



Report Title: **Planning Enforcement Project Update**

Forward Plan reference number (no applicable):

Report of: **Eubert Malcolm Service Manager Enforcement Response**

Wards(s) affected: All

Report for: **Non Key Decision**

**1. Purpose** To update committee Members on the progress of the planning enforcement Project

**2. Introduction by Cabinet Member (not necessary)**

**3. Recommendations**

To note progress of the planning enforcement project

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Contact Officer: **Brian Ellick Interim Team Leader Planning Enforcement**

**4. Director of Finance Comments**

**5. Head of Legal Services Comments**

**6. Local Government (Access to Information) Act 1985**

## **7. Strategic Implications**

7.1 To reduce the historical backlog of planning enforcement open cases and enable an improvement in planning enforcement performance.

## **8. Financial Implications**

8.1 The project is currently being funded by salary under spends across the business unit. Recruitment following restructuring of the enforcement service is expected to allow continued funding until the end of December 2007.

## **9. Legal Implications**

9.1 It should be noted that the Council may face the potential of having abuse of process arguments raised on behalf of defendant's for undue delay in the Council bringing prosecution action against land owners and occupiers especially when many years have lapsed after the initial Enforcement Notice was served without any particularly persuasive reason. It has been suggested in leading case law however that this argument should only be successful in exceptional circumstances. Since the implementation of the Human Rights Act 1998, direct regard should also be had to Article 6(1) of the European Convention for the Protection of Human Rights and the related Strasbourg jurisprudence which states, in broad terms that in the determination of a person's obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time and Article 6(3) sets out a list of what are described as minimum rights which must be afforded to any one charged with a criminal offence. These include the following:

- (a) to be informed promptly, in a language he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence.

## **10. Equalities Implications**

10.1 Providing an effective planning enforcement service will help ensure fair and equal outcomes for all service users.

## **11. Consultation**

11.1 No consultation apart from head of finance and legal services

## **12. Background**

12.1 The Planning Enforcement Project commenced in January 2007 and has been running for nine months. The Project was the result of a proposal put forward to Planning Application Committee (PAC) to reduce and manage the open planning enforcement cases by two thirds within four to six months.

12.2 In order to better manage the open cases the project was broken into three phases. At the start of the project there were a reported 1531 open cases. At the end of October 2007 there were a reported 711 open cases.

12.3 The process for closing any case within the project requires authorisation from either one of the two heads DC. It was agreed by Development control (DC) that in the first

phase project 20 cases per week could be referred over to the two heads of DC for closure.

### **PHASE 1 FOUR YEAR RULE**

12.4 Under the four year rule, any case where work was carried out over four years ago is immune from legal action.

12.5 In the first phase of the project 489 cases were originally deemed to fall within the four year rule, however after close examination of each case a percentage of the cases were deemed not suitable to close under this rule and as a result required further investigation.

- 495 cases received
- 311 cases closed (immune)
- 178 requiring further enforcement investigation

### **PHASE 2**

12.6 Phase two addressed cases that were received from 2004 - 2006. As the project moved into phase two there was a reduction in the amount of cases referred to the two heads of DC for closure. This was due to cases requiring further investigation into the alleged breach and more enforcement action being taken.

- 1036 Cases received
- 437 Cases closed
- 559 Cases Open

### **PHASE 3**

12.7 Phase 3 was to deal with the remaining cases, and would effectively incorporate the regular cases received on a daily basis. Phase three is envisaged to address the regular cases which are received daily. These cases are the new complaints received from January 2007 until present. Once the caseload in phase 1 & 2 are deemed manageable then the regular cases received will be incorporated into the phase 3 of the project.

- Cases received 759
- Cases closed 458
- Cases open 301

### **Overview phases 1& 2**

12.8 To date 820 cases in total have been closed on the project. This means that 53.56 % of the 1531 cases are closed. There is a remaining 711 cases (46.44%) which require further investigations. At least 90% of the remaining open cases have had some form of planning enforcement investigation action taken. There is an envisaged reduction

the amount of cases being closed due to cases in phase two requiring further investigation and enforcement action being taken.

12.9 The remaining open cases are being reviewed and will be dealt with in order of priority, namely:

#### **Priority 1**

12.10 Cases which have the most detrimental effect to the environment / amenity i.e. those that breach planning control regulations in relation to Article four areas, conservation areas, and listed / protected buildings.

#### **Priority 2**

12.11 Breaches which are unlikely to be granted permission without substantial modification to the development. These breaches could effectively be of a similar nature to the types currently being addressed in priority one.

#### **Priority 3**

12.12 Breach of Planning Control of a minor / temporary nature with limited planning concerns. These types of breaches would only require minimum remediation in order to comply with planning regulations and have a very limited negative impact on the local amenity.

12.13 On analysis of previous closed cases we envisage that at least half (355 cases) of the remaining 711 cases can be resolved by December 2007.

### **13. Conclusion**

13.1 Although it has taken longer than expected to reach the current milestone of closing 53.56 % of the original 1531 open cases. The project is continuing to progress successfully and we are continually reviewing our processes in attempt exceed the objective of closing two thirds of the open cases. During the course of this project a number of cases have been satisfactorily resolved without the need for Enforcement Notices or prosecution. A number of cases have been resolved through negotiation, removal of unauthorised, sheds, satellite dishes, fences and advertisements.

Closed cases:	820
Open cases:	711
Enforcement Notices:	100
S330:	70
TSN :	1
PCN:	7

#### **Recommendations**

- 13.2 To continue with the planning enforcement project until the end of December 2007.
- 13.3 To report back to PAC at the end of January 2008 to make further arrangements for management of planning enforcement activity.

**14. Use of Appendices / Tables / Photographs**