

**Brighton & Hove City Council**

**For general release**

**Meeting: Overview & Scrutiny Organisation Committee**

**Date: 10 March 2008**

**Report of: Director of Environment**

**Subject: Planning Enforcement**

**Wards affected: All**

**1. Purpose of the report**

1.1 To outline the general procedures with regard to planning enforcement and inform Councillors about the structure of the Development Control Team in relation to enforcement.

**2. Recommendations**

That this report **be noted**.

**3. Background**

3.1 Without planning enforcement, unscrupulous or unaware individuals or developers would be able to carry out development – be it building works or changing the use of land or buildings - without challenge, thereby bringing the whole planning system, which exists to control the use of land and buildings in the public interest, into disrepute. However, it is not an offence to carry out development without consent, and planning enforcement is a discretionary power.

3.2 The power for councils to serve Planning Enforcement Notices stems from Part VII of the Town and Country Planning Act 1990. It is not a mandatory power; councils are urged to take enforcement action only when they regard it as expedient and necessary in the public interest. Therefore, in considering any potential enforcement action, the decisive issue for the council is whether the breach of planning control unacceptably breaches

planning policy or public amenity sufficient to justify such action in the public interest.

#### **4. National debate about Planning Enforcement**

- 4.1 OSOC received a report at its meeting on 11 April 2005 which outlined the general procedures in relation to planning enforcement. At that time it was agreed that representations should be made to the The Local Government Association and government with respect to amendments to enforcement legislation and procedures to improve its effectiveness. Accordingly the then Development Control Manager sent a letter to the Office of the Deputy Prime Minister. The responses were acknowledged but did not move the debate any further forward.
- 4.2 Since that time the Department of Communities and Local Government has published a Review of the Planning Enforcement System in England (November 2006). That review made four key recommendations. Firstly, to continue to do research and benchmarking on best practice in enforcement. Secondly, to develop up to date guidance for magistrates to assist when dealing with enforcement cases. Thirdly, to review and update Planning Policy Guidance Note 18: Enforcing Planning Control (PPG18). Finally, research to be commissioned to set in place a procedure for monitoring if buildings are being built in accordance with permissions and to monitor conditions.

#### **4. Planning Enforcement Procedures**

- 4.1 The Council receives 800 complaints per year, mainly from local residents or Councillors, about alleged unauthorized development. All are investigated. Some of these complaints cannot be progressed, for example, if initial investigation reveals that the works being complained about already have planning permission or do not need it. Other complaints may be vexatious or unfounded.
- 4.2 A 'normal' planning investigation will start by the acknowledgement of the complaint to the objector, with the enforcement officer perhaps requesting any further information needed at this stage. The identity of the complainant always remains confidential throughout. The enforcement officer will then check the planning history of the site and make a site visit. In a few cases this will be sufficient to ensure that the unauthorized works or use stops and the case can then be closed. In other cases negotiations may achieve an acceptable compromise or a retrospective planning application will be submitted and subsequently approved.

- 4.3 However, many cases are far more complex. People may be uncooperative or elusive, it may be difficult to gain access into sites or collect evidence about unauthorized uses, or promises to stop works or uses may not be kept. But before an Enforcement Notice can be served officers must have clear evidence of the breach of planning control, which has to be specified in the formal Notice, and gathering this evidence can be time-consuming.
- 4.4 An Enforcement Notice must be served on everyone who has a legal interest in the site. In addition to specifying the breach of planning control and the reasons for issuing the Notice, it will state what has to be done to remedy the breach and give a date when these requirements must be met. The Notice usually comes into operation 28 days after it has been served, but before it is effective anyone who has received the Notice can lodge an appeal to the Planning Inspectorate.
- 4.5 The making of an appeal has the effect of suspending the requirements of the notice until the appeal is determined or withdrawn, which, if the appeal is dealt with by a hearing or inquiry, can delay compliance with the notice by between 6 months to a year. If an enforcement notice is not complied with, then the next course of action is for the council to start prosecution proceedings in the Magistrates' court. Although this process can be time consuming and the outcome uncertain a breach of an enforcement notice is an offence of strict liability and to prosecute for such an offence demonstrates that the Council takes its enforcement responsibilities very seriously.
- 4.6 From the above it can be seen that the service of an Enforcement Notice may not always be the most appropriate way of resolving a breach of planning control. This is why officers will try to resolve the issues by negotiation or persuasion, but will use the Council's formal powers to serve a notice when this has not been possible. Powers do exist to take more immediate action, by way of a Stop Notice, but this is recommended only for the most serious and harmful breaches of planning control.
- 4.7 There are other formal notices that can be served as appropriate, for example, Breach of Condition Notices for when conditions on planning permissions have not been complied with, Listed Building Enforcement Notices, Advertisement Discontinuance Notices and Section 215 Amenity Notices. Again, the power to serve these is discretionary.
- 4.8 Much of this information is contained in a leaflet published in January of this year. It can be found on the B&HCC website. The leaflet is intended to

outline and explain the work of the Planning Investigation and Enforcement Team. It is attached as Appendix 2 to this report.

## **5. The Council's Planning Investigation and Enforcement Team**

- 5.1 Until December of 2007 the responsibility for investigation and enforcement had rested within the multi-disciplinary Area Planning Teams. There were two Enforcement Officers' posts within each of the Teams. As part of a management re-structure and review of the Development Control Service at the end of 2007 it was recognized that the Planning Investigation and Enforcement Team needed to be rationalized in order for the service to be more responsive and in order to improve relations with stakeholders. As part of the review the post of Planning Manager: Investigation and Enforcement has been created. This has been advertised initially as a 12 month contract, but with an expectation that the post will become permanent. Interviews are due to take place on the 7<sup>th</sup> March 2008.
- 5.2 The new Team manager will have a number of priorities on taking up the new position. Firstly, to review the current procedures and processes for the management and handling of complaints and investigations. Secondly, to participate as a stakeholder in agreeing the framework for the Corporate Enforcement Policy, reported to Policy and Resources Committee on 7<sup>th</sup> February 2008. Thirdly, to engage in a joint process of consultation with Members in order to determine and agree a Policy on Planning Enforcement.
- 5.3 This approach is in accordance with the Corporate approach outlined in the report to Policy and Resources Committee in February of this year and agreed for consultation.

## Appendix 1

<b>Meeting/Date</b>	<b>Overview and Scrutiny Organisation Committee 10 March 2008</b>	
<b>Report of</b>	<b>Director of Environment</b>	
<b>Subject</b>	<b>Planning Investigation and Enforcement</b>	
<b>Wards affected</b>	<b>All</b>	
<b>Financial implications</b>		
Finance officer consulted:		
<b>Legal implications</b>		
The relevant legislative background to enforcement procedures is outlined in the Report, It is not considered that any adverse human rights implications arise from the Report.		
Lawyer consulted: Hilary Woodward ext 1514		
<b>Corporate/Citywide implications</b>	<b>Risk assessment</b>	
Appropriate and effective enforcement activity assists with the delivery and implementation of the of the Local Development Framework objectives. It can also be a mechanism for shaping communities.	Developing a Planning and Investigation Enforcement Policy could be used as a tool to assist in risk assessment.	

<p><b>Sustainability implications</b>  Effective enforceemnt is one of the planning controls which can help towards shaping communities.</p>	<p><b>Equalities implications</b>  If applied consistently there should be no equalities implications</p>
<p><b>Implications for the prevention of crime and disorder</b>  None identified</p>	
<p><b>Background papers</b>  DCLG, Review of the Planning Enforcement System (November 2006)</p>	
<p><b>Contact Officer</b>  Jeanette Walsh, Development Control Manager Ext 2195</p>	
<p><b>Appendices</b>  Appendix 2: Enforcement leaflet</p>	

