

## Scrutiny Management Committee

28 July 2008

### Planning Enforcement – Feasibility Report

#### Summary

1. This report asks Members to consider a scrutiny topic registered by Councillor Wiseman to scrutinise the resources available to the Planning Enforcement Team and to look at the timescales for completion of enforcement cases. A copy of the topic registration form is attached at Annex A.

#### Criteria

2. Councillor Wiseman believes that this topic fits with the following eligibility criteria as set out in the topic registration form:
  - Public Interest (i.e. in terms of both proposals being in the public interest and resident perceptions)
  - Under Performance/Service Dissatisfaction.
  - Service Efficiency
3. The Assistant Director of Planning and Sustainable Development and the Head of Development Control also agree that the topic fits with the above criteria.
4. The portfolio holder for City Strategy did not have any particular comments but believed that most of the questions proposed in this topic could be answered by other means than a scrutiny review and a review would only be necessary if a process issue existed.

#### Background to Proposed Review

5. Councillor Wiseman wishes this review to explore the possibilities of speeding up the period from opening to closing planning enforcement cases and achieve a reduction in the number of outstanding cases. She has 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 proposes that the Council's approach to court action is reviewed to investigate concerns that enforcement by City of York Council has little threat of further legal action being taken.
6. 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. There do not appear to be any timescales for completing a case. Whilst Councillor Wiseman is aware that some cases are very complex and need a lot of time there are still too many minor cases (Category C cases [see Annex E]) ongoing and as part of this review she would like to explore possible ways of completing these in a timelier manner.

## Consultation

7. Between September 2004 and May 2005, City of York Council's Environment and Sustainability Scrutiny Board conducted a detailed review into the subject of 'Powers of Enforcement – Take-Aways'. The findings of this review were signed off by the Scrutiny Management Committee (SMC) at a meeting on 24 October 2005. These findings were subsequently recommended for implementation by the Executive Member for Environment and Sustainability at a meeting held on 9 November 2005.
8. SMC receive regular updates on whether the recommendations of scrutiny reviews have been implemented. Once SMC are happy that all the recommendations have been fully implemented then they will sign them off as complete. An update in relation to the scrutiny review 'Powers of Enforcement – Take-Aways' was presented to SMC on 22 October 2007 and again on 26 November 2007 when the Assistant Director (Planning and Sustainable Development) attended to answer questions. The minutes of this meeting record that the recommendations had been implemented and were therefore signed off subject to additional information in relation to recommendations 1 and 2 being provided to Members by e-mail. Recommendations 1 and 2 are set out below.

**Recommendation 1** The Environment and Sustainability Scrutiny Board would welcome the positive contribution that the success of the penalty notice support bid would make to addressing these issues.

**Recommendation 2** A multi-agency access database containing details about all individual take away properties should be created. Such details should be in the form of notes on disturbance, environmental health issues, actions taken to ensure compliance etc and updated by licensing, planning, environmental health and the community police as appropriate. This should be maintained to ensure that it remains current.

At the time of writing this report it had not been clarified whether the additional information had been provided as requested.

9. Should this topic go ahead as a scrutiny review Councillor Wiseman has suggested that these recommendations be revisited. She would like to find out whether the recommendations of the scrutiny review on 'Powers of Enforcement – Take-Aways' changed the way that planning enforcement was conducted. If it did change how did it change and how was this change achieved.
10. Recommendation 8 of the 'Powers of Enforcement – Take-Aways' stated that:

'Officers should be equipped with the necessary tools to undertake their work. The present level of equipment between departments is variable. Equipment should be assessed to meet the needs of the work and ensure equality of access between equivalent areas of work.'

Planning Enforcement Officers at both Chester City Council and Bath and North East Somerset Council are issued with the same type of equipment as those in York. Neither of the aforementioned Councils provided their Planning Enforcement Officers with laptop computers. In terms of numbers of officers employed Chester City Council has 3 enforcement officers and Bath and North East Somerset Council has 4 (with one post for a senior enforcement officer currently being vacant).

### National Picture

11. The Town and Country Planning Act 1990 sets out the law on Enforcement. This is attached at Annex B.
12. Planning Policy Guidance 18 (PPG18) introduced new and improved enforcement powers to Local Planning Authorities (LPAs) by the Planning and Compensation Act 1991. The guidance outlines the general approach to enforcement, including the primary responsibility of LPAs in the matter and the decisive issue of whether a breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. This is attached at Annex C to this report.
13. A table is attached at Annex D showing Enforcement Benchmarking Results 2006/07 for various Local Authorities including York and giving a national and regional perspective. This table includes statistics in relation to number of cases investigated and total number of notices issued within given timescales.

### Local Picture

14. Information on local planning enforcement is available on City of York Council's website. This sets out the Authority's approach to planning enforcement, the procedures for enforcing planning control in the City, what to do if you have concerns that a development is proceeding without any necessary consent or is not in accordance with a consent already granted and the level of service that can be expected from the City of York Council. A copy of this is attached at Annex E.
15. City of York Council employs 4 Planning Enforcement Officers; 3 of these are employed on a full time basis and one part time (4 days per week). As well as dealing with planning enforcement work they also deal with Section 106 monitoring work. (A definition of Section 106 Agreements is attached at Annex F of this report). The amount of work done in relation to Section 106 monitoring is the equivalent of 1 full days work for each officer and involves collecting monies as certain trigger points during a development.
16. The Head of Development Control is planning to undertake a review of the internal processes and procedures within the planning enforcement service in

Autumn 2008. There would be the possibility of linking this in with a scrutiny review.

17. The Head of Development Control and Assistant Director (Planning and Sustainable Development) have volunteered to run a training course for Members on planning enforcement. If Members were interested in attending then a date could be arranged for Autumn 2008.
18. The following further comments were received from the Assistant Director: (Planning and Sustainable Development) and the Head of Development Control:
  - a. The Planning Enforcement Teams do not offer an 'Out of Hours' Service, but will monitor cases outside normal working hours on a pre-arranged basis.
  - b. Are the delays only attributable to a perceived lack of resources in the City Strategy Department or are there other factors such as capacity in legal services?
  - c. Are the delays caused by the procedures in place or because of the nature of enforcement work?
  - d. Enforcement Officers also monitor Section 106 Agreements and this can be a very time consuming process.
  - e. The timescales from receipt to closing enforcement cases in York are comparable with other Local Authorities and are largely determined by the nature of the cases and the extent to which a 'breacher' of planning control seeks to resist action through the appeal process.
  - f. Historically City of York Council has no reputation or track record for taking Court Action.
  - g. City of York Council does not use 'all the tools in its toolbox' i.e. there are some options open to the Authority in relation to Planning Enforcement that have never or rarely been used, such as Section 215 Notice to require the improvement of unsightly land or dilapidated buildings.
19. The following comments were received from City of York Council's Legal department:
  - a. Planning Enforcement Officers have received training from Legal Services on how to prepare files for prosecution.
  - b. There is no evidence of any recent planning prosecutions being undertaken.
  - c. The Planning Department are aware of their statutory duty to enforce planning legislation.
20. In light of the above consultation there are clearly tensions within City of York Council in relation to expected outcomes from planning enforcement cases. In

order to provide clarity within the organisation it is suggested that a focused review of this topic would be appropriate.

21. Comments have been received from 2 of the 4 Planning Enforcement Officers. The issues raised would need to be addressed if a review of this topic were to go ahead; however it was not considered appropriate to include them at this stage since the comments were not directly related to whether the review should proceed.

## **Conduct of Review**

### **Information Gathering**

22. A Scrutiny Review on Planning Enforcement would allow Members to study various statistics in relation to planning enforcement cases including:

- The number of cases opened, ongoing and closed over a specified time.
- Number of Enforcement Notices (of all types) issued over a specified time.
- Number of times court action was taken over a specified time.

These statistics could then be compared with statistics in similar Local Authorities.

23. A review would also allow Members to

- Investigate City of York Council's approach to court action in relation to planning enforcement matters.
- Investigate the possibility of adapting the Planning Enforcement Guidelines (Annex E) to form a Charter and/or a policy.

24. It is suggested that the following persons be consulted if a review were to go ahead:

- Officers from the Planning Department
- Planning Enforcement Officers
- Legal Services
- Members
- Any other associated Officers that may be associated with planning enforcement
- Chair of the 'Powers of Enforcement – Take-Aways' (If Members consider it appropriate to include the changes introduced to planning enforcement as a result of the Powers of Enforcement – Take-Aways Scrutiny Review in the remit).

25. Taking the above into consideration, it is considered that a topic of this nature would require no more than 3-6 months to complete.
26. This directorate has already been subject to two recent scrutiny reviews that have taken up officer time and resources. This may impact on 'everyday workloads' e.g.: Highways Maintenance Procurement Process and PFI Scrutiny Review, Traffic Congestion Scrutiny Review and the 2005 Powers of Enforcement – Take-Aways Scrutiny Review.

### **Implications**

27. **Financial** - There is a small amount of funding available within the scrutiny budget for research.
28. **Human Resources (HR)** – None other than those mentioned in paragraph 26 of this report.
29. **Legal** – There are no direct legal implications associated with this particular report. However legal implications associated with this topic may emerge if the topic progresses.
30. **Other** – There are no known equalities, property, crime and disorder or other implications associated with the recommendations within this report.

### **Risk Management**

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

### **Recommendations**

32. Based on the evidence presented within this report Members are advised to proceed with this review. It is suggested that this review commence in the autumn of 2008.
33. In making this recommendation, an overall aim for this review was recognised together with a number of key objectives. A suggested remit is therefore attached at Annex G and Members are asked to consider this and make any necessary changes necessary, prior to approving a remit for this review.
34. Members are specifically asked to consider whether they wish any review to include examining the impact of the Powers of Enforcement – Take-Aways Scrutiny Review (see v of remit).
35. Members are also asked to consider whether they would like to take up the offer of attending a training course as set out in paragraph 17 of this report.

## Contact Details

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Feasibility Study  
Approved



Date 18.08.2008

### Specialist Implications Officer(s)

None.

### Wards Affected:

All



For further information please contact the author of the report

### Background Papers:

None

### Annexes

Annex A – Topic Registration Form

Annex B – Section VII – Town and Country Planning Act 1990 – Enforcement

Annex C – PPG18

Annex D – Enforcement Benchmarking Results 2006/07

Annex E – Guidelines in relation to City of York Council's Planning Enforcement Service

Annex F – Definition of Section 106 Agreements

Annex G – Draft Remit for the Review