

Ward: N/A

Review of Changes to Planning Enforcement

Report by the Director for the Economy

1.0 Summary

1.1 Following a JOSC review of the effectiveness of planning enforcement a number of recommendations were put forward to improve the delivery of the planning enforcement role to improve public's confidence in the planning system. One of the recommendations emerging from two enforcement workshops held by a JOSC working party at the end of 2013 was to have greater involvement of the Building Control Section. It was agreed that from the 1st April the Councils Building Control Section would take a more proactive stance to ensure adherence to the approved planning drawings and this report reviews the effectiveness of these changes.

2.0 Background

2.1 The Committee will be aware that it has raised concerns about the effectiveness of planning enforcement previously. An initial review undertaken in 2011 and a Working Group was established and all of its recommendations were subsequently agreed by the Joint Strategic Committee with the exception of Recommendation No. 2 – *“To consider providing additional funding to employ extra Planning Enforcement Officers”*.

2.2 The lack of resources in Planning to deliver what was considered to be a more effective enforcement service and in particular an ability to take a more proactive approach to prevent breaches occurring prompted a further JOSC review in 2013. This further review was prompted by two cases where breaches of planning control had not been identified until late into the building project. As a result the Planning Committee was forced to make difficult decisions about the level of harm caused and to consider whether it was expedient to demolish dwellings which were substantially built.

2.3 Following the JOSC meeting on the 13th January a request was made to the Chairman of both Planning Committees to set up a Member Workshop to investigate the matter prior to deciding whether to add this issue to the future JOSC work programme. A workshop was set up on the 1st July (delayed following the May elections) and included JOSC Members and Officers from Development Management and Building Control. The initial workshop considered the scope of any review, the discretionary nature of planning enforcement and the need to consider the expediency of any action. The key points identified were that:

- (i) There should be an earlier identification of breaches of planning control ideally by Building Control Officers to avoid Planning Committee having to consider the use of enforcement too late in the development process.
- (ii) There should be greater publicity of the need for planning permission and examples of where enforcement action is successful to improve the public's confidence in the planning system. Ideally a more pro-active enforcement service was required.

- 2.4 In considering the role of Building Control to check compliance with planning approvals the Building Control Manager explained the potential difficulties this could cause in terms of remaining competitive and ensuring a balanced trading account. In this respect the Building Control Manager was concerned that developers may be more likely to use Approved Inspectors to avoid more careful scrutiny and that checking compliance with planning drawings was not the primary role of the Service and could not be a cost that could be recovered through the building regulation fees. As a result this could have budget/resource implications for the Service. However, the Building Control Manager accepted that Building Control Officers had an important role to play being the initial 'eyes and ears' for Development Management.
- 2.5 The initial workshop agreed an approach between Development Management and Building Control whereby 'higher risk' development sites and controversial applications could be 'flagged' during the planning process ensuring a greater degree of checking at the Building Control stage. This would include infill sites where the dimensions to side boundaries was of particular importance. It was also agreed to carry out further investigations to determine the approach of other authorities and whether any Councils had considered Development Management paying the Building Control Service to act as its agent checking compliance with the approved planning drawings as this would help to overcome resource/budget issues.
- 2.6 Following further research the second enforcement workshop was held on the 25th September 2013. Following a review of other authorities it was clear that some Councils do undertake greater checks at the Building Control stage, in particular that the plans correspond with the approved planning drawings, but few authorities had formalised this approach. There were also no examples of Building Control Officers checking sites controlled by Approved Inspectors and being directly paid by Development Management to undertake planning compliance checks.
- 2.7 The conclusion of the second workshop was that most of the smaller development sites could be checked by Building Control Officers to ensure general compliance in terms of setting out and general conformity with the approved planning drawings. It has been agreed that this would start on a twelve month trial period starting from 1st April 2014. As indicated previously, the key difference to other Local Authorities that have been approached is that the process would also include sites that have been checked by "Approved Inspectors". This would help to ensure that local builders see that the initial check process is undertaken on all sensitive sites regardless of who is undertaking the building regulation checks.
- 2.8 Other matters were discussed during the Enforcement Workshop and this included the need to require all applicants to submit a survey drawing of new development

sites and include dimensions to adjoining boundaries. There is a need to revise the validation requirements for all applications and this can ensure that these requirements are necessary to validate any planning application. One of the earlier recommendations of the JOSC Working Party was that there should be greater publicity given to breaches of planning control. Unfortunately, where Press Releases have been prepared, the local media, quite often, do not run the story. Nevertheless, there was still a need to publicise more high profile cases and examples of effective enforcement action could be given on the Council's website.

- 2.9 The scope to be more proactive and provide greater publicity around the need for planning permission would be limited by current staff resources. Publicity around relaxing planning regulations has not helped the situation as many residents have assumed that various householder alterations/extensions do not require planning permission.

3. Review of Planning Enforcement – Current Position.

- 3.1 Since 1st April 2014 the Councils Building Control Section has been undertaking additional site monitoring of cases identified as 'sensitive' either in terms of the restricted dimensions of the site or cases where there were particular issues raised during the planning process. The number of such cases has been limited but the trial has clearly raised awareness with local builders. At the Building Control validation stage of the process Building Control Officers have been able to predict potential risk cases and have been able to advise builders at an early stage that planning issues need to be considered and outstanding conditions addressed.
- 3.2 Changes to standard letters issued by Building Control have raised awareness that plans have to be in accordance with the approved planning drawings and this is followed by verbal checks with builders at the start of the building project. The Building Control team is also more aware of planning issues and in particular are more aware of any planning implications if amendments to plans are required in order to comply with building regulations (for instance requiring opening windows to improve ventilation may breach a planning condition to avoid overlooking). Additional training between Building Control and Development Management staff has also been identified as beneficial and is planned for later in the year.
- 3.3 At the present time no complaints or negativity has been received from builders to the greater compliance checking and as yet no difficult enforcement cases have been identified and reported to either Planning Committees. In terms of specific cases the following case studies highlight some of the additional compliance checking that has been undertaken:

Former Parcel Force site, Brighton Road Shoreham

The Building Control Manager has made several site visits even though it is an Approved Inspector project. The developer has been fine with this arrangement and it has helped a neighbour (one of the houseboat owners) the Environment Agency (EA) and the case officer discharge planning conditions. Whilst, it is still at an early stage in the construction process the builders were advised of the importance of discharging pre-commencement conditions. Early site checks also identified problems with site levels which has alerted the builders and the EA to the need for revised levels to take into account potential flood risks with the public hard.

5 Detached Dwellings – Northbrook Farm Titnore Lane

The sensitivity of the site was identified by the Planning Officer resulting in the setting out of the site being carefully checked with full knowledge and assistance of the contractor. The builders had some difficulty identifying the site boundaries and correct site layout but setting out agreed in consultation with the case officer and the development has continued without concerns about setting out and without delays to the project.

3.4 Other changes have been considered including:

- Introduce a requirement for Planning Officers to place a '**property note**' into the Planning UNIFORM software and complete a pro-forma which is held on the Councils Electronic Document Management System (EDRMS) for all cases where negotiations suggest there maybe problems. Judgement will be needed here to include only certain key cases as the process will lose all value if every planning application is flagged. It may be necessary to establish some criteria to assist in determining those cases that require additional monitoring.
- The front of each Building Control file to be clearly marked to identify the potential issues that might need addressing (drainage concerns or setting out issues) for the case officer. These can then be checked at the commencement/inspection stage with the builder/contractor/developer and a brief record will be added to the Building Control inspection.

3.5 The above changes would help to formalise the current revised procedures. Nevertheless, the trial has demonstrated that closer co-operation between Planning and Building Control can help identify early problems and avoid subsequent enforcement problems. This is not to say that this co-operation has not happened in the past but it was on more of an ad hoc basis and the current arrangements do help to focus attention on a few specific cases where it is identified that problems may occur as well as encouraging builders at an early stage to check planning drawings and ensure planning conditions have been discharged.

3.6 Unfortunately, during the period of the trial the Councils Senior Planning Enforcement Officer has been on maternity leave and it was not possible to recruit temporary cover. As a result the enforcement team has been depleted and has not been able to take on some of the proactive enforcement that JOSOC has previously felt was important. The Senior Officer has now returned to work and has recently written to all Worthing estate agents to remind them of the legislation relating to the number and time periods allowed for sale boards.

4. Finance

4.1 It was anticipated that Building Control may need to re-charge Development Management for undertaking a compliance role. However, the small number of cases where significant additional time has been taken on site has not required any re-charge. This will be reviewed on a regular basis. As indicated previously it is hoped that overall the additional compliance checking will be cost neutral due to the fact that breaches can be identified at an early stage in the construction process and if the development is altered to comply with the approved planning drawings, it

would save time avoiding retrospective planning applications and possible enforcement action. It would also make it easier for Planning Committee to consider the expediency of enforcement action if changes are more minimal and there is less financial cost to the developer.

5.0 Recommendation

- 5.1 The Committee is requested to note the report and to endorse the approach adopted since 1st April 2014. Additional compliance checks by Building Control staff have been beneficial and it is recommended that these will continue and the further changes mentioned in the report at paragraph 3.4 will be adopted to provide a more formal recording procedure of cases that need closer inspection and compliance checking by Building Control Officers.

Local Government Act 1972

Background Papers:

Minutes of JOSC Workshops held on 1st July and 25th September 2013.

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Schedule of Other Matters

1.0 Council Priority

1.1 To deliver improved customer service.

2.0 Specific Action Plans

2.1 By utilising Building Control Officers to undertake planning compliance checks this would provide a more efficient service.

3.0 Sustainability Issues

3.1 Matter considered and no issues identified

4.0 Equality Issues

4.1 Matter considered and no issues identified

5.0 Community Safety issues (Section 17)

5.1 Effective enforcement is important to ensure that Planning Law and other legislation is complied with by the local community.

6.0 Human Rights Issues

6.1 Matter considered and no issues identified

7.0 Reputation

7.1 An effective enforcement service can help to enhance the reputation of the Council by protecting the local community from inappropriate development that may be visually unacceptable and cause a loss of amenity.

8.0 Consultations

8.1 Matter considered and no issues identified. A consultation of residents associations was undertaken as part of the original Enforcement Review.

9.0 Risk assessment

9.1 Any areas of risk are identified within the attached report.

10.0 Health & Safety Issues

10.1 Matter considered and no issues identified

11.0 Procurement Strategy

11.1 Matter considered and no issues identified

12. Partnership working

- 12.1 The report from the Working Group is a joint report and the recommendations relate to a joint enforcement service.