

Confirmed



Minutes of a Meeting of the **Scrutiny Committee** held in the Conference Room, Riverside,
on **Thursday, 16 June 2022 at 6.30pm**

Members of the Committee present:

Councillor Edward Back, Councillor Stuart Bird, Councillor Judy Cloke, Councillor Linda Coulam, Councillor Mike Deacon, Councillor Tess Gandy, Councillor Tony Goldson, Councillor Colin Hedgley, Councillor Geoff Lynch, Councillor Keith Robinson

Other Members present:

Councillor Peter Byatt, Councillor Tony Cooper, Councillor Louise Gooch, Councillor David Ritchie

Officers present: Martin Clarke (Licensing Manager and Housing Lead Lawyer), Sarah Davis (Democratic Services Officer), Jo Hooley (Legal and Licensing Services Manager), Philip Ridley (Head of Planning and Coastal Management), Alli Stone (Democratic Services Officer) and Ben Woolnough (Planning Manager - Development Management).

1 Apologies for Absence and Substitutions

Apologies for absence were received from Councillors Beavan, Green and Topping.

2 Declarations of Interest

There were no Declarations of Interest.

3 Minutes

RESOLVED

That the minutes of the meeting held on 19 May 2022 be approved as a correct record and signed by the Chairman.

4 Review of the Planning Enforcement Process

The Committee received report ES/1184 from the Cabinet Member for Planning and Coastal Management who stressed that enforcement was a very important part of the planning process. He explained that a quarterly statistical report was given on enforcement to the Strategic Planning Committee and that it had been reported at the last meeting that there were fewer cases open at the end of the last three months with the main reason for the closures being because there had been no breach, they were

now complying or the use had ceased, or they now had planning permission. He added that both Planning Committees North and South met monthly and they also received a report on the cases that were open in their areas. There were three Enforcement Officers, 1 senior and 2 junior officers who the Cabinet Member felt did an extremely good job but he hoped improvements could still be made to the system. He explained that Internal Audit were currently looking at the systems and processes and they would give some pointers moving forwards and changes had already been made to the management structure of the service.

The Planning Manager - Development Management stated that he had started managing the Enforcement Team last year and had identified early on the need to give a renewed approach to the management and processes within the Team, hence why it had been suggested to the last Strategic Planning Committee that an enforcement action plan be presented to them in September setting out the improvements, measures, and potential efficiencies that could be brought into the service over the rest of this year and next. He explained that this would sit alongside ongoing work with the Audit Team, following on from previous audit reports which had highlighted some areas that needed attention, predominantly the way in which the IT system was used to process enforcement complaints, maintain data and documents and this was being actioned. It was hoped that a lot of information would be forthcoming in the near future on how the service would be improved further. He stressed that the service was not failing in any way. The Team had worked incredibly hard over the Covid period and figures had shown a significant rise in enforcement complaints over the early stages of the Covid period, possibly due to a lot of people doing their own developments at home under permitted development or under planning applications eg improvements and extensions which had given rise to enforcement complaints etc, as more people were at home and could see what was happening around them. He stated that the Council welcomed feedback on any breaches of planning control and they were investigated diligently but pointed out that a lot were closed quickly because many were under permitted development or did not require further investigation and these were reported back to Committee too.

The Chairman stated that he had cross referenced the report with the scoping document and did not feel that all the lines of enquiry had been answered eg what timescale/targets the Team had to complete the process before a case went to the Legal Team and he also asked what would help speed that process up. The Planning Manager - Development Management responded that the Planning Enforcement Policy which had been attached to the report had been adopted in March 2019 and set out how complaints were investigated and the way in which they were taken forward. He referred, in particular, to Section 5 which detailed how complaints would be investigated including an acknowledgement within 14 working days and he explained that they involved quite a lot of work, such as a Site Visit, researching the planning history, communicating with the complainant and developer to understand what was needed to take the case forward eg the nature of concerns, the extent of investigations needed, the harm being caused and what resources were available. He added that the Section also described how the Council sought to close cases as follows:

- Within 20 weeks of receiving a request for an investigation 60% of all cases where there was no breach of planning control would be closed.

- Within 20 weeks of receiving a request for an investigation 60% of all cases where there was a breach of planning control but it was not expedient to take action would be closed.
- Within 24 weeks of receiving a request for an investigation we would decide what further action to take in 80% of cases where a retrospective application was appropriate but not submitted, or where rectification had not occurred.
- Within 24 weeks of receiving a request for an investigation we would determine what enforcement action to take in 80% of cases where formal action was necessary.

The Planning Manager - Development Management acknowledged that 20 and 24 weeks appeared lengthy and Officers had to manage complainant's expectations carefully, however, he reiterated that there was an incredible amount of work that needed to be undertaken during that time. He stated that the Council did not want to rush cases and end up with abortive work further down the line, penalties on appeals and, in some cases, if we proceeded in the wrong way we could end up back at square one.

The Chairman stressed that Members were concerned about the timescales and he queried what could be done to speed that process up including if setting a more rigorous target would help. The Planning Manager - Development Management responded that a lot of changes had been introduced over the last few years to speed up the processes including the fact that Planning Officers had previously investigated cases, whereas now the two Assistant Enforcement Officers took full responsibility for the early investigation eg logging of cases and first site visits, then they fed back to other Officers to determine the way forward. He stated that he wanted to improve things on the back of other changes recently made such as the provision of a dedicated team, including the creation of a line manager and a couple of Planning Officers to review cases regularly and make clear recommendations on action to be taken, thereby having a more professional input at an early stage. He added that this would be formally set out as part of the action plan being taken to the Strategic Planning Committee. He concluded that there needed to be that professional input at an early stage to make the right call and to advise customers what would happen.

Councillor Goldson queried, if there was no legal requirement, what would happen if the Council did not provide a planning enforcement service. The Cabinet Member responded that the Council had a responsibility to enforce and the power to enforce, but did not have the duty to enforce so if the Council did not do it then there would not be any. He added that it was sensible to do it this way because sometimes there were small cases that did not always have to be enforced eg if minor and not controversial differences between plans and what was actually built, so need to use common sense when deciding to enforce or not. He concluded that the Council did not enforce all cases but did where it was felt appropriate to do so. He confirmed that there was no legal requirement for the Council to operate an enforcement service. Councillor Goldson queried if consideration had been given to outsourcing the service. The Head of Planning and Coastal Management confirmed that it was a discretionary function of the Authority but he strongly advised against outsourcing because the Council wanted a seamless planning authority to deal with matters at the front end through to delivery so that we had an overview of development going forward and provide public confidence. He acknowledged that the Council did get a number of enforcement

complaints but most were relatively minor that could be resolved by email, phone, a visit etc but if there was a major breach then resources would be made available. He confirmed that the Team was looking to improve the function provided and acknowledged that some cases did take longer than anticipated but it was hoped that the 20 and 24 weeks timescales could be shortened, although he stressed that by the time Officers had visited and spoken to colleagues then wrote to the owner, those weeks passed by quickly. He concluded that Officers would report further on improvements to the Strategic Planning Committee in September but that outsourcing was not a panacea.

The Chairman queried if the Council had an option to walk away if it was a discretionary service and not pursue a case even if there was a clear breach. The Cabinet Member responded that it was the Council's intention was always to enforce major breaches when expedient to do so.

Councillor Hedgley acknowledged that things had improved in the last few years but queried if the Team had enough resources and he also asked how many breaches were found due to public information coming in. The Cabinet Member responded that there was now extra capacity with the addition of a dedicated technical lead and line manager for the team. He added that the Audit Team had recently examined the enforcement processes and it was a really positive experience to have a good look at things with a fresh pair of eyes. He acknowledged that more capacity in the team might be needed but he felt that there was sufficient capacity at management level.

The Planning Manager - Development Management stated that the Policy set out the principles of good enforcement and the way in which complaints were prioritised eg a serious threat to the health or safety of the public, irreparable damage to a historic or natural environment, impacts on Sites of Special Scientific Importance etc would trigger a quicker response because they had another legislative importance to them eg unauthorised works to a listed building were a criminal offence so had to be investigated quickly. In response to the other question regarding enforcement as a result of complaints by members of the public, he stated that, although he did not have any specific statistics, the vast majority came in from the public or Town and Parish Councils.

Councillor Lynch joined the meeting at 7pm.

In relation to resource, he stated that there was always capacity to add resource to teams, particularly the Enforcement Team, because they were undertaking many Site Visits and worked through complaints in a detailed fashion and now there was an additional Principal Planner and the other Planners provided a considerable input into the process, those cases where a retrospective application was recommended could now be dealt with in a timely manner eg whether to proceed or take the necessary action. The Head of Planning and Coastal Management acknowledged that it would be good to have more resource but stated that they would be discussing whether it would be better to have more compliance and monitoring colleagues to check consented developments were being undertaken in accordance with approved plans at the time of commencement as that added value at the front end rather than waiting for them to grow into an enforcement case.

The Licensing Manager and Housing Lead Lawyer clarified that, whilst it was a discretionary service, the Council could not act unreasonably so if it decided not to enforce any cases at all, it would be susceptible to a judicial review.

Councillor Deacon agreed that the service was much better than it was years ago but he asked how East Suffolk matched up against other similar Council Planning Departments. The Head of Planning and Coastal Management stated that the Council only reported the number of enforcement notices served to the Government rather than the number of cases so it was difficult to compare the service with neighbouring authorities but he acknowledged that benchmarking should be looked at as part of the ongoing review work.

In response to Councillor Deacon's query about what happened after a case went to the Legal Team, the Licensing Manager and Housing Lead Lawyer explained that there were two main processes that the Team were involved in. The first was prosecutions, so following an Enforcement Notice not being complied with, Planning Officers presented the case to Legal, it was examined in liaison with the Officers to decide if it was in the public interest to prosecute and, if so, the Court was then asked for a date, a summons was issued and then it went to Court. He added that, since he had been involved, the Council had undertaken three prosecutions, all of which had been successful and resulted in conviction. The second, was by injunction requiring action to be taken, and again enough evidence needed to be gathered to seek an injunction and do an Expediency Report to determine if it was expedient and proper to seek an injunction and then the case went to the High Court. He added that he had been involved in two injunction cases and these had taken longer than he would have liked, one started last year but due to Covid, resource issues and also an issue with a previous barrister, this had resulted in delays, and the second case was politically sensitive but he hoped both injunctions would go out to the Court soon.

The Chairman asked if there was any way to speed up the cases that had gone on for years. The Planning Manager - Development Management stated that there were two parts to planning enforcement the planning and legal elements, however, the vast majority of planning enforcement work did not involve going to Court or injunctions but involved making planning judgements earlier on and that could include retrospective planning applications, appeals and Enforcement Notices. He reflected that the processes could be long winded and not necessarily clearly sequential as they could be cyclical, so it was not always the legal stage that was the slow part and he referred to a flow chart in the Policy which set out the process. He explained that the other area where there were delays was determining if a development was lawful or not, eg a potential breach was claimed to be permitted development or they did not need planning permission which could then get stuck in a process called Certificate of Lawful Use and that could include an appeal process which could take time too. He added that one area which had been sped up was changes to the scheme of delegation, in that the Head of Planning and Coastal Management now had delegated authority on all enforcement matters, eg not to pursue action and to serve notices, whereas previously the Committee had to approve the service of an Enforcement Notice which had caused delays.

In response to the Chairman's query about whether a clever defence could throw up appeals or procedural points to delay and hamper things, the Planning Manager -

Development Management stated that there were times when people played the system and made applications, sought an appeal or made another application etc so, whilst the planning stage went on, the ability to take enforcement action was hindered.

Councillor Coulam expressed concern at the lengthy delays due to the legal process which could take years and could look to the public that the Council was not doing its job. The Licensing Manager and Housing Lead Lawyer stated that, whilst it was not acceptable, there were two legal cases that were outstanding, one was Pine Lodge and the issue was that the officers who dealt with the case originally were no longer at the Council and, for some reason, the amounts on the charging order did not reflect any of the figures the Team or the Barrister could come up with. He added that none of the Courts seemed to know where the judgement had come from for this order but having spoken to the Barrister the Council was going to pursue it anyway. In relation to the other case, which started last year again, he admitted that this should have been prioritised differently.

Councillor Coulam queried if it was hoped to recruit another lawyer to help with the cases and the Licensing Manager and Housing Lead Lawyer responded that it was currently difficult to recruit lawyers so in the meantime he would ensure that enforcement cases were a higher priority in future and the new case he had referred to earlier was his number one priority.

Councillor Hedgley suggested that more resources were needed. The Cabinet Member responded that he was pleased to hear from Councillors that the Team should have more Planners but he pointed out that only a tiny number of enforcement cases went to the Legal Team. He added that he thought the Licensing Manager and Housing Lead Lawyer was being too hard on himself because he was not responsible for cases taking three years and everyone shared the frustration when cases took such a long time.

Councillor Deacon referred to page 9 which stated that there was a time limit for bringing legal proceedings and he asked if any cases had missed that time limit. In response, the Licensing Manager and Housing Lead Lawyer stated that none of the cases he had been involved in had missed a time limit for prosecution.

Councillor Goldson stated that he did not think the Council should employ more staff because of the cost to the taxpayer unless there was a benefit to have more Planning Officers eg what improvements would be seen in the short, medium and long term. The Cabinet Member responded that there was no plan to recruit more staff in enforcement at the moment but there were some current vacancies in the Planning Team which had arisen due to retirements and internal promotions, so the priority was to backfill those. He added that he might at some point ask for more officers but he wanted to see the results of the review first before making a decision and he agreed that he did not want to employ people unless there was good reason because it was public money.

The Chairman referred to the Head of Planning and Coastal Management's earlier comment that an additional Enforcement Officer(s) would not necessarily be of benefit but a Compliance Officer(s) who could check that developments were being built in accordance with approved plans might prevent a lot of cases coming to the Enforcement Team. The Planning Manager - Development Management agreed that

would be a good recommendation as the quality of developments taking place was an area the Council needed to focus on rather than just enforcement. He added that the Council now had a specialist services team to achieve the Government's expectations for good design, great landscaping and biodiversity which was going to require a lot of monitoring especially for big developments eg if the landscaping was not done well it could become an enforcement issue so it needed monitoring. He stated that he appreciated the positive comments regarding staff but pointed out that there were currently recruitment issues, although he acknowledged that enforcement staff could have transferable skills so if the Council wanted to expand the resource in that area in future we could grow and train our own to be good Enforcement Officers. He concluded that he wanted the Strategic Planning Committee report to set out an action plan and it was possible that the review of the whole service might identify the need for additional resources. In response to the Chairman seeking clarification regarding the type of additional resource required, the Head of Planning and Coastal Management stated that the Government was introducing the Levelling Up and Regeneration Bill and it was anticipated that there would be an increase in planning fees which might allow additional funding to employ additional staff on the enforcement/monitoring side so the Committee might wish to recommend that Officers explore opportunities to take this forward. He added that the design criterion on developments was ratcheting up, biodiversity, net gain, quality of places, healthy places etc so the Council needed to provide that reassurance to the community that where consent was granted, it was being implemented in accordance with plans and where it was not, we needed a faster track through to resolving matters to everyone's satisfaction.

Councillor Gandy queried if there were any apprenticeships within the Enforcement and Compliance Teams and if it would help lessen pressure on Officers to water down the response times in the Policy. The Planning Manager - Development Management referred to the fact that the Head of Planning and Coastal Management had worked with the RTPi to get planning apprenticeships underway and the Council currently had 5 or 6 Officers going through to Masters level and that gap would be filled when they became seniors in 5 years' time. He added that there was no reason why this could not be extended to Enforcement Officers.

In response to Councillor Lynch's query regarding sharing resources with other local authorities, the Planning Manager - Development Management stated that East Suffolk worked closely with other Suffolk Local Authorities to try to share the load but all the Council's had busy caseloads.

Councillor Robinson asked about time limits for legal proceedings and the Licensing Manager and Housing Lead Lawyer responded that either way offences did not have time limits but if the Council tried to prosecute 20 years after the event, the Court might say it was not in the interests of justice to proceed. He explained that the time limits applied from when the Enforcement Notice was not complied with, so it was not a case of six months from when a building went up. Once an Enforcement Notice was issued, if it was an either way or indictable only there were no time limits but if it was summary only there was a six months' time limit. He clarified that the offence was not normally the actual construction of the building but the offence was the failure to comply with the Enforcement Notice.

Councillor Gandy queried if the Council could legally amend the times for responses and, if so, would that alleviate pressure on staff. The Planning Manager - Development Management stated that the Planning Enforcement Policy timeframes could be amended as it was a discretionary service, however, he suggested that it was not necessarily the timeframes but the volume of cases that were the issue. He added that, if the timeframes were extended, the Council would still need to deal with the level of perception and expectation by the public on how quickly they felt things should be dealt with and a lot of time was spent in explaining the processes, so he would rather try to be more effective on how things were done in those periods of time rather than extend the timeframes.

Councillor Goldson queried what the report to the Strategic Planning Committee would contain and suggested it would be better for the Scrutiny Committee to see it before them. The Planning Manager - Development Management confirmed that the report would include a number of actions to improve things and also various changes to the way things operated including setting the scene on some work going on behind the scenes that Planning Committee Members were not aware of but was quite important on how the Team became more efficient. The Chairman agreed that he would have preferred this Committee to be able to inform the Strategic Planning Committee report and pointed out that if it was to come back to Scrutiny the earliest date would be April 2023.

The Licensing Manager and Housing Lead Lawyer reported that his Team was trying to recruit an additional Litigation Lawyer who could assist with planning enforcement but he reiterated that it was difficult to recruit.

The Cabinet Member reiterated that the most common outcome of enforcement complaints was that there was no actual breach and only a few cases were passed to the Legal Team. He thanked Officers and suggested that the Scrutiny Committee might want to look at this again in a year's time when improvements had time to bed in.

A discussion ensued on whether to make a recommendation supporting the principle of the Cabinet Member and Officers exploring the provision of additional resource, within the compliance area, if it was found that this would support the Enforcement Team moving forwards. Councillor Goldson stated that he felt it would not be appropriate for the Scrutiny Committee to support even the principle of additional resource without seeing the Strategic Planning Committee report and action plan. The point was made that the Scrutiny Committee could always review the matter again once the report and action plan was considered by the Strategic Planning Committee.

RESOLVED

That the Cabinet Member with responsibility for Planning and Coastal Management note that the Scrutiny Committee would support the principle of exploring opportunities for additional resource in the compliance and monitoring area to support and improve the Enforcement Service.

The meeting adjourned for a comfort break at 7.53pm and resumed at 8pm.

Councillor Coulam left the meeting.

5 Cabinet Member Scrutiny Session

The Chairman welcomed and thanked Councillor Ritchie, Cabinet Member with responsibility for Planning and Coastal Management who gave a brief verbal presentation in relation to Local Plans. Several queries were raised in relation to Neighbourhood Plans and the Cabinet Member explained they were a material planning consideration and could not be ignored so were not a waste of time. He also confirmed that Town and Parish Councils could restrict the sale of dwellings in their Plan to principal residences only which helped those areas where the provision of affordable housing and second home ownership was a particular issue. The Committee also noted that it was hoped eventually to have only one plan which covered the entire District but that paid attention to the different areas.

The Cabinet Member also gave a brief verbal presentation in relation to the Development Management side of his portfolio. He explained that workloads continued to be high nationally and that all East Suffolk's major applications had met their timescales within the last three months and, although some of the smaller ones had slipped, he was confident that the Team would get back to meeting national targets and the Council's own stretch targets soon.

6 Scrutiny Committee Work Programme

The Scrutiny Committee received and reviewed its current forward work programme and the Chairman confirmed that the next meeting on 14 July 2022 would review the Council's progress following the Declaration of a Climate Emergency.

The meeting concluded at 8.30pm.

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Chairman