



Planning Enforcement Ad Hoc Scrutiny Committee

18th May 2009

Planning Enforcement – Final Report

Background

1. This topic was registered by Councillor Wiseman to explore the possibilities of speeding up the period from opening to closing planning enforcement cases and to achieve a reduction in the number of outstanding cases. She had raised concerns that a lack of resources within the Planning Enforcement Team may be contributing to delays in cases being brought to a timely conclusion. As part of the review she also proposed that the Council's approach to court action was reviewed to investigate concerns that enforcement by City of York Council had little threat of further legal action being taken.
2. Members are presented with information on both ongoing and completed cases at Planning Sub-Committees on a quarterly basis and it is noticeable that the number of ongoing cases is not being reduced. Some cases have been open for a very long time without resolution and there do not appear to be any timescales for completing a case. Whilst Councillor Wiseman was aware that some cases were very complex and needed a lot of time there were still too many minor cases ongoing and as part of the review she suggested exploring possible ways of completing these in a timelier manner.
3. A feasibility study and a draft remit were submitted to the Scrutiny Management Committee (SMC) in July 2008 and after due consideration it was agreed to proceed with this scrutiny review based on the following remit.

Aim

4. To identify ways of bringing enforcement cases to an earlier completion through reviewing City of York Council's approach to planning enforcement and court action.

Key Objectives

- i. To understand the Council's approach in relation to planning enforcement processes including Section 106 Agreements.
- ii. To understand the City of York Council's approach to court action in relation to breaches of planning enforcement notices.
- iii. To examine why so many cases are outstanding

- iv. To review the Council's processes and procedures to improve the handling of planning enforcement cases
- v. To explore the impact of the Scrutiny Review on 'Powers of Enforcement – Take-Aways' on the way planning enforcement is now conducted.

Consultation

5. This review was carried out in consultation with the following:
 - Assistant Director (Planning & Sustainable Development)
 - Head of Development Control
 - Planning Enforcement Officers
 - Officers from Legal Services
 - Elected Members with links to Planning Committees
 - Area Team Leaders for East Area Planning and West & City Centre Planning Committees.

Information Gathered

6. During the course of this review at both an informal session and formal meetings Members of the Committee gathered the information contained in the following paragraphs.

First, Second and Third Key Objectives

- (i) **To understand the Council's approach in relation to planning enforcement processes including Section 106 Agreements**
 - (ii) **To understand the City of York Council's approach to court action in relation to breaches of planning enforcement notices**
 - (iii) **To examine why so many cases are outstanding**
7. At a formal meeting on 7th October 2008 Members received a presentation from the Head of Development Control entitled 'Planning Enforcement at York'. This gave Members an overview of planning enforcement at both a local and national level, in particular the regulations that apply and the processes involved in tackling breaches of planning control. A copy of this presentation is attached at Annex A to this report. A definition of Section 106 Agreements is attached at Annex B to this report.
8. The Committee received a flow chart entitled 'Planning Enforcement – The Choice of Routes', which illustrated the course planning enforcement took dependent on the kind of case being investigated. This is attached at Annex C to this report.
9. Members of the Committee also received information on the number of planning enforcement cases opened, closed and outstanding for the period between January 2006 and July 2008. Information was also provided regarding the number of Section 106 Agreements dealt with. This is detailed in the tables below.

Table 1 - Planning Enforcement Cases - West and City Centre Area since January 2006

Date of Report	Enforcement Cases			Section 106 Agreements
	Opened	Closed	Outstanding	
Jan 2006	77	91	110	27
April 2006	70	64	114	30
Oct 2006 (2 Quarters)	150	126	135	44
Jan 2007	95	84	117	50
April 2007	76	75	118	45
July 2007	70	47	129	53
Oct 2007	87	60	167	43
Jan 2008	47	66	152	53
April 2008	80	66	171	47
July 2008	69	69	179	43

Table 2 - Planning Enforcement Cases – East Area since January 2006

Date of Report	Enforcement Cases			Section 106 Agreements
	Opened	Closed	Outstanding	
Jan 2006	68	42	167	Not known
April 2006	64	44	159	30
Oct 2006 (2 Quarters)	164	122	Not known	83
Jan 2007	78	81	173	41
April 2007	89	84	175	48
July 2007	92	63	199	44
Oct 2007	94	74	212	40
Jan 2008	51	55	208	58
April 2008	76	69	219	62
July 2008	116	78	258	65

10. At the formal meeting on 7th October 2008 it was suggested that a Member of the Committee shadow one of the Planning Enforcement Officers for the day to gain a valuable insight into their work. Councillor Douglas volunteered for this and produced the following summary of her experience:

'I shadowed a Planning Enforcement Officer on Wednesday 26th November 2008. In the absence of a pool car, I was driven to 6 sites that were in need of enforcement on planning issues. Some issues had been raised by the public, others picked up from invalid applications. So much extra information and other breaches are picked up this way and this is an extremely useful exercise.

The Planning Enforcement Officer was professional and took photographs of his findings, we talked about feeding information back to complainants and

also about what was done in terms of follow up back at the office. The Officer handed his card out to people so that they had contact details and he always identified himself before stating his business there.

I feel that these enforcement visits are absolutely vital as not only can the developers be picked up on breaches before the building is completed but so much more information about other possible breaches can be seen. We observed a road having been built across land, which originates from the main highway – do they have permission? We also viewed satellite dishes on roofs and had the opportunity to check advertising signage without contacting the originators themselves. It would appear the Planning Enforcement Officer ticks some applications off but finds more oddments to add to the list as he goes.'

11. To clarify their understanding of the processes surrounding planning enforcement the Committee asked various questions during the course of the review. Both questions and Officer responses are set out in Annex D to this report.
12. At an informal meeting on 5th November 2008 the Head of Development Control provided the Committee with information on the third key objective (to examine why so many cases are outstanding). He informed Members that the following factors influenced the timescales for dealing with cases:
 - Process and Regulatory Procedure, and;
 - Workload issues which are split into the following categories:
 - i. Increase in number of financial obligations
 - ii. Reduced officer capacity
 - iii. Managerial reporting arrangements
 - iv. Filing systems
 - v. Responses from consultees
 - vi. Input from legal services
13. Further information regarding the above is attached at Annex E to this report.
14. At the same meeting Members of the Committee asked for information regarding the planning enforcement departments at other similar Local Authorities for comparison with that at York. This is attached at Annex F to this report.

Issues Arising & Analysis

15. After due consideration of the information received on key objectives (i), (ii) and (iii) Members raised various points as detailed in the paragraphs below.

Section 106 Agreements

16. Section 106 payments often took a long time to come through for various reasons i.e. because a trigger point for payment had not been reached, because of slow responses from some developers or because of difficulties finding out who the land owner was. The original intention was for Planning Enforcement Officers to ensure that financial obligations were paid upon reaching the appropriate trigger point. With the introduction of the Draft Local

Plan in April 2005 Development Control now used planning conditions to secure financial contributions to the Council. This had increased the workload of the Planning Enforcement Officers as the number of financial obligation cases had doubled. The most widely used condition incorporated two trigger points and this needed extra Officer time in terms of processing and ensuring compliance with the condition, especially as a trigger point could indicate that payment would be due once a certain number of units had been occupied.

17. After further discussion the Committee agreed that non-payment of Section 106 obligations needed to be addressed as early as possible and Legal Services involved at an earlier stage than at present. Members acknowledged that investigations were already ongoing regarding the possibility of reducing the number of trigger points from two to one. There was a database detailing Section 106 payments within the City Strategy directorate but a cross directorate database would be preferable to allow the viewing of all payments received. It was also suggested, that in the interest of transparency, Section 106 Agreements be available to view through the Council's Planning Portal.
18. Discussions were also had regarding the importance of spending the Section 106 contributions on appropriate schemes. A process of accountability and transparency should be developed to ensure that this happened and a satisfactory record kept of all monies received and all schemes implemented.

Timings

19. Discussions were had regarding the possibility of introducing more rigid timings for the different stages of the enforcement process. The current process followed was set out in the Planning Enforcement Service guidelines available on the Council's website (website address listed in the background papers section of this report). This detailed the priorities for investigation and when a response/action to a complaint could be expected from a Planning Enforcement Officer. There were currently no timescales for completing a case as each had to be taken on its own merits. Members acknowledged that some cases were more difficult and time consuming than others but indicated that there were times when both developers and individuals 'played the system' causing unnecessary delays to the process.
20. Further deliberation found that at busy times management had to prioritise their time and due to statutory requirements and timescales processing of planning applications and planning appeals had to take priority over most planning enforcement work.

Minor Cases

21. The Committee raised concerns that some of the minor cases reported were often those that were the most important to local residents. It appeared that if the owner of the land could not be traced easily or a response was not received then the case could fade into the background and not be cleared up in a timely way. There was, therefore, a need to investigate whether appropriate timescales for clearing up cases could be introduced, especially in relation to the minor and less complicated cases.

Land Charges Register

22. Discussions were had regarding the possibility of using the Local Land Charges Register to flag up buildings where there was an enforcement issue. This initially raised concerns regarding confidentiality, possible compensation claims and usefulness in the majority of cases. The Head of Development Control, in conjunction with legal services prepared a briefing note on this to give Members further insight into the viability of using the Land Charges Register in this way. This is attached at Annex G to this report.
23. Discussions of the above showed that, used judiciously; this could be a useful tool. Whilst a solicitor undertaking searches for a client purchasing a property would be made aware of outstanding enforcement notices on a particular property they would not be made aware that a premises had not been constructed to plan. A purchaser may then, in good faith, buy the property without being aware that there was a problem.

Court Action

24. Discussions were had regarding the likeliness of City of York Council bringing court action against an individual. It was acknowledged that there had been delays in the past but this was now improving and the threat of court action from the Local Authority could prompt a response from some developers in relation to breaches of planning conditions.

Office Administration

25. The Committee were keen to know whether the system presently used for filing would change with the introduction of the new Document Management System. Officers had put in a growth bid to allow them to have documents scanned to the new system and the outcome of this bid was still pending as part of the budget process. If successful it would mean that more documentation would be instantly on hand to the Planning Enforcement Officers and less time would be needed to request/wait for retrieval of archived documents from storage.

Reporting to Area Sub-Committees

26. At present the Planning Area Sub-Committees received quarterly reports regarding both open and recently closed planning enforcement cases. Members of the Committee agreed that these should still be received although further notification to Ward Members via e-mail may prove useful.

Members as Witnesses

27. The Committee expressed interest in knowing more about whether Members could be used as witnesses in planning enforcement cases. Currently Members can report breaches of planning regulations to the Planning Enforcement Officers who then decide whether to take a witness statement from them. Members asked for further information detailing if, and in what circumstances, Elected Members could be used as witnesses in all aspects of planning enforcement. A briefing note prepared by legal services is attached

at Annex H to this report. It was acknowledged that this would not, in any way, release the Planning Enforcement Officers from their crucial duty to investigate and/or personally witness any complaint.

28. Members discussed the above briefing note and agreed that an Enforcement Notice shouldn't be issued without a Planning Enforcement Officer witnessing the breach. They did, however, feel that Members could be used as witnesses provided common sense prevailed as to when it was useful/beneficial and when not.

Other

29. Further discussions also raised the following issues
- The need for the Parish Councils to have more feedback and be made more aware of Planning Enforcement issues in their areas
 - Whether Planning Enforcement Officers should have more legal training.
 - A pilot scheme was due to be undertaken in the Building Control Department which would look into the use of various kinds of mobile communication technology (laptops, PDA's, mobile phones etc) to assist with working on site visits. The pilot was expected to commence sometime between June and September 2009. Members thought that the outcome of the pilot scheme could possibly be beneficial to the Planning Enforcement Officers in terms of provision of appropriate equipment.
 - Wearing of High Visibility Jackets and whether these should be marked or unmarked.
 - Some Members of the Committee believed that planning enforcement, in general, was kept out of the public eye and was relatively low profile. Discussions ensued regarding making planning enforcement cases public but it was realised that this could be problematic in terms of keeping a complainant's identity confidential and complying with the Data Protection Act.

Fourth Key Objective

(iv) To review the Council's processes and procedures to improve the handling of planning enforcement cases

30. In relation to the fourth key objective the Planning Department intended to hold a series of workshops with staff to review the service. The intention of this was to map out the current processes and procedures and consideration would be given to improving working practices and resource allocation. Further information regarding this is attached at Annex I to this report. Staff within the services will undertake the review, and the process will necessitate involvement from colleagues within the Council upon which the Enforcement Service in particular relies. An outline for this review is attached at Annex H to this report and a summary of the discussions had so far attached at Annex I.

Issues Arising & Analysis

31. Members welcomed the work being undertaken via the internal review and noted that recommendations made within the internal review may give rise to service improvements and changes. Members agreed that both the scrutiny review and the internal review could run concurrently but did not feel that the internal review need cause any delay to the scrutiny process.
32. The Committee requested that, as part of the internal review, the managerial situation be investigated to look at the possibility of having one manager for the whole team rather than two. This would give a more consistent approach to advice given on planning enforcement matters. They also asked that the results of the review be reported to all members of staff within the department so that everyone was aware of the outcome.

Fifth Key Objective

(v) To explore the impact of the Scrutiny Review on 'Powers of Enforcement – Take – Aways' on the way planning enforcement is now conducted.

33. Councillor Brian Watson had originally raised the above topic for review after numerous complaints had been received from residents in his Ward. The review had highlighted a number of concerns such as the disparity in equipment between Planning Enforcement Officers and Building Control Officers when doing a similar job, the support Enforcement Officers received during out of hours working and problems in processing complaints.
34. Councillor Moore gave evidence regarding the above review, and suggested that as the Planning Enforcement Team was small it needed assistance, support and appropriate equipment. He suggested that the Planning Enforcement Ad Hoc Scrutiny Committee revisit the recommendations the 'Powers of Enforcement – Take-Aways' Committee had made in order to be satisfied that they had been implemented and a difference to the service had been made.
35. The Executive Summary of the review and the recommendations arising from it are attached at Annex J to this report. All bar two of the recommendations were signed off by the Scrutiny Management Committee on 26 November 2007. The outstanding recommendations being 1 and 2 as set out in the aforementioned Annex J.
36. In light of the previous three paragraphs Members of the Committee asked the Chair and Scrutiny Officer to re-visit the recommendations of the 'Powers of Enforcement – Take-Aways' Review to see whether they had been implemented. Their findings are attached at Annex M to this report. This includes an update (provided by Environmental Protection Unit), on recommendations 1 and 2, which had been outstanding.

Issues Arising & Analysis

37. The findings of the Chair and Scrutiny Officer gave rise to various issues that required further clarity from the Planning Enforcement Officers. These are detailed below and should be seen as an addition to Annex M to this report:

Recommendation 3 Planning Enforcement Officers confirmed that one Planning Enforcement Officer attended the joint meetings.

Recommendation 4 The Planning Enforcement Officers confirmed that no one had been out with them at night to assess the level of risk

Recommendation 5 The nearest car park that Planning Enforcement Officers could use was the one in Marygate and this could be time consuming and difficult when dealing with urgent or emergency call outs as it took a while to walk to and from it. They also needed to give 48 hours notice to obtain a pool car for out of hours working.

Recommendation 6 Existing Planning Enforcement Officers had not received any court training (e.g. preparation of files, display of evidence, what to do in court). One Planning Enforcement Officer was an ex-policeman and therefore had more knowledge than the other Planning Enforcement Officers regarding this.

38. Discussions were had regarding the information provided in Annex M and the Planning Enforcement Officers' clarification on the outstanding points. Members agreed that recommendations 1, 2 and 3 were now fully implemented. On weighing up all the information they had been given regarding recommendation 4 they were also satisfied that this had been satisfactorily implemented.
39. In terms of recommendation 5 the Committee asked further questions of the Planning Enforcement Officer in attendance at the meeting on 15th April 2009. Clarity was sought on how long it took to walk from the office to Marygate car park and this was approximately 5 to 10 minutes. The representative of the Planning Enforcement Team indicated that this could be a problem if they needed to go out several times in a day or to an urgent call out. In terms of visiting take-away premises specifically, they did not need to do this on a regular basis and therefore the Committee felt that it was not unreasonable for Planning Enforcement Officers to continue to use the car park in Marygate.
40. Further discussions ensued regarding the 48-hour notice period needed for a pool car for out of hours working. The main reason for this length of notice period was because other officers took the pool cars home at night and they would need to make alternative transport arrangements should the pool car be needed elsewhere. It was suggested that this 48-hour notice period could be

looked at as part of the internal Review being undertaken in Development Control. In summary Members of the Committee agreed that this recommendation had been satisfactorily signed off in the context of the 'Powers of Enforcement – Take-Aways' Review.

41. Recommendation 6 raised issues around court training for Planning Enforcement Officers and Members of the Committee agreed that it would be hard to give thorough training at this stage because no prosecutions had taken place. Planning Enforcement Officers were keen to learn about the processes needed to prepare a court case and a representative from legal services indicated that they were supportive of this.
42. Both recommendations 7 and 8 were not fully implemented but had been addressed again in the recommendations arising from this review. They therefore agreed that in the context of the 'Powers of Enforcement – Take-Aways' Review they could be signed off.

Planning Enforcement in Relation to Premises Licensed under the Licensing Act 2003

43. Consideration was given to various concerns expressed outside of Planning Enforcement Ad Hoc Scrutiny Committee formal meetings about a perceived lack of planning enforcement in relation to premises licensed under the 2003 Licensing Act. The concerns mainly focused on various fast food take-aways where there was a conflict between planning restrictions and licensing restrictions (for example a premises may be licensed until 2am under the Licensing Act 2003 but be obliged to close at 11pm under planning conditions). At some Licensing Hearings premises licence owners had conceded to working outside their permitted planning hours.
44. In an e-mail circulated to the Committee at their formal meeting on 4th February 2009 Councillor Merrett, Ward Councillor for Micklegate, raised concerns that there was an ongoing problem in relation to enforcement of planning conditions attached to some fast food take-aways in his Ward. He suggested that Development Control set up arrangements to periodically check up late night/closing time adherence by late night take-away establishments and to respond within a set timescale to complaints about breaches of planning conditions. He also suggested that Development Control be involved in the Nightsafe Task Group and an integrated approach to managing the late night economy area be taken that was both compatible with reasonable street condition and residential amenity.
45. Discussions between both Officers and the Committee on the above concerns indicated that the Planning Enforcement Team only received 1 or 2 complaints per year regarding late night take-aways working outside their permitted hours and these were always investigated. Anomalies between planning and licensing hours were beginning to be regularised now as licensees applied to bring both their planning and licensing operating hours in line with each other. Officers said that with the current workload and the resources available it would be difficult to offer a proactive rather than a reactive service.

All key objectives

46. The four Planning Enforcement Officers prepared a report, which was presented to Members at an informal session on 5th November 2008. This is attached at Annex N to this report. The aim of the report was to provide Members of the Committee with information regarding all planning enforcement processes and the five key objectives of this review from the viewpoint of the Planning Enforcement Team.

Issues Arising & Analysis

47. The report prepared by the Planning Enforcement Officers offered the Committee a valuable insight into some of the problems they faced on a day-to-day basis. It is hoped that many of these would be addressed either during the course of the internal review or within the recommendations attached to this report.

Corporate Priorities

48. This review relates to the following Value as set out in the Corporate Strategy 2007-2011:

'Encouraging improvement in everything we do'.

Options

49. Having considered the information contained within this report and associated annexes, Members may decide to:
 - i. Amend and/or agree the content of and the recommendations within this report.
 - ii. Provide their comments prior to the report being presented to the Executive.

Implications

50. **Financial** – Purchasing new technology/new equipment will incur costs, as will ensuring a full First Response Kit is available and marked high visibility jackets. A growth bid will be put forward once the outcome of the pilot scheme is known and the type of equipment needed has been identified. The initial set up cost could be in the region of £6,000; with ongoing support costs it is also possible that recommendations made during the course of the Planning Enforcement Internal Review could lead to some additional expenditure.
51. **Human Resources** – There are no Human Resources implications directly involved within this report and the recommendations within it other than the temporary and informal reallocation of staff to assist the Planning Enforcement Team in quiet moments. It is, however, possible that recommendations arising from the Planning Enforcement Internal Review could lead to some.

52. **Legal** – There are no known legal implications associated with this report or the recommendations within it.
53. There are no known Equalities, Property, Crime & Disorder or other implications associated with the recommendations within this report.

Risk Management

54. In compliance with the Council's risk management strategy, there are no known risks associated with the recommendations of this report.

Recommendations

55. In light of the above report Members are asked to agree the following recommendations:

1. That the Head of Development Control:

- (i) Prioritise new complaints/cases
- (ii) Shorten the response time to letters sent in relation to breaches of planning regulations, where there is discretion to do so
- (iii) Introduce a weekly list detailing new planning enforcement cases, split by Ward

Reason: To ensure that all cases are dealt with in a timely manner and that Ward Members are kept fully informed of new enforcement cases in their areas.

2. That, once trigger points are reached and payment has not been received, Section 106 Agreements are promptly passed to Legal for action.

Reason: To ensure City of York Council can pursue non-payment of Section 106 Agreements in a timely manner.

3. That Section 106 Agreements, including the schedule of obligations, be placed on the planning portal under the planning applications to which they relate

Reason: To ensure transparency in the process

- 4.

- (i) That the expenditure of Section 106 monies be made entirely in accordance with the Council's Financial Regulations.
- (ii) That a regular report be presented to the relevant Planning Committees detailing where Section 106 monies have been spent by the receiving Directorates

Reason: To ensure that Section 106 monies are spent appropriately.

5. That Planning Enforcement Officers be issued with:

(i) Necessary mobile communication technology (e.g. laptop, mobile phone, PDA, laser rule) subject to the outcome of the pilot scheme to be undertaken by Building Control and to funding being available.

(ii) A First Response Kit and any appropriate training to use this.

Reason: To ensure the safety of Planning Enforcement Officers and to allow them to easily gather and record information when on site visits.

6. That Planning Enforcement Officers be issued with high visibility jackets marked with 'CYC Planning Enforcement Officer' and these should be worn at appropriate times.

Reason: To enable Planning Enforcement Officers to be easily identified.

7. That the Head of Development Control make planning staff available to help with planning enforcement when possible.

Reason: To reduce the number of outstanding cases.

8. That the results of the Development Control Internal Review be fully communicated to all departmental staff.

Reason: To ensure that all members of the department are fully aware of the outcome of the Internal Review.

9. That a copy of the final report of the Planning Enforcement Ad Hoc Scrutiny Committee be circulated to all Members involved with Planning Committees.

Reason: To ensure that all Members are made aware of the recommendations of the Planning Enforcement Ad Hoc Scrutiny Committee

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Final Draft Report
Approved



Date 23rd April 2009

Specialist Implications Officers**Legal**

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Wards Affected:

All



For further information please contact the author of the report

Background Papers:

- **Minutes of the meetings of Scrutiny Management Committee on both 26.11.2007 and 28.07.2008 can be found on the Council website at:**
<http://democracy.york.gov.uk/ieListMeetings.asp?CId=144&Year=2009>
- **PPG18 (Planning Policy Guidance 18: Enforcing Planning Control**
<http://www.communities.gov.uk/publications/planningandbuilding/planningspolicyguidance18>
- **Planning Enforcement in York**
http://www.york.gov.uk/environment/Planning/Planning_enforcement/

Annexes

- Annex A** Presentation – ‘Planning Enforcement at York’
Annex B Definition of Section 106 Agreements
Annex C Planning Enforcement – Choice of Routes
Annex D Questions and Answers Arising Through the Course of the Review
Annex E Further Information on Key Objective (iii)
Annex F Information Comparing York and Other Local Authorities
Annex G Briefing Note Regarding Land Charges Register
Annex H Briefing Note on when Elected Members can be used as Witnesses
Annex I Further Information on Key Objective (iv)
Annex J Outline of Internal Review
Annex K Outline of Discussions Regarding Internal Review
Annex L Executive Summary ‘Powers of Enforcement – Take-Aways’ Scrutiny Review
Annex M Update on the Recommendations arising from the ‘Powers of Enforcement – Take-Aways’ Scrutiny Review
Annex N Report prepared by Planning Enforcement Officers