

Meeting of: Cabinet

On: 25 September 2006

Agenda Item No.: 5a

Topic: Response to investigation into Planning Enforcement – Report from Scrutiny Panel

Type of Report: None Key decision.

Executive Summary:

The attached Action Plan sets out the progress made against each of the recommendations of the Scrutiny Panel in respect of its investigation into Planning Enforcement, the vast majority of which have now been implemented.

Those that have not been implemented are those with cost or significant resource implications.

The outstanding recommendations will, therefore, need to be dealt with through the forthcoming business planning and budget bids process.

Options:

To note the progress that has been made to date.

To note that the additional resources required to meet the outstanding recommendations of the Scrutiny Panel will form part of the forthcoming business planning and budget bids process.

Risks: If additional resources are not agreed, it will not be possible to implement Recommendation 11. In addition, it will not be possible to fully implement Recommendations 1 and 4 to the extent envisaged by the Scrutiny Panel.

Recommendation[s]: To note the report at this stage.

Background Papers:

1. Planning Enforcement Action Plan and appendices

Financial Implications: Not fully costed at this stage

Equalities Implications: None

Legal Implications: None

For further details please contact: Alan Southerby

**Braintree District Council
Planning Enforcement**

Scrutiny Panel Recommendations

ACTION PLAN FOR IMPLEMENTATION

Recommendation 1

Planning Enforcement to be more proactive.

Progress: Not yet implemented.

Comments: In order to implement this recommendation, staffing resources need to be enhanced. This will be done through the business planning and budget bids process in the Autumn 2006.

Recommendation 2

Keeping complainants informed.

Progress: Implemented.

Comments: A pro-forma has been designed for attachment to all enforcement cases to ensure that the Case Officer notifies complainants and other interested parties of the progress being made at all stages of an investigation.

Recommendation 3

Quarterly Case Monitor.

Progress: Implemented.

Comments: A report has been developed. This will be generated each quarter and distributed as required.

Recommendation 4

Produce and publish an Enforcement Manual.

Progress: Not yet implemented.

Comments: Work to be programmed as part of the business planning process, as additional short-term resources are likely to be required in order to implement this recommendation.

Recommendation 5

Dealing with persistent offenders

Progress: Implemented.

Comments: A process has been devised to ensure that repeat offenders' details are recorded to the extent that, regardless of which site or development is concerned, a first breach will merit a verbal warning, a second breach a written and final warning, a third breach will result in the issue of a Breach of Condition Notice.

Recommendation 6

Training workshops for Parish/Town Councils and others.

Progress: Not yet implemented.

Comments: To be arranged in early 2007.

Recommendation 7

Planning conditions to be readily available to Parish/Town Councils and others.

Progress: Implemented.

Comments: The Council's Electronic Document Management System (EDRM) and Web Access Module (WAM) enable all decision notices to be available on the Council's website. This ensures that the nature and extent of planning conditions are readily accessible by all.

Recommendation 8

Standard notification letter to be amended.

Progress: Implemented.

Comments: The standard letter notifying objectors of the outcome of an application has been amended to include reference to where decision notices can be inspected.

Recommendation 9

Improve compliance checks using Building Control Officers.

Progress: Partly implemented.

Comments: It is not entirely practical for Building Control Inspectors to undertake compliance checks. There is already a Building Control/Development Control liaison check carried out and Building Inspectors advise us if they find discrepancies on site by reference to their files. However, the system will be improved during the autumn of 2006 to ensure greater control of the reporting of discrepancies between Building Control and Development Control approved plans.

Recommendation 10

Area Committees to consider enforcement cases in public session.

Progress: Implemented.

Comments: Members can decide to consider enforcement cases in open session. Few enforcement cases are reported to committee. The majority of those that have been reported since the Scrutiny Panel made its recommendations have been considered in open session. The Case Officer will now include a comment as to whether he/she feels there are any reasons for the matter not to be heard in open session although the general policy is that they will always be included on the agenda as an open session item unless there are specific reasons why such matters should not be considered in this way. The advice of Democratic Services is sought.

Recommendation 11

Staffing resources to be reviewed.

Progress: Not yet implemented.

Comments: To be addressed through the business planning and budget bids process during the autumn of 2006. If additional staffing resources are agreed, this should include a third enforcement officer and dedicated line manager to act as supervisor and as a conduit between the enforcement team and the Head of Planning Control.

Alan Southerby
Head of Planning Control
September 2006

Appendix 1 – extract from Scrutiny Panel minutes, 25 January 2006

Appendix 2 – extract from Cabinet minutes, 3 April 2006

Extract of Scrutiny Panel Minutes of 25th January 2006

44 PLANNING ENFORCEMENT

INFORMATION: The Chair of the Scrutiny Panel presented the draft Scrutiny report into planning enforcement. He invited Mr Bore, Scrutiny Manager, to put forward one or two amendments to the report some of which were drafting errors and others had been proposed by witnesses.

Suggested amendments:-

Page 4 - under the heading of 16th November 2005 to include David Whipps, Council's Planning Solicitor from Holmes & Hills.

Page 7 - (Paragraph VII) include the words "immediate criminal" after "an" and before "offence" on the first line

Page 8 - 4th paragraph down include after the "Enforcement Officer" at the end of the first line "(frequently in conjunction with the Council's Solicitor)";

Page 9 - 2nd paragraph at the end of the first sentence after "application" include the words "where the imposition of conditions would make it acceptable in planning terms".

Page 9 - at the end of the penultimate paragraph delete wording after "(See Paragraph E below)" and replace with "a criminal prosecution may be undertaken in the Magistrates Court".

Page 17 - paragraph number 2 delete the words "non-compliance for" on the first line; Insert on the third line after the word "Regulations" the words "or non-compliance" and insert the word "previously" at the end of the third line after the word "has".

Page 23 - paragraph 3 - delete the words after "Case Monitor" and insert the words "in respect of each case" and include a further bullet point that reads "the complaint priority category".

With reference to the paragraph at the bottom of page 17, the Panel heard that the Head of Planning Control and the Council's Solicitor were comfortable about taking enforcement matters in public session. The Panel therefore agreed to add a further recommendation to the effect that the Area Committees should be encouraged to take items in public session.

Having considered the report and the above amendments, the Panel agreed that the Chair and Vice-Chair be authorised to approve the final report and recommendations to Cabinet. The Chair thanked all Members of the Panel for their support and contributions regarding the Scrutiny of planning enforcement and reminded Members that the issue of fly-posting would be further considered as part of the investigation into Environmental Protection/Street Scene enforcement.

DECISION:-

- (1) That, subject to the amendments detailed above, the draft report be approved.
- (2) That the Chair and Vice-Chair of the Scrutiny Panel, in consultation with the Scrutiny Manager, be authorised to approve the final report and the following recommendations for submission to the Cabinet: -
 1. The Planning Enforcement Section should become more proactive in its approach particularly with regard to checking compliance with the conditions attached to planning consents.

2. A more systematic process should be drawn up by the Head of Planning Control for keeping complainants informed at the following key stages of the planning enforcement process: * Acknowledgement of complaints; * Report on initial assessment, advising of action to be taken, if any; * Issue of Enforcement Notice, or outcome of other action; * Lodging of any appeal; * Final closure of investigation; and for giving regular updates to complainants in between these key stages where the case is a complex and lengthy one.
3. The Planning Enforcement Section should produce a quarterly Planning Enforcement Case Monitor in respect of each case containing: * the date the complaint was received; * the complaint priority category; * the nature and location of the alleged breach; * a brief summary of the current position. The Monitor should be circulated to District Councillors, Parish and Town Councils and Amenity Societies to keep them up to date on progress.
4. The Head of Planning Control's proposal to produce and publish a Planning Enforcement Manual should be welcomed and endorsed.
5. The Head of Planning Control, in consultation with the Council's Planning Solicitor, should set out guidelines for Planning Enforcement Officers when undertaking informal negotiations with determined offenders, or those persistent offenders who act in an anti-social manner, so that there is a clear boundary beyond which tougher and more formal enforcement methods come into play.
6. The Head of Planning Control should hold a training session/workshop for Parish and Town Councils and Amenity Societies on planning enforcement.
7. The introduction of the Planning Department's IDOX imaging system should be utilised in such a way as to ensure that the conditions of planning consents are readily available to the public, Parish and Town Councils and Amenity Societies.
8. The standard letter notifying the outcome of a planning application that is sent to persons, who submitted representations, should include a sentence indicating where the decision notice can be inspected.
9. Building Control Officers should take copies of planning permissions with them on site to check for obvious non-compliance.
10. The Area Committees be encouraged to consider planning enforcement cases in open session wherever possible unless legal advice suggests otherwise.
11. Staffing resources in the Planning Enforcement Section should be reviewed in the light of any decisions to accept the above recommendations. If further resources are allocated to the Planning Enforcement Section, the Head of Planning Control should draw up a series of indicators to measure the impact on performance.

Extract from Cabinet Minutes – 3rd April 2006**(b) Scrutiny Panel – 25th January 2006**
Investigation into Planning Enforcement

INFORMATION: Councillor Gyford, Chair of the Scrutiny Panel, introduced the recommendations of the Panel concerning its investigation into Planning Enforcement. He summarised the issues arising from the investigation and therefore the main focus of the recommendations as covering (a) the complexity and (b) the transparency of Planning Enforcement.

It became apparent to the Panel that the process was far more complicated than most Councillors and Members of the public realised and a very useful tool presented at the Panel's request was a flowchart explaining the various steps and stages involved in the process. The other main issue was that it appeared there was a lack of transparency due to the nature of enforcement. This sometimes flowed from the fact that officers had to make judgements behind closed doors and on occasions it appeared to the public that nothing was happening.

The recommendations of the Panel were therefore aimed at making the process easier to understand and more transparent. Councillor Gyford wished to record the thanks of the Panel to all those involved in the investigation.

In responding Councillor Scattergood, Cabinet Member for Planning and Rural Issues, welcomed the recommendations and stated that she would wish for all recommendations that could be implemented at no cost to be implemented as soon as practicable and for those with cost implications to be reviewed by herself and officers before reporting back to Cabinet with a plan of action.

DECISION: That the recommendations of the Scrutiny Panel be accepted. That those recommendations with no cost implications be implemented as soon as practicable. That those recommendations with resource implications be reviewed by the Cabinet Member for Planning in conjunction with the Head of Planning Control and the Chair of the Scrutiny Panel and that an issues/resources report and a plan of action be brought back to Cabinet by September 2006.