

MAIDSTONE BOROUGH COUNCIL
CABINET MEMBER FOR REGENERATION
REPORT OF THE DEVELOPMENT CONTROL MANAGER

Report prepared by Rob Jarman

Date Issued: 11 March 2010

**1. ADOPTION OF THE PLANNING ENFORCEMENT POLICY
STATEMENT INCLUDING PRACTICE STANDARDS**

1.1 Issue for Decision

- 1.1.1 To consider the results of the consultation on the draft Planning Enforcement Policy and agree to adopt the policy.

1.2 Recommendation of the Development Control Manager

- 1.2.1 That the consultation responses, and officer comments on those responses, be noted and the amended draft document, as at Appendix A, be adopted.

1.3 Reasons for Recommendation

1.3.1 Introduction

- 1.3.2 The draft Planning Enforcement Policy was reported to Planning Committee on 24 September 2009. It was agreed that the draft should be sent out to consultation. This was duly done with the consultation period running from 14 October 2009 to 25 November 2009.

- 1.3.3 The draft has also been presented to the Annual Meeting of Maidstone Parish Councils in December 2009. Secondly, it has also been included as a 'key decision' with entry onto the Forward Plan. Following the completion of the consultation period the amended policy has been back to Planning Committee on 25 February 2010 for further comments.

- 1.3.4 A copy of the amended draft policy is attached as Appendix A.

1.4 Results of Consultation

1.4.1 The following organizations have made summarized representations and each one is commented on in turn.

1.4.2 Coxheath Parish Council

- Too much "imprecision" and too many "weasel words" such as "where expedient" and "where appropriate". Frustrated by the perceived unwillingness to enforce conditions and the tendency to back down from confrontation.
- Question a policy that implies that enforcement action will only be taken where there is significant harm. Question who should decide whether the harm is significant. "Parish Councils will argue that they are perhaps better placed as elected representatives of their communities, to judge the extent of harm caused by non-compliance with conditions but the decision process is unclear."
- Underlying suggestion of selective enforcement for unauthorized development (Para 13.1 Policy EP9). The Parish Council see this as another sign of weakness. There will also be a loss of planning fee income and the ability for Parish Councils to comment is lost (Policy EP10).

More specific concerns:-

- a) Paragraphs 3.1 (iii) should read "breach of planning control would unacceptably affect public AND PRIVATE amenity."
- b) Paragraph 4.2 (iii) Rather than buildings and people" would it not be better to say "quality of life and amenity."
- c) "Paragraph 7.1. Reference is made to 'the approved matrix methodology. What is the matrix methodology?"
- d) Paragraph 18.2. The Reference to 'transferring' a complaint is not understood. How are statutory consultees to report suspected breaches of planning permission other than by contacting the Enforcement Section?
- e) Paragraph 19.2 (Practice EN3). The practice seems to be limited to dwelling houses but surely it should also apply to other buildings where material change of use has occurred.

1.4.3 Officer Comment

1.4.4 The general opinions of the Parish are not in tune with the spirit of PPG18. A fundamental fact concerning planning enforcement is that a Local Planning Authority is not obliged to take enforcement action, rather, it has to consider the expediency of taking enforcement action. Moreover, Local Planning Authorities do enjoy strong powers with

regard to Direct Action, prosecutions and injunctions and with such powers the law requires them to act reasonably and this has to be proportionate to the level of harm being caused.

1.4.5 With regard to the detailed points I would comment that planning is essentially concerned with public amenity and I remain satisfied with the distinction I draw in paragraph 4.2 (iii). The 'matrix methodology' relates to a prioritization methodology and this was attached as an appendix to the draft Policy. It would be of greater help if Parish Councils could help identify planning harm when passing on complaints to the Council's Planning Enforcement Team.

1.4.6 Finally, I agree, in general terms, with Coxheath Parish Council's last point on changes of use. However, Practice EN3 relates solely to dwelling houses.

1.4.7 Stockbury Parish Council

"The consensus is that the draft is generally acceptable. Particular note was made of paragraphs 11.1, 12.1 to 12.3 and 22.3. Another point made was the importance of time taken to respond. It follows, therefore, that the Policy must be complied with by Maidstone Planning Enforcement and appropriate action taken.

1.4.8 Officer Comment:

A key general target for the Enforcement Team is timeliness.

1.4.9 Teston Parish Council

Acknowledge that resources are limited and that prioritization has merit. Concerned that the 'matrix' (priority system) employs subjective weightings. The Parish Council see "huge potential for individual 'grumbling' complaints to be continually relegated towards the bottom..."

1.4.10 Therefore recommend: -

- a) A modest amount of resources devoted to low priority complaints, say 10%
- b) "the lower priority complaints for such attention to be nominated by Parish Councils ... or through some other local body, with such complaints perhaps addressed on a round-robin basis between those local bodies". Attention should not be solely focused on high priority cases.

1.4.11 Officer Comment

A prioritization system is purely to do with speed and matching resources to the degree of harm being caused. Local Planning Authorities have to respond to all complaints within a reasonable period of time otherwise it can be alleged that there has been maladministration.

1.4.12 Boxley Parish Council

"Members welcomed the preliminary draft. Agreed this document should contain/would benefit from a flow chart, timescales and clearly identified targets for completion of the work. It would also benefit from a timescale for management reports to show the effectiveness of the policy."

1.4.13 Officer Comment

I consider that these are two sensible points and agree with both. Therefore, I have changed EP1 to reflect this.

1.4.14 Medway Internal Drainage Board

- MBC needs to act quicker on breaches of planning.
- MBC need to be consistent. Often "too heavy-handed with normal law abiding citizens trying to improve their homes..." but fail to punish in respect of gypsies.
- A "tougher" stance should be taken on retrospective applications which are inappropriate. These should not be allowed to drift.
- "Building in the flood plain needs to be taken more seriously..."
- Conditions need to be complied with and monitoring take place.
- "Enforcement needs to actually mean enforcement. Be tougher and not just threats in writing."

1.4.15 Officer Comment

These would appear to be a series of opinions on enforcement in general and the performance of the Enforcement Team.

1.4.16 Kent Wildlife Trust (Keith Nicholson 12/11/09)

- "EP3. The term "major" harm should be defined; or at least the factors that will be taken into account in judging whether or not harm is "major" should be listed.
- EP7. The term "serious" harm should also be defined or explained.

- "Communications." It is recognized that a balance needs to be struck between resources dedicated to communicating with complaints and "getting on with the job". However, a commitment should be given to acknowledging complaints and keeping complainants in the picture. Suggest issuing routine progress reports e.g. by e-mail so this can mitigate against the impact of time-consuming telephone and e-mail 'progress' enquiries.
- "Conclusion" support "negotiated" solutions but queries the extent to which complainants are part of the negotiations. "In my view, those who suffer the nuisance (or who seek to protect the environment from harm) should be party to every such negotiation..."

1.4.17 Officer Comment

I consider that terms such as "major" and "serious" are clear to people and that examples would be too numerous. All complaints are acknowledged and when cases are closed this is communicated to the complainant, secondly, Parishes and Borough Councillors get a quarterly enforcement update but this has not led to a decrease in telephone calls and emails. Lastly, negotiations involving multi-parties run the risk of being open ended in terms of time-scales and are resource hungry. My view is that the Enforcement Team need to take a strong lead.

1.4.18 Kent Wildlife Trust (Debbie Salmon 23/11/09)

- Para 4.3 – needs to mention biodiversity. Therefore, recommend bullet point 2 be changed to: -

"Assess whether the breach of planning control affects public amenity or causes harm to land, buildings or biodiversity."
- EP1: recommends a time period for review of the document is stipulated within EP1.
- EP8: as well as significant harm to amenity, significant harm to nature conservation interest should be included.
- "25.2. It is often the case that the Trust is alerted to works that do not have planning permission only when these works are being carried out on site. Our most frequent calls are regarding tree felling, where bats are reported to be present, tree felling in the bird nesting season and site clearance or pond works where reptiles, great crested newts or ground nesting birds are present. If the biodiversity interest is not to be lost on site a site notice may also be needed in these situations. Due to the frequency of site clearance without permission the Trust

would recommend that protected species issues also be mentioned as an example when a stop notice may be used.”

1.4.19 Officer Comment

With regard to the first point, I consider that the term “land” in this broadest sense would incorporate biodiversity. I agree with the second point (see my comments with regard to Boxley Parish Council). With regard to the third point I accept that this change would be appropriate. Finally, I agree that protected species can be mentioned as an example of where stop notices should be issued.

1.5 Alternative Action and why not Recommended

- 1.5.1 It could be decided not to adopt an Enforcement Policy, but this would not be in line with best practice and audit requirements, as a policy clearly sets out the framework in which the Enforcement section will operate.

1.6 Impact on Corporate Objectives

- 1.6.1 The policy will provide a framework for the operation of the Planning Enforcement team. Planning Enforcement has an impact on all Council objectives as it controls the quality and design of the built and natural environment.

1.7 Risk Management

- 1.7.1 No significant risks from introducing a policy. Existing risks of the Council being exposed to potential ombudsman complaints and judicial review would be further reduced in likelihood by the introduction of the policy.

1.8 Other Implications

1.8.1

1. Financial	X
2. Staffing	
3. Legal	X
4. Equality Impact Needs Assessment	
5. Environmental/Sustainable Development	
6. Community Safety	

- 7. Human Rights Act
- 8. Procurement
- 9. Asset Management

1.8.2 Financial - No additional costs or direct savings result from the adoption of the policy, but the document sets a framework that allows for better resource management within the section in order to tackle prioritized cases.

1.8.3 Legal - The policy would represent the framework within which the Council would be expected to operate. This will improve our position if we are challenged on how we handle individual cases.

1.9 Background Documents

1.9.1 Planning Committee Report – 24 September 2009

NO REPORT WILL BE ACCEPTED WITHOUT THIS BOX BEING COMPLETED

Is this a Key Decision? Yes ☒ No ☐

If yes, when did it appear in the Forward Plan? _____

Is this an Urgent Key Decision? Yes ☐ No ☒

How to Comment

Should you have any comments on the issue that is being considered please contact either the relevant Officer or the Member of the Executive who will be taking the decision.

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