

Growth and Development Scrutiny Group

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| Cllr Jones | | |
| | Staffing levels | <p>Resources and capacity is kept under review. Additional posts have been created in recent years, including a Planning and Appeals Assistant, two Planning Technicians and a Contributions Officer. The creation of some of these posts has enabled a redistribution of work within the team, for example, the validation of planning applications now undertaken by the technicians was previously undertaken by the Principal Planning Officers. The Strategic Sites Delivery Officer post was also created with a particular focus on the allocation to the East of Gamston but has also been engaged in other major housing schemes within the Borough. In addition, agency staff and a consultant have been engaged to address resource issues within the team.</p> <p>Whilst there has been a growth in planning applications in recent years and increase in development taking place in the Borough, the number of Enforcement enquiries received each year has generally declined.</p> <p>Consultants have been engaged to undertake a health check of the Planning Service including assessment of workloads, resources and capacity. The report is due shortly, however, the initial views are that the dedicated enforcement resource is sufficient.</p> |
| | Capacity of Enforcement Team | <p>Cllr Jones made reference at the previous meeting to the Enforcement team operating at 50% capacity earlier in 2019. This was due to the unfortunate and unforeseen absence of one of the Enforcement Officers due to ill health. The officer did not return to work after the festive break and as with all absence due to illness, the situation will be monitored and where the absence is short term, we will endeavour to cover the work within the team. When it became apparent that the</p> |

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| | | absence of the Enforcement Officer would be a longer term issue, a decision was taken to employ an agency worker to provide cover. This in itself takes time but a suitable candidate was identified and started work with the Council in mid February. |
| | Departures from/changes to approved plans | It is acknowledged that there are occasions where development is undertaken and what is built departs from the approved plans to a greater or lesser extent. This may be due to a number of factors, including changes needed to comply with Building Regulations. In some instances, the changes may be small scale and either deemed to be within acceptable tolerances or not expedient to take action. Such enquiries often relate to extensions to domestic properties. Of the enquiries received in 2019/20 (235 in total) only around 15% were recorded as alleged non-compliance/not in accordance with approved plans. The outcome of these cases will include where work is found to be in accordance with approved plans, where the change is of a small scale so as to amount to within acceptable tolerances or not expedient to take action. Some may have been resolved through the submission of a revised planning application to regularise the changes to the originally approved scheme. |
| | Ensuring conditions are met | It is important that conditions of planning permission are complied with. Where a potential breach of condition is identified, either as a result of an approach by a member of the public or a Councillor, investigations will be undertaken and appropriate action taken where necessary to ensure compliance with the condition(s). |
| | Sharphill Wood/Edwalton Sustainable Urban Extension | Cllr Jones has raised a number of issues with regard to the development at Edwalton. The resolution of some of these issues has unfortunately been protracted, however, some of the issues are now being remedied and officers continue to monitor the progress of these issues. |

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| | | <p>Flooding arising from earthworks – Applications involving large scale residential development such as that at Edwalton will be accompanied by flood risk assessments and drainage strategies and will normally include the provision of sustainable urban drainage measures. The drainage strategy relates to the finished development and does not deal with drainage during the construction phase. It remains to be determined whether matters relating to surface water run off during the construction phase falls within the remit of the planning system or whether this amounts to a civil matter.</p> <p>Erection of Heras fencing and earthworks – the erection of the Heras fencing does not amount to a breach of planning control. The impact of this Heras fencing on the public right of way has been referred to Nottinghamshire County Council Rights of Way as this is not a planning/Borough issue. It has been established that the earthworks taking place within the land set aside for the community park involves storage of topsoil from elsewhere within the development which will then be used at a later date in gardens and landscaped areas. The storage of topsoil within the site was addressed in the submission of a Construction Management Plan, submitted to discharge a condition of the planning permission and is therefore authorised.</p> |
| | <p>Increase in number of applications and volume of large sites</p> | <p>Planning applications are categorised under three main headings, Major, Minor and Other development. Major development includes schemes where, for example, ten or more dwellings are proposed or the floor area to be created exceeds 1000sqm. Minor development involves schemes for less than ten dwellings or smaller extensions to commercial premises etc and Other development captures mostly householder extensions and smaller scale development. Minor and Other development is generally termed non-major development.</p> |

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| | | <p>In terms of the proportion of Major applications received, the proportion of Major applications has hovered around 3% - 4% of total applications received in recent years. The number of major applications has increased in recent years, particular in response to the work associated with and adoption of the Local Plan Part 2. In the period between 1 April 2019 and 31 March 2020 the Borough Council received a total of around 1400 valid applications (falling in the Major, Minor and Other categories), of which 65 (4.6%) were categorised as Major applications.</p> |
| Cllr Combellack | | |
| | Licensing | <p>These comments appear to relate to issues with licensing and disturbance from the operation of the pub which is not relevant to the matter being considered by the Growth and Development Scrutiny Group.</p> |
| | Environmental Health | <p>The comments in respect of AE Faulks appear to relate to a noise abatement issue which is not relevant to the matter being considered by Growth and Development Scrutiny Group.</p> <p>Church Farm, Hickling – this concerns a gulley and pipe shown on a plan to dispose of animal waste from a milking parlour. This was not provided and instead waste was transported from the site in a bowser. If the method of disposal of waste was a critical issue to the acceptability of the development, appropriate conditions would need to be attached to the planning permission.</p> |
| | Planning – timescales for action to be taken | <p>Cllr Combellack provides a number of examples where development has not been undertaken in accordance with approved plans resulting in what she describes as 'unacceptable housing and development' or where there have been delays in serving a formal notice. Where development is not undertaken in accordance with the approved plans, the property owner/developer does so at their own risk. The guidance is quite clear that any subsequent application must be considered on its</p> |

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| | | <p>merits, i.e. as if the development had not taken place. If development is unacceptable, the correct response would be refusal of permission and subsequent action to remedy the issue.</p> <p>The guidance in respect of investigating breaches of planning control advocates that a remedy should be sought through discussions and negotiation and that the service of a formal notice should be the last resort. The service of a notice can be frustrated by a number of factors, including the submission of a retrospective planning application seeking to regularise the situation or investigations to determine the parties on whom any such notice should be served. However, it is accepted that this is an area for further consideration to ensure notices are served in a timely fashion.</p> |
| | Lack of regard for Conservation Areas | The duty to have regard to the desirability of preserving and enhancing the character and appearance of the Conservation Area is applicable when considering any harm arising from a breach of planning control. This is a matter of judgement. |
| | Securing action | Again, the guidance is clear that action should be proportionate to the breach and any harm that arises. Stop notices/temporary stop notices are rarely used and should only be served where such action would be justified. |
| | Use of technology | Use has been made of photographs and video during the lockdown, however, this may not always obviate the need for a site visit. |
| | Para 4.5 of report | With few exceptions, development which is undertaken without planning permission is unauthorised. This does not mean that no action will be taken. There is an expectation amongst some residents that the Borough Council should take legal action when planning regulations are breached. This is not an option for the Council, legal action can only be taken when an offence has occurred, e.g. failure to comply with the requirements of an enforcement notice. |

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| | Para 4.23 of report | This paragraph needs to be read in conjunction with the following paragraph of the report which seeks to explain that enforcing planning regulations is not just about responding to complaints from residents. Planning officers are also involved in ensuring compliance with the regulations through, for example, determination of applications, discharge of planning conditions etc. We do rely to some extent on members of the public being our eyes and ears but as the report attempts to explain, where a breach may occur, it will not always result in action, it may not be expedient to do so or in the public interest. |
| | Para 4.26 of report | The suggestion is that officers should visit every site at least twice, once during the build and again on completion of the development. It would not be feasible to visit every site where development is taking place. |
| Cllr Thomas | | |
| | Scrutiny Process | There are a number of stages the Policy will need to go through prior to adoption by Council. Prior to the policy being referred to Council for adoption, it will be the subject of a report to Cabinet and a public consultation exercise. |
| | Policy | The Planning Enforcement Code of Practice is an advice note about how complaints will be investigated, it is not an adopted document. The policy will be an adopted document, which will supersede the Code of Practice. It is considered that a Policy would carry greater weight than a code of practice. The Policy would constitute a Local Enforcement Plan as required by Para 58 of the NPPF. |
| | Active Monitoring of Completions/Discharge of Conditions | First and foremost, it is the responsibility of the applicant/developer to ensure they comply with the conditions of a planning permission. The Borough Council does not have the resources to check all developments. Measures are in place and being developed further to proactively monitor major developments, currently the threshold is set at developments of 50 dwellings or more. |

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| | | <p>Where the planning permission is the subject of a Section 106 agreement, this will normally include obligations which require the developer to notify the Borough Council when specified events are due to occur or have occurred, e.g. first occupation.</p> <p>Other agencies may be involved in the process of discharging requirements of conditions or obligations within a section 106 agreement. Inspections may be undertaken to ensure that the work is completed to an acceptable standard but future maintenance of, for example, play equipment will be the responsibility of the management company where one has been established.</p> <p>The threshold of 50 homes is considered to be an appropriate threshold to trigger proactive monitoring. It is considered that this threshold captures the majority of major housing developments within the Borough, in particular all but two of the allocations in Local Plan Part 2 is anticipated to deliver 50 or more dwellings. It would not be feasible for checks to be undertaken on all developments, including those providing fewer than 50 dwellings.</p> <p>Building Control are not responsible for checking compliance with planning permissions.</p> |
| | Case Studies/examples - Investigating Breaches/Monitoring | Reference will be made to the cases referred to by Cllr Thomas in the presentation to the group |
| | Investigating Breaches | <p>Enforcement investigations are, for the most part, undertaken in response to complaints/enquiries from local residents or other third parties.</p> <p>The source of the complaint/enquiry is not currently a performance indicator. It may be possible to produce figures for the source of the complaint/enquiry, however, this is not considered to be necessary, all</p> |

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| | | <p>complaints will be investigated regardless of the source of the complaint and subject to the same timescales/prioritisation.</p> <p>It should be possible to produce figures for the length of time taken to resolve investigations. There are no published figures against which to compare the service provided by the Borough Council. Time alone taken to resolve an investigation would be meaningless as there are likely to be a number of factors that influence this and it would be necessary to examine each case in detail to reach any meaningful conclusions.</p> <p>When investigating alleged breaches of planning control we will notify the complainant/enquirer of the outcome of the investigations. Where possible, we will endeavour to keep them informed of progress during the investigation, although sometimes we may need to avoid disclosure of specific details so as not to prejudice the investigation.</p> <p>We do unfortunately deal with some repeat offenders, however, the system should not be used punitively in response to repeat offences, e.g. refusal of planning permission would not be justified where the applicant has breached planning controls, even where this may have occurred previously.</p> <p>An application for retrospective planning permission is subject to the same considerations as an application where development has not commenced. The application will be considered on its merits regardless of whether the development has commenced or been completed.</p> |

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| | | <p>Through our investigations, it may become apparent where the breach has occurred out of ignorance. When we close cases they are categorised, e.g. unfounded, permitted development, development removed etc. It is difficult to determine whether a breach has been committed knowingly and in any event this is not relevant to the investigation.</p> <p>In 2019/20, approximately 10% of cases were resolved as a result of the development being removed, the site being cleared or a use ceasing. Complaints may also have been resolved by ensuring compliance with conditions or the grant of retrospective planning permission. The grant of retrospective planning permission provides an opportunity to apply conditions that mitigate potential impacts of development. These results are not generally publicised.</p> |
| | Staffing levels | It is considered that the staffing levels are adequate and proportionate to respond to the level of work involved and this is currently being reviewed. The figures across Nottinghamshire would suggest that the staffing levels are generally comparable with other authorities in the area. |
| | Comments on Draft Policy | Consideration of the policy by the Growth and Development Scrutiny group provides an opportunity for Councillors to comment further on the content of the Policy. |
| Cllr Phillips | | |
| | Development north of Rushcliffe Arena (pile driving) | Reference will be made to this site during the presentation to the Growth and Scrutiny Development Group. |
| Cllr Way | | |
| | Maintenance of open spaces on developments | This has previously been the subject of a report considered by the group. The process of laying out/completing and future maintenance of |

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| | | an open space is usually addressed through a section 106 agreement associated with a planning permission for development. The ongoing inspection and maintenance of play equipment would normally be the responsibility of the management company, where one has been established to manage the open spaces. |