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Report of the Chief Planning Officer

Scrutiny Board (City Development)

Date: 21st April 2009

Subject: Update on the Management and Capacity of the Planning Compliance Service

Electoral Wards Affected: ALL

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

At the meeting of Scrutiny Board (City Development) held on 18th November 2008 Members considered and commented upon an update report of the Chief Planning Officer on the progress in developing the management and capacity of the planning compliance function. This report followed a detailed consideration of the issues in a report to the Scrutiny Board meeting of 22nd April 2008. Scrutiny Board requested a further update in Spring 2009.

This is a further report on work in progress, which sets out actions being taken focused around the themes of *improving the customer experience, building capacity, developing skills and links with area planning applications teams*. It also provides a brief overview of enforcement actions and outcomes during Quarters 3 and 4 of 2008/09. The report outlines the reporting mechanisms to elected members on key cases which commenced in December 2008 and the issues that have arisen from producing that and a subsequent report in Quarter 4. The report also outlines process improvements in the preparation of enforcement notices and prosecution instructions which are being introduced. Staff availability has had an impact on service delivery over Quarter 4. The report outlines the current position on recruitment and redeployment to meet agreed establishment levels.

Recommendation

Scrutiny Board are recommended to note the contents of this update report

1.0 Purpose of this Report

- 1.1 The purpose of the report is to update Scrutiny Board (City Development) on the actions being taken to implement changes to improve the process management and increase the capacity of the planning enforcement service. This follows an update report to Scrutiny Board at its meeting of 18th November 2008, focussing on the key themes of improving the customer experience, building capacity, developing skills and making closer links with the planning application teams. At the meeting in November 2008 Members noted the report and requested a further progress report in Spring 2009.

2.0 Improving the customer experience

- 2.1 The first report on key enforcement cases was issued to all Ward Members at the end of December 2008. The report provided information relating to some 230 cases comprising of matters;
- referred to us by Elected Members of the City Council and Members of Parliament;
 - that are the subject of Ombudsman investigation or are being dealt with through the Council's corporate complaints system and where a development is being monitored or the matter relates directly to an enforcement issue; and
 - Significant enforcement cases that we have identified due to the nature and impact of the breach, or level of public interest or which are linked to particular projects or initiatives involving other Council services.
- 2.2 The report received favourable responses from Ward Members in terms of the level of information provided. The process also identified other cases where Ward Members have become involved in the matter at a later date and the key cases list is being adjusted to include these cases.
- 2.3 The second report was due to be issued in mid February. However, this was not achieved due to a combination of staff availability issues and day to day case work pressures. The report was issued in mid March but due to the delay and staff time constraints was not fully updated. Feedback from Members has included expressions of concern about the delay in issuing the report; the omission of some cases with recent Member involvement; that old cases continued to appear although resolved/closed and some cases had not been progressed.
- 2.4 The key cases report was discussed at the Joint Officer / Member Working Group meeting on 23rd March 2009. It was agreed there that the interval period for issuing the report should be extended to two monthly with the next report to be issued to all Members by the 1st June 2009. To assist Members in their dealings with Parish and Town Councils in their wards cases referred by Parish and Town Councils are being added to the key case report from 1st April.
- 2.5 In line with the provision of information to Members on new planning applications received a schedule of new enforcement cases registered is being provided on the Intranet on a weekly basis. The information is provided in Ward name order and describes the alleged breach of planning control and the property address. As with

the lists of new planning applications the weekly lists of new enforcement cases will be retained on the Intranet for three months. The list of new enforcement cases is not being published for public access. It is considered that publicising a schedule of complaints would not be in the public interest since in almost 50% of the cases investigated no breach of planning control is found and in very many instances the person being investigated is not aware that any complaint has been made.

- 2.6 Processes are being embedded to ensure that timely responses are provided to complainants on the outcome of initial investigations and on what further action is proposed where an identified breach is ongoing. A monitoring report is now available to check on delivery of these notifications. However, continuing pressures on staff availability and an increase in workload compared to the same period in 2007/08 has resulted in performance on this aspect falling short of the proposed target of 90% of complainants being notified of the outcome of initial investigations within 3 weeks of submitting an enquiry. This is a key area for improvement in the first quarter of 2009/10.
- 2.7 The development of improved liaison with Parish and Town Councils is being introduced through the implementation of a Charter with Parish and Town Councils across Planning Services. Planning Compliance staff have regular contacts with a number of Parish and Town Councils about enforcement matters. However, it is recognised that this is an area where the service can be more proactive in keeping Councils informed on enforcement activity in their parishes, seeking opportunities to explain the policies and processes that underpin planning enforcement and gaining a better understanding of local issues and priorities. The processes to provide regular information to Parish Councils and to attend periodic liaison and briefing meetings with individual or groups of Parish Councils is being considered through the joint City Council/Town and Parish Council's working group which had its first meeting in February 2009 and is seeking to complete the Charter by the end of the Summer.

3.0 Building Capacity

- 3.1 The volume of new enforcement case work declined by some 6% overall in the calendar year 2008 whereas the number of planning applications submitted over the same period fell by 21%. However, the trend in new complaints received over the last quarter of 2008 and into the start of 2009 shows a 17% increase compared to the same period in the previous year. Overall in Quarter 3 (October – December 2008) new cases were up nearly 20% on the same period in 2008 and similar to levels recorded in the same quarter in 2007. Whilst case resolution rates in 2008 have equalled the numbers received over the year there remained over 1300 live cases in the system. A period of overtime working in November assisted in maintaining case resolution rates and in the preparation of enforcement notices but the upturn in new cases has restricted the achievement of a higher number of case resolutions. Actual case closure numbers have fallen significantly in Quarter 4 (January – March 2009) to about half the number received. Recent case reviews have identified some 70 cases that are resolved but require closing on our computer system. There are now over 1400 live cases in the system.

- 3.2 Staffing levels in the Compliance team remain a crucial issue to building capacity and delivering service improvements. A further vacancy in the section has occurred as a result of a retirement. Planning Compliance is a priority area within Planning Services and, in the light of this, the release of two permanent Compliance officer posts was agreed with effect from 06/02/09. The posts have been advertised first through the Council's redeployment process and interviews with two potential candidates have been held recently. The intention is to fill these posts as soon as possible with priority being given to internal candidates within the Council before seeking to recruit externally. An appointment has been made to a temporary compliance officer post, agreed for an initial period of six months on a secondment basis from within City Development. The officer has been in post for some four weeks. A long term sickness absence during quarter 4 also impacted on the capacity of the team to deliver its service.
- 3.3 As part of the review of team structures and staffing arrangements in Planning Services, taking account of the down turn in planning application numbers, a senior planner is being redeployed to the Compliance team for a period of six months. The officer will provide input into the preparation of enforcement notices and prosecutions, enforcement appeals and planning input into decisions on expediency. It is expected that the officer will be in post at the end of April. This arrangement is in lieu of the vacant senior compliance officer post on the structure. Despite recruitment campaigns it had not been possible to attract a suitable person to fill that vacancy. It has also been agreed that where there is capacity planners in the area teams will assist in handling enforcement appeals.
- 3.4 Due to these staffing issues individual officer case loads remain very high, now between 30 and 50% above the 150 case level referred to in the previous report to Scrutiny Board as being a typical officer case load nationwide. Our aim is to quickly bring individual case loads down to this 150 case level when the two compliance officer posts are filled and to aim for case loads of around 120, as this will enable a faster delivery of the service.
- 3.5 Speedier decision making on whether it is expedient to pursue actions in respect of more minor breaches will contribute to reducing the number of cases on hand at any particular time and allow efforts to be concentrated on the more serious breaches and more proactive compliance action to monitor major and sensitive developments. In taking decisions on expediency the Planning Service recognises that enforcement is a powerful negotiating tool that brings developers and property owners into discussion, which can, and often does, lead to the granting of a subsequent planning permission when all other attempts at negotiation by the planning authority have failed to elicit a response.
- 3.6 This approach should not be interpreted as being a licence for developers to ignore the planning application process. In practice it is not expected to lead to a significant increase in the numbers of matters that will not be pursued. In most cases such matters are minor or technical breaches or where the limits set for "permitted development" are slightly exceeded. Where a decision is being considered not to pursue a matter that is more significant than minor or technical breaches a process is being introduced whereby Members will be advised of the course of action being considered in their Ward and have the opportunity to bring forward any other relevant

information they wish to have considered or to ask for a review of the case by a senior manager. This will introduce checks and balances into the process.

- 3.7 The appointment of two locum planning solicitors to the Legal Services planning and development team is having immediate benefit in terms of advice and input in preparing enforcement notices and in consideration of whether matters are expedient to pursue further. The case list of all instructions to issue enforcement notices has been reviewed and updated and is being used for regular monitoring of case progress. This assists in managing those cases where there are legal or procedural questions about the expediency of taking enforcement action so that earlier decisions can be made to either discontinue an investigation or change the approach being taken by Compliance to address the issue.
- 3.8 Officers have jointly reviewed the processes of preparing and submitting instructions to serve enforcement notices. Instruction templates are being prepared that will assist Compliance officers in being “right first time” in assembling relevant information to enable enforcement notices to be checked and authorised by managers, and considered by legal officers, to minimise delay between first draft and service. The process will also address the way expediency of taking enforcement action in planning terms is considered and recorded within the computer system. It is expected to introduce the finalised templates in April.
- 3.9 The Prosecution service has been under some pressure due to a long term staff absence. The recruitment of additional staff is enabling planning enforcement prosecutions to now progress to Court. All cases referred for prosecution have now been issued or reviewed by lawyers and guidance provided on further evidence needed to progress them. A similar list of cases being considered for prosecution is being prepared and will be used by managers in both services to monitor case progression. In addition some joint training has been provided and further training on evidence is being provided in the next few weeks.
- 3.10 The use of the CAPS Uniform system has been expanded by the e-planning team to enable Compliance officers and the prosecution team to draft, transfer and amend prosecution Instructions and witness statements electronically. The system will enable a complete case record to be held electronically and enable easy reference to the history of court actions and outcomes, fines imposed and costs awarded. Prosecution solicitors are considering the draft templates to comment on any amendments they wish to see before the system is put into use.

4.0 Developing Skills

- 4.1 Addressing the skills gap within Planning Compliance is a key objective for service improvement. The training and development of existing and new staff is an essential component of this objective. Further training has taken place in the form of planning policy and practice updates and negotiating skills, both shared with planning officers. Training on the consideration of the validity and value of evidence gathered for use in prosecutions and the legal process of disclosure of evidence is ongoing. Training on enforcement basics for planning officers and new compliance staff is to be arranged, the timing to link in with the start of new compliance staff. A senior compliance officer

has attended training on staff supervision and development for women first line managers.

5.0 Creating links better links with planning applications teams.

5.1 Effective working relationships between compliance officers and planning case officers exist on a case by case basis. The identified principal planning officer in each of the area teams is used as first point of contact by compliance officers in cases where a local planning input is required to ensure consistency of approach. Better links are still required to embed planning compliance within the development management process. Regular meetings with area planning teams to discuss compliance issues in the area, identify priorities and obtain early involvement in potential problem sites are proposed but this aspect has been held back by staffing in Compliance and are a priority area for action as new appointments are made, freeing up management time from case work activities.

6.0 Update on Enforcement Actions and Outcomes

6.1 During Quarter 3 of 2008/09 356 new cases were received and 334 cases resolved. During October 184 new cases were received, some 50% above the monthly average. This has had a knock on effect on case resolutions and the speed in which new cases could be investigated. In Quarter 4 overall 354 cases were received but only 165 cases were resolved.

6.2 Enforcement and other Statutory Notices

6.2.1 In Quarter 3 12 enforcement notices and 4 Breach of Condition Notices have been served. 32 Enforcement Notices have been drafted and authorised for consideration by the Chief Legal Officer. (6 notices relate to garden extensions into the Green Belt on the same housing development). In Quarter 4 12 enforcement notices and six breach of condition notices have been served. Nine enforcement notices have been drafted and authorised.

6.2.2 In Quarter 3 11 enforcement appeals were received and 8 were resolved. 3 appeals were allowed on their planning merits and planning permission was granted; 2 appeals were dismissed; 2 were withdrawn following negotiation and extension of compliance periods and 1 was not validated by the Planning Inspectorate, resulting in 5 of the 8 enforcement notices appealed against now being in effect. In 1 case the notice is being complied with and in a second prosecution proceedings are being taken for failure to comply with the notice in the stipulated period. The remaining sites are being monitored for compliance within the set periods. In Quarter 4 6 appeals were received and 7 resolved. Five appeals were dismissed, one was withdrawn and the enforcement notices are now in effect. One appeal were allowed and planning permission granted for the development.

6.2.3 Overall in 2008/9 15 out of 21 enforcement appeal decisions were dismissed by the Inspectorate giving a success rate of 71%. By comparison some 69% of planning application appeal decisions were dismissed in 2008/9.

6.3 Prosecutions

- 6.3.1 During Quarter 3 two cases were considered by the Court, both relating to non compliance with enforcement notices. In one a fine of £2000 was imposed and costs of £3000 were awarded to the Council. In the other case the offence has been admitted and the case has been adjourned for consideration of sentence. A press release will be issued once the outcome of the second case is known.
- 6.3.2 Instructions have been sent to the Chief Legal Officer relating to 12 offences (7 for non compliance with enforcement notices, 3 relating to displays of advertisements and to 2 for non compliance with S215 untidy land notices).
- 6.3.3 Information on Quarter 4 is awaited and will be reported verbally to Members at the meeting.

7.0 **Recommendation**

- 7.1 Scrutiny Board are recommended to note the contents of this update report .

Background papers

Report to Scrutiny Board 22nd April 2008 “Management and Capacity of the Planning Compliance Service”

Report to Scrutiny Board 18th November 2008 “Progress Report on the Management and Capacity of the Planning Compliance Service