



Report of the Chief Planning Officer

Scrutiny Board (City Development)

Date: 10th November 2009

Subject: Planning Enforcement Service – Update Report

Electoral Wards Affected:

All

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Purpose of this Report

- 1.1 This report provides a further update to Scrutiny Board (City Development) on actions being taken to increase capacity in the planning enforcement service and improve process management to provide a faster throughput of cases and improve the responsiveness of the service to its customers. Scrutiny Board (City Development) first received a report on the planning enforcement service at its meeting of 22nd April 2008. Update reports were then considered at the Scrutiny Board meetings of 18th November 2008 and 21st April 2009. At the April 2009 meeting Members noted the contents of the update report and requested a further update report in the new municipal year.

2.0 Enforcement action and outcomes

- 2.1 The planning enforcement service has a number of successful outcomes in some high profile matters since the last update to Scrutiny Board and instructions to the Chief Legal Officer to issue enforcement notices are at a higher level than in previous quarters. A summary of actions and outcomes is set out below:

2.2 Enforcement and other Statutory Notices

- 2.2.1 During the six months of Quarters 1 and 2 of 2009 32 enforcement notices and 8 Breach of Condition Notices have been served. Also 2 Temporary Stop Notices were served and an injunction obtained to continue the effect of a Temporary Stop Notice in respect of use of land as a travellers site at Rothwell. 63 enforcement notices have been authorised for consideration by the Chief Legal Officer. These include 17 sites on two streets in Barwick in Elmet and West Ardsley involving garden extensions into

the Green Belt and 7 long stay car parks in the Holbeck area which are operating contrary to planning policies.

2.2.2 18 appeals against enforcement notices were received in the period and 17 appeal decisions were made, of which 13 (76%) were dismissed. Important dismissed enforcement appeal decisions include repair and restoration work at Mike's Carpets in Armley which is a key listed building in the West Leeds Gateway; to secure the removal of a large decked forecourt area to a restaurant in Pudsey and to progress the demolition of a house in the Fearnville's (East Leeds), which has been built larger and taller than approved. Of the four appeals allowed three had permission granted on their planning merits, though in one case conditions were imposed requiring the removal of harmful aspects of the development. In the fourth case the Inspector concluded that the extent of deviation from the approved plans, given their lack of details, did not amount to a breach of planning control. The Inspector also made an award of costs to the appellant in this case. Of the 13 appeals dismissed nine are still within the compliance periods, three have been complied with, one is now subject of prosecution action. A further six appeals were withdrawn or were invalid on receipt by the Planning Inspectorate. Of those, five notices are now in effect and in one case the notice was withdrawn because information came to light as to the lawfulness of the development.

2.3 Prosecutions

2.3.1 In the half year eight prosecution cases were brought before the Courts. Four resulted in convictions, three for non compliance with enforcement notices and one for the display of advertisement hoardings. The fines ranged from £16000 for multiple offences of non compliance with enforcement notices by two defendants where the breaches had not been remedied to £85 fines on two defendants where the matter had belatedly been dealt with before the Court hearing. Two cases remain adjourned at the end of Q2, one for sentencing pending the outcome of a legal challenge to a planning appeal decision and another for a trial scheduled for January 2010. In two other cases prosecutions were adjourned at the defendants' request and subsequently withdrawn on payment of the Council's costs where negotiated resolutions had been obtained. A total of £16770 was imposed in fines and £10,800 was recovered to the Council in costs. A further case is scheduled for a first hearing in November and three other matters are pending consideration by prosecution solicitors. Instructions are currently being prepared in respect of five alleged offences.

2.4 Publicity

2.4.1 In line with previous reports we have taken steps to publicise successful enforcement actions, particularly as a warning to others who are contemplating breaching planning controls. There has been some positive publicity in the press following the action taken at a Travellers' site in Robin Hood which involved a temporary stop notice, an injunction and an enforcement notice which is now at appeal. The prosecution of householders in East Leeds over a wall and garden structures resulting in substantial fines made the front page of the Evening Post with a supportive editorial comment.

3.0 Current Workloads

- 3.1 Workloads in Planning Compliance have not decreased in line with reductions in planning applications submitted to the Council. The table below shows the number of cases received and resolved over the last two and half years:

| | Cases Received | Cases Resolved |
|------------------|----------------|----------------|
| 2007/08 | 1500 | 1655 |
| 2008/09 | 1519 | 1265 |
| 2009 (Q1 and Q2) | 795 | 931 |

Whilst there had been an 8% fall in cases between 2006/7 and 2007/8 with only a very slight increase in the following year the trend is now of a slight overall increase in the number of new cases. Within the last year there have been significant fluctuations in the amount of incoming casework and when new cases peak this further contributes to the difficulty of case progression where no spare capacity exists. For example 96 new cases have been received between 1st and 19th October 2009. The figures show that overall the number of cases resolved over the 2.5 year period has exceeded the numbers received, but not by many and so there has been little impact on the total number of cases in the system over that period.

- 3.2 A full review of all open enforcement cases has been carried out and as result 534 cases were resolved in Q1 of 2009 compared to 400 received. In Q2 the numbers received and resolved were about even (396 received and 397 resolved) There are currently some 1500 cases in the system, which has resulted in very high officer caseloads averaging about 165 per case officer but with two officers having over 200 cases each. These workloads are unsustainable and result in a slow turn round and difficulties in both progressing actions and keeping people informed. The issue of keeping complainants informed of the progress of cases is the dominant cause of customer complaint and is a matter of significant frustration to both officers and elected members.
- 3.3 It has been necessary to undertake further periods of overtime working, financed by savings from vacant posts, to reduce the numbers of old cases in the system and latterly to maintain the level of case resolutions at the same level as incoming cases. Clearly this is not a desirable way of working in the longer term and will have budgetary implications once vacant post are filled and the officer returns from maternity leave.
- 3.4 A commitment has been made to resume the monitoring and enforcement of the additional controls over the display of landlords and property agent letting boards in the Headingley/Hyde Park area, now that a new Direction has been issued by the Secretary of State. This work, which has been in abeyance since the original Direction expired in late 2007, is due to start in December 2009. It will be a priority to embed the restrictions on advertising and the associated the Code of Practice for acceptable property advertisements in the operating processes of landlords and agents. This will require robust enforcement through prosecution actions during the 2010 letting season, involving the allocation of sufficient staff resources to undertake the task.

4.0 Building Capacity

- 4.1 Staff availability in the enforcement team still remains a key factor in the ability to deliver and maintain service improvements and effectively progress enforcement actions. The establishment level of the Compliance team is 13.5 FTE posts (Planning Compliance Manager, Principal Compliance Officer, 3 Senior Compliance Officers and 8.5 Compliance Officers. It has been agreed that, notwithstanding budgetary constraints across all Council services, the establishment level of the planning compliance service will be maintained. However, due to staff turnover, problems of recruiting suitably qualified and experienced staff and absences due to maternity leave and long term sickness absences the service is still not yet at establishment level.
- 4.2 One of the two vacant compliance officer posts was filled in May 2009 through the Council's redeployment scheme. In the absence of any other suitable candidates the second post was cleared for external advertisement, which attracted over 200 applicants. Unlike previous recruitment rounds, there were over 30 candidates with a number of suitable skill sets for the post. 9 candidates were interviewed and the successful candidate, who will take up the post in November, has long experience in the Police service and has recently undertaken a Masters Degree in Planning. The appointee will bring valuable experience of the Police and Criminal Evidence Act processes. An officer employed part time, who has been on maternity leave since January will return to work by December, at which point all compliance officer posts will be filled.
- 4.3 The secondment of a Senior Planner to a long vacant Senior Compliance Officer post has made a significant contribution to the increased number of enforcement and other notices served and in dealing with appeals. The post holder also provides planning input into reviewing cases to determine whether or not it is expedient to take any further action. The secondment was for an initial period of six months, starting in mid May. It is anticipated that the arrangement will continue with a further six month secondment from November 2009.
- 4.4 Long term sickness absences have been a continuing issue for the enforcement service. An experienced officer was absent for four months during Q1 and Q2 of 2009 due to an injury from a non work related accident. The officer is only now being able to resume a full range of duties. In the light of this absence a further Senior Planner was seconded to Compliance for a period of five weeks and was able to contribute to moving forward older cases.
- 4.5 A dedicated administrative resource had been made available to help make up case files; to collate information for performance reports and provide general administrative support to the team. Following the departure of that officer the logging of new cases and making up the case files is being carried out in the Development Enquiry Centre (DEC). This system is working well as most cases now arise through e-mail complaints, or by direct contact with DEC staff over the telephone or at the public reception desk. The new process has resulted in less time being taken by senior enforcement officers in setting up new cases. However, increasing workloads in the DEC, combined with levels of staff availability, can result in some temporary backlogs in the process delaying acknowledgements and new cases coming through to officers. A recent review of the administrative requirements across Planning Services has identified the need for a dedicated administrative resource in the Compliance section.

5.0 Keeping people informed

- 5.1 It is recognised that much still needs to be done to get to the point where we need to be on this aspect of customer service. Embedding a consistent approach by officers to updating complainants and keeping cases moving continues to be handicapped by the high case loads, as explained above. Reducing officers' case loads to more manageable numbers is therefore key to implementing a number of service improvements in a consistent and timely manner.
- 5.2 The Key cases report has been produced for Members on a two monthly basis for cases to the end of May, July and September with the next due for cases to the end of November. The September Key cases list contained some 270 cases, predominantly matters that members had brought to officers' attention or had subsequently expressed an interest in. The Key Cases list nonetheless contains less than 20% of all live cases in the system.
- 5.3 A supplementary document to the City Council's Charter with Parish and Town Councils has been drawn up setting out operational links between Parish and Town Councils and the Planning Service. The final draft sets out new arrangements whereby Compliance team will identify all enforcement cases arising from enquiries made by Parish and Town Councils where there has been a breach of planning control and provide regular updates on progress to Parish and Town Council Clerks, or other named contact, on the matters in their areas. Parish and Town Councils will indicate which of the case in their areas are important locally so that the City Council can take that into account in progressing individual cases. These cases will be included on the Key cases report so that Ward Members will be aware of those matters that are priorities for the Parish and Town Councils in their wards.

6.0 Ways forward to address the backlog of cases and to prioritise actions on new enforcement cases

- 6.1 The Joint Plans Panel, at its meeting of 19th October 2009, considered a report by the Chief Planning Officer and Chief Officer, Legal, Licensing and Registration on "Enforcement - Outstanding cases". The report set out suggestions for a way forward to tackle the backlog of cases that has built up and to then maintain case loads within manageable levels once all posts on the structure are filled, either by permanent appointments or long term secondments of staff. The report set out background information on staffing and workloads in the Planning and Legal Services dedicated to enforcement tasks or available to take forward prosecutions and provide legal advice.
- 6.2 The information on current resources and workloads in the Compliance team and the recent outcomes of enforcement actions are also included in this report. The main purpose of the report was to set out in outline proposals to address the current backlog of cases and set parameters for establishing enforcement priorities to take actions forward beyond the point of the initial investigation, which would be applicable to the older cases that remained in the system and to "new" cases, both now and in the future. Members of the Joint Plans Panel were invited to comment on the elements (set out in paragraphs 6.3 – 6.5 below) that together offer an approach to deal with the issues that have been identified. There was a consensus of view that significant breaches of planning control should be pursued rigorously otherwise confidence in the planning process, and in the Council that administers it, would be lost. Members agreed to the proposals as a basis for further consideration and added that enforcement case reviews with Members in all wards should take place over the next six months.
- 6.3 Additional resources

It is considered that in the current difficult financial position, with a significant budget deficit in Planning Services due to the sharp decrease in income (£800,000 down in planning fees after 6 months against target income in the budget) it is unlikely that additional resources can be made available to undertake the planning enforcement function. It is intended to staff up to the structure (13.5 FTE) and it may be possible to utilise some staff time from the area teams in the Planning Service. However, the reduction in establishment of 30 posts across Planning Services that has already occurred through various early leaver initiatives, secondments and by not filling posts as they are vacated, markedly reduces the scope for being able to do this without it impinging on the operation of other parts of the Planning Service. There is some suggestion that additional resourcing in both Planning Compliance and Legal Services may be possible through securing funding from the Area Committees. We will be preparing proposals for the Area Committees to consider.

6.4 Better case load management

To improve the throughput of cases greater rigour is required in determining whether or not it is expedient to pursue an alleged breach of planning control, both in terms of dealing with the backlog and in new cases. This would involve scrutinising new complaints to see if sufficient information is provided to enable the matter to be investigated in the first instance. The Council's leaflet on the operation of the planning enforcement notice provides guidance on the sorts of information required to enable an effective investigation to be made. Enquiry Centre staff can assist in this process when advising customers over the phone or at the reception desk and when screening incoming e-mail traffic. Once the initial investigation is completed it is important to make early decisions as to whether the matter will be pursued in the light of the evidence, closing them at an early stage where little evidence exists of a material breach, or where the identified breach is not causing significant harm. Where new evidence comes to light the matter can always be pursued at that time. If there is an identifiable breach a Planning Contravention Notice can be served at an early stage to ensure an entry is put on the Land Charges Register, which will warn potential purchasers of that a matter is under investigation.

6.5 Prioritising action

The Planning Service has a long established set of priorities for undertaking initial investigation which works well. However, there is no agreed process to inform what matters should be pursued as a priority once it has been established that a breach of planning control has occurred. It is therefore proposed to prepare a scheme of agreed priorities which will identify those issues that would apply city wide, such as protection of trees and Listed Buildings, or Green Belt protection in the outer areas and seek to address particular planning problems that are causing significant harm to the amenity of local communities. The establishment of a priorities list and a clear statement of what the Council will pursue would provide clarity and consistency in the approach taken in moving cases forward.

Officers have met Members from two wards to review all the current cases in those wards. This process has been helpful to both Ward Members and Compliance staff in giving Members a full picture of the current enforcement issues in their wards, in identifying priorities for action for compliance officers and in finding common agreement on those matters where it would not be expedient to take further action. It is proposed to invite Members from all Wards to meet with officers to undertake similar case reviews over the next six months.

6.6 Following the discussion at Joint Plans Panel officers will work up these proposals further as a basis for consultation with Members and with other stakeholders in the planning process including Town and Parish Councils and Area Committees as it is considered essential that Member approval and ownership is obtained if this issue is to be tackled successfully.

7.0 Recommendations

7.1 Scrutiny Board is recommended to:

- (i) note the contents of this update report and to endorse the approach set out in section 6.0 of the report to take forward measures to establish a clear set of priorities for taking enforcement actions and to establish a programme for dealing with the backlog of cases, utilising all available resources to assist in the process.
- (ii) endorse an approach being made to the Area Committees to seek funding for additional resources for planning enforcement and Legal Services to address current case loads.

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"

Report to Scrutiny Board 22nd April 2009 "Update on the Management and Capacity of the Planning Compliance Service"