



Growth and Development Scrutiny Group

Wednesday, 14 October 2020

Planning Enforcement – Part 2

Report of the Executive Manager - Communities

1. Purpose of report

- 1.1. The Borough Council is in the process of preparing a Planning Enforcement Policy. At the meeting of the Growth and Development Scrutiny Group held on 25 August 2020, the Group received a report and presentation setting out the regulatory framework within which the enforcement function at the Borough Council operates, details of workload and resources within the team and performance statistics together with details of the emerging policy.
- 1.2. The Policy has been amended to reflect comments made at the meeting and the purpose of this report, and consideration of the matter at this second stage of the scrutiny process, is to agree the content of the draft document. Following approval, the policy will be referred to Cabinet where agreement will be sought to consult on the document prior to consideration by Council and adoption of the policy.
- 1.3. This report should be read in conjunction with the previous report which was considered at the meeting held on 25 August 2020.

2. Recommendation

It is RECOMMENDED that the Growth and Development Scrutiny Group:

- a) support the referral of the updated Planning Enforcement Policy to Cabinet; and
- b) note the initial findings of the external consultants in relation to the level of dedicated enforcement resources.

3. Reasons for Recommendation

- 3.1. The Council's Corporate Strategy 2019-2023 was adopted in September 2019. The Strategy includes a new corporate priority of 'The Environment'. The enforcement of planning controls is an important aspect of protecting the natural, built and historic environment. Furthermore, there is a need for the policy to set out clearly for all residents and businesses, including those who may be undertaking development, to understand clearly the approach the Council will take when investigating alleged breaches of planning control.

4. Supporting Information

- 4.1. The draft policy has been amended following consideration of the matter at the meeting held on 25 August 2020 and, in the main, in response to comments made at that meeting. The main changes to the policy are as follows:
- Amendments to the prioritisation of enquiries;
 - Minor changes to content to ensure clarity to the reader;
 - The range of enforcement powers are set out in an appendix rather than in the main body of the policy with additional detail on each power;
 - Information on Proactive Development Monitoring has been expanded; and
 - Signposting to relevant bodies for non-planning issues.
- 4.2. The changes to the section of the policy which explains how enforcement enquiries will be prioritised is one of the most significant changes. The previous draft of the policy included two levels of priority, high priority cases which would be investigated/sites visited within one working day and other priority cases which would be investigated/sites visited within five working days. The prioritisation of cases now proposed in the draft policy involves three categories, Priority 1 (High), Priority 2 (Medium) and Priority 3 (Routine). The timescales for undertaking an initial site visit would be 1 working day, 5 working days and 10 working days respectively. This prioritisation of cases has been determined following research into processes within neighbouring councils and the response times are equivalent to or better than those offered elsewhere. Furthermore, the three levels of prioritisation are reflective of previous practices at RBC and will allow officers to balance their workload.
- 4.3. On receipt of any enquiry, the case will be given a priority rating. Therefore, whilst an enquiry may, for example, at first glance be categorised as Priority 2 or 3, it may be treated as a higher priority depending on the nature of the alleged breach and the likely impact this will be having. Furthermore, the 5- and 10-day periods for category 2 and 3 respectively are considered to be realistic timescales for a site visit to be undertaken and may, in reality, be visited more quickly depending on workload. In addition, under the current system for prioritising cases, the Enforcement Officers have been visiting the same geographical area of the Borough more frequently, which is often an inefficient use of resources, and it is considered that the categorisation suggested will enable officers to better manage the cases and their time, enabling more of a focus on proactive monitoring of large-scale development sites. Proactive monitoring of the large-scale residential sites and compliance with conditions will involve more than just the Enforcement Officers, it may also involve the original case officer and the Contributions Officer who has a role in monitoring the triggers and collection of contributions within Section 106 agreements.
- 4.4. As set out in the draft policy, there will be some matters that do not fall within the control of the planning regime and at the previous meeting it was suggested that the policy could signpost people to the appropriate service area/organisation that may deal with matters outside the control of planning. This information has now been added to the policy, however, it is important to

acknowledge that it is not possible to address every potential eventuality. The examples referred to in the draft policy are some of the most common issues that arise when investigating possible breaches or are raised with the Council by residents. Planning officers remain available to residents to signpost if required.

- 4.5. At the invitation of the Chairman, prior to the previous meeting, Councillors were invited to share their experiences of the planning enforcement service or to submit any observations they wished to bring to the attention of the group. The comments received have been summarised along with comments from officers which are included in the table attached to this report.
- 4.6. The level of resource available to deliver the enforcement function has been raised by the Group as an area of concern. The Council has engaged consultants to undertake a Health Check on the planning service generally, involving an assessment of workload, resources and capacity within the team. The final report is due shortly, however in terms of the enforcement function, the initial advice from the consultants would suggest that each Enforcement Officer can potentially handle circa 225 cases per year of varying complexities, although it is acknowledged that the level of resource required will be dependent upon the approach taken, i.e. the level of negotiation undertaken to resolve cases or whether formal action is taken as a matter of course, which in itself can generate additional work, for example in defending appeals etc. The processes and systems in place can also influence the level of resource required to deliver the service. Furthermore, it is also acknowledged that the expectations of Councillors and the community may influence decisions on the level of resource required and also whether the Council wishes to promote a proactive rather than reactive service which seeks to build relationships with developers and address issues before they are identified by the community. The consultant concludes that the current resource is sufficient.
- 4.7. The previous report to the Group provided details of the number of enforcement enquiries received by the Council each financial year since 2014/15. This information indicates that there has been a general decline in the number of enquiries received, with 281 cases received in 2018/19 and 235 cases in 2019/20. In view of the current workload and the initial feedback from the consultants undertaking the review of resources and capacity within the service, it would appear that the level of dedicated enforcement resource currently available is appropriate to respond on a reactive basis to enquiries regarding development within the Borough, whilst also enabling a focus on a more reactive response to development. However, it should be acknowledged that the current resource would not enable every single planning permission granted to be actively monitored and the focus would be on the larger housing developments within the Borough.
- 4.8. Councillors will be aware that the Government is currently undertaking a consultation on the 'Planning for the Future' white paper which, in respect of enforcement invites responses on proposals to strengthen enforcement powers and sanctions. Depending on the outcome of this consultation, any potential

changes to the planning system may have implications for resources, particularly in relation to the enforcement function.

5. Risks and Uncertainties

- 5.1. Failure to deliver an effective planning enforcement service and to respond promptly to complaints regarding alleged breaches of planning control can impact on public confidence in the planning service and the reputation of the service and the Council as a whole.
- 5.2. It is also important to ensure that the policy is measured according to the constraints and requirements of the legislative framework and resources available to the Council. Setting false/undeliverable expectations could create negative reputational issues and lack of confidence in the planning process generally.

6. Implications

6.1. Financial Implications

- 6.1.1. The cost of the dedicated officers responsible for undertaking enforcement work and any additional costs such as court costs are contained within current budgets.
- 6.1.2. Where enforcement action is taken without justification or such action cannot be robustly defended, there may be a risk of an award of costs in the event of an appeal or claims for compensation, principally in connection with the service of a Stop Notice. It is not possible to provide an estimate of such costs as these will vary from case to case and will depend on the factors impacted by any action, e.g. cost of plant and machinery, lost earnings, cost of expert witnesses to defend appeals etc.

6.2. Legal Implications

- 6.2.1. Enforcement action must be considered and where appropriate taken in accordance with the relevant legislation. Outcomes must be proportionate and in the public interest. To ensure a proportionate approach is taken, particularly before serving a temporary stop notice or a stop notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be remedied or, in the case of a stop notice, stopped immediately and before the end of the period allowed for compliance with the related enforcement notice.

6.3. Equalities Implications

- 6.3.1. The Council is committed to delivering all enforcement activities in accordance with its Equality and Diversity Policy and will embed the principles of that policy in its approach to its enforcement and regulatory functions. Therefore, the Council will treat all people equally and fairly.

6.4. Section 17 of the Crime and Disorder Act 1998 Implications

6.4.1. Whilst there may be community safety implications associated with the delivery of the enforcement function, there are not considered to be any such implications associated with the recommendation and consideration of this report.

7. Link to Corporate Priorities

Quality of Life	Unauthorised development may give rise to impacts which may adversely affect the amenities and quality of life of residents which can be resolved by taking appropriate enforcement action where this is justified or in seeking to regularise unauthorised development through a retrospective planning application and the imposition of conditions which can mitigate the impact of development.
Efficient Services	The delivery of an efficient and effective planning enforcement service is consistent with the Council's corporate priority to transform the Council to enable the delivery of efficient high-quality services.
Sustainable Growth	Sustainable development can be delivered through the preparation of development plan documents and the application of policies within the National Planning Policy Framework. The operation of an effective enforcement service can ensure that development is compliant with national and local planning policies and is therefore sustainable.
The Environment	Unauthorised development may give rise to impacts which may adversely affect the natural and built environment, impacts which can be resolved by taking appropriate enforcement action where this is justified or in seeking to regularise unauthorised development through a retrospective planning application and the imposition of conditions which can mitigate the impact of development.

8. Recommendations

It is RECOMMENDED that the Growth and Development Scrutiny Group:

- a) support the referral of the updated Planning Enforcement Policy to Cabinet; and
- b) note the initial findings of the external consultants in relation to the level of dedicated enforcement resources.

For more information contact:	Andrew Pegram Service Manager - Communities 0115 914 8598 apegram@rushcliffe.gov.uk
Background papers available for Inspection:	<p><i>The Corporate Enforcement Policy and the Rushcliffe Borough Council's Planning Enforcement Code of Practice. These documents are available on the Council's website at:</i></p> <p>https://www.rushcliffe.gov.uk/aboutus/aboutthecouncil/ <i>(Corporate Enforcement Policy is available under the heading Documents, policies and strategies)</i></p> <p><i>and</i></p> <p>https://www.rushcliffe.gov.uk/planningandgrowth/enforcement/</p> <p>Report to Growth and Development Scrutiny Group considered at meeting on 25 August 2020</p>
List of appendices:	Appendix One - Draft Enforcement Policy Appendix Two - Observations from Councillors on the Enforcement Function and Officer Responses