carrying out planning enforcement duties; and
 - a concerted effort to recruit new Officers to the Planning Enforcement Team on a permanent basis and by utilising channels to attract ex Police and armed services personnel with relevant transferable skills.
- 2) to act to retain the planning enforcement function in-house and to support continued efforts to reduce the Council's reliance on temporary staff employed through agencies and to recruit permanent staff to the Planning Enforcement Team by utilising channels aimed at targeting ex Police and armed forces personnel with transferable skills and with the offer of on-the-job training and development;
- 3) To require Officers to undertake a specific and immediate update to the Planning Enforcement Policy and associated harm risk assessment to incorporate changes, , that are aimed at improving clarity, relevance and effectiveness and for the updated version to be reported to the Planning Committee for its consideration and approval at the earliest meeting practicable;
- 4) To thereafter require Officers to undertake an automatic review of the Planning Enforcement Policy and associated risk harm assessment every four years for the Planning Committee's consideration and approval to ensure it is kept up to date and responds accordingly to changes in law, policy, circumstances and trends in enforcement-related activity – allowing for earlier reviews where necessary;
- 5) To empower the Director of Planning, in consultation with the Chairman of the Planning Committee and the Monitoring Officer, to escalate and expedite (as appropriate) enforcement action where there are considered to be

exceptional matters of public interest with implications for the reputation of the Council that are not necessarily identified through the standard scoring approach in the harm risk assessment;

- 6) To require Officers to prepare quarterly reports on enforcement caseload and performance to go to the Planning Committee, for information, which will contain data on the:
 - number of complaints received/registered in the quarter;
 - number of cases closed in the quarter;
 - number of live cases presented by category, electoral ward and time period since receipt; and
 - enforcement-related appeal decisions;
- 7) To support the continued work of the Council's internal Corporate Enforcement Group and Operational Enforcement Group in considering cross-service and cross-body enforcement matters;
- 8) To require Officers to continue the process of reviewing cases recorded on the database system to remove closed/irrelevant cases and re-categorising them to provide an accurate baseline for case management and reporting of data going forward;
- 9) To require Officers to provide an annual training session, held in person, for all District Councillors covering the powers, policy and processes around planning enforcement together with case-study examples and exercises – with the first training session to be held within the two months following the May 2023 local elections (and following subsequent local elections);
- 10) To reiterate that any Councillor who is a member of the Planning Committee (either as a permanent or designated substitute Member) must attend the planning enforcement training as a mandatory requirement;
- 11) To request the Director of Planning offer or facilitate similar training sessions for Town & Parish Councils;
- 12) To ensure that Officers incorporate within internal systems, reminders to automatically update complainants, interested Ward Councillors and other relevant parties (where appropriate) every 21 days with information on the progress of cases – even if it is to advise of no or limited progress – unless earlier or more frequent updates can be given or are required (these 21-day reminders will follow the initial 21-day notification currently in place following the receipt of a complaint);
- 13) To ensure that Officers respond within 48 working hours, to emails from Councillors relating to planning enforcement matters so they can be suitably informed when advising members of the public;
- 14) To note that a significant proportion of live enforcement cases in the District relate to breaches of occupancy conditions at caravan and holiday parks, many of which are complex, sensitive and long-standing with a variety of issues to be taken into account. To resolve these breaches in full and deal with the implications thereafter would require significant additional and dedicated resources. It is therefore recommended that the Planning Policy

and Local Plan Committee be asked to consider developing a strategy or policy to guide a coordinated and long-term approach to the application and enforcement of occupancy conditions across the District having regard to matters such as impact on the tourism industry, flood risk, health and safety, quality of life, ecology, disability and homelessness;

15) To ensure that for site inspections, Officers:

- i. must always use Council equipment for capturing photographs and other data;
- ii. and are supplied with hi-visibility clothing (preferably labelled 'Tendring District Council Enforcement')

16) To ensure that Officers pro-actively monitor compliance with planning conditions and obligations wherever practical and where resources allow – and work constructively with owners, developers and applicants to identify and resolve potential future compliance issues before they give rise to a breach of planning control and possible enforcement action;

17) To ensure that the Planning Service consider incorporating standard advice into pre-application responses and validation requirements for applications setting out, and seeking agreement to, the Council's expectations for development to be carried out with the necessary consents and compliance thereafter with any planning conditions or obligations imposed;

18) To ensure that Officers review and update the form on the Council's website for reporting enforcement complaints to make it more user-friendly and to allow complainants to provide as much information as they can to describe the issue they wish to report; and

19) To request the Director of Planning considers, on a case-by-case scenario and in liaison with the Council's Communications Manager, publicising successful enforcement outcomes to demonstrate the Council's commitment to planning enforcement.

20) To request the Monitoring Officer to consider the appropriate body to which individual recommendations are/should be directed and, where appropriate, refer those recommendations to those bodies. The outcome of this process shall be reported to Cabinet when it receives the reference report from this Committee on the outcome of this enquiry.

PORTFOLIO HOLDER COMMENT(S) AND RECOMMENDATION(S) TO CABINET

The response of the Planning Portfolio Holder is as follows:-

"I look forward, as the new Portfolio Holder for Planning, to working with the Planning Service to bring forward an action plan to deliver on the recommendations in this report. That action plan will be brought back to the Resource and Services Overview and Scrutiny Committee, working alongside the Audit Committee. We have already seeing big improvements in the work of our Planning Enforcement team in the last few months and I am confident that we can build upon these going forward."

RECOMMENDATIONS TO CABINET:

That the recommendations made by the Resources and Services Overview & Scrutiny Committee be considered and that the response of the Planning Portfolio Holder thereto be endorsed.