

# Gloucester City Council

<b>Meeting:</b>	<b>PLANNING COMMITTEE - 3<sup>rd</sup> November 2015</b>
<b>Subject:</b>	<b>PLANNING ENFORCEMENT QUARTERLY PROGRESS REPORT (APRIL to SEPTEMBER 2015), UPDATE TO PLANNING ENFORCEMENT PLAN, AND S106 MONITORING FEES</b>
<b>Report Of:</b>	<b>ANDY BIRCHLEY, SENIOR PLANNING COMPLIANCE OFFICER</b>
<b>Wards Affected:</b>	<b>ALL</b>
<b>Key Decision:</b>	<b>No                                      Budget/Policy Framework:    Yes</b>
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<b>Appendices:</b>	<b>1. SUMMARY OF ENFORCEMENT ACTIVITY 2. NOTICES IN EFFECT AT 1<sup>st</sup> OCTOBER 2015 3. REVISED ENFORCEMENT PLAN (INCLUDING REVISED CUSTOMER SERVICES CHARTER)</b>

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To present an updated Planning Enforcement Plan, including Customer Service Charter, for member's consideration
- 1.2 To discuss arrangements for the collection of monitoring fees on s106 Agreements, and their future status, in the light of a recent legal challenge
- 1.3 To identify the level and nature of enforcement activity undertaken by the Planning Enforcement team between April and September 2015
- 1.4 To provide an update on formal action being taken against more serious planning breaches, including the results of legal actions undertaken.

### 2.0 Recommendations

- 2.1 Planning Committee is asked to APPROVE the updated Enforcement Plan and Customer Service Charter.
- 2.2 Planning Committee is asked to APPROVE the continuing practice of requiring monitoring fees from developers, on the basis of the approach proposed in 5.6, below.

- 2.3 Planning Committee is asked to RESOLVE, subject to any questions or issues arising, that planning enforcement performance be noted.

### **3.0 Background and Key Issues**

- 3.1 Gloucester City Council's Planning Enforcement function is based in the Private Sector Housing team, and is part of the Council's Public Protection Service. The team is made up one full time Enforcement Officer, and a Senior Planning Compliance Officer, and also involves the monitoring of Section 106 legal (planning) agreements.
- 3.2 The team operates according to the provisions of the Planning Enforcement Plan, approved by members in September 2013. This policy is supported by a set of customer service standards, priorities for action, and is supplemented by agreed office procedures.
- 3.3 With an increasing workload, including involvement in areas not traditionally associated with planning enforcement, there is a growing challenge for the Planning Enforcement team to manage its caseload to the standards it aspires to. In particular there is a need to ensure that there is enough time and resource available to focus on the most serious cases, and keep up to date with fast changing legislation, guidance, and case law – all crucial in making sound decisions. In order to achieve this focus, the team have reviewed their working practices, to make further efficiencies.
- 3.4 Some of these changes involve a change to the Enforcement Plan. In September 2013 members agreed to the recommendation that *"Full Council amend the Council's scheme of delegation to enable Planning Committee to approve any future amendments to the Gloucester City Council's Planning Enforcement Plan"*.
- 3.5 The changes recommended are summarised in Section 4.0 below, and the revised Enforcement Plan and Customer Services Charter are presented in Appendix 3. For comparison, the current (unrevised) plan is available on the Planning Enforcement Webpage.

### **4.0 Changes to the Enforcement Plan**

- 4.1 Details of the relocation of the Planning Enforcement team from the Planning section to Private Sector Housing, and current decision making arrangements, including access to a direct action budget.
- 4.2. Those making enquiries are expected more to provide basic details and other information to assist the investigating officer, as is appropriate. Customer services and call centre staff have been asked to direct customers to the Planning Enforcement webpage for further advice on how to make an enquiry. This way, officers should be able to identify without a site visit some issues that are not considered a breach of planning, enabling the team to focus on those that are. Currently around a third of all cases result in there being no breach of planning regulations identified. Investigations would continue to be undertaken where there is any doubt.

- 4.3. Complainants no longer updated as a matter of course. With over a hundred investigations open at any one time, the time taken to update complainants is significant and diverts officers from focusing on progressing investigations more quickly. However, the team will continue to acknowledge all complaints, providing contact details of the assigned investigating officer where an investigation is opened, giving updates *on request*, and advising on the outcome (with reasons) once the matter is concluded.
- 4.4 Where a breach of planning regulations has been identified, but it is not considered expedient or otherwise to take enforcement action, these investigations will not only be closed but also specifically recorded as a 'Contravention'. This practice is already used for building regulation breaches. This will ensure that any prospective purchasers are more readily aware of any planning issues relating to the land, by making them more easily identifiable in a future land search. This would also provide those committing the breach with more of an incentive to rectify it, without the Council taking action to make them do so.
- 4.5 Progress reports presented to Planning Committee half yearly rather than quarterly, covering periods January to June and July to December respectively, starting in 2016.

## **5.0 s106 monitoring fee**

- 5.1 At its July 2008 meeting, Planning Committee resolved to adopt the practice of charging fees to cover the (officer salary) costs of monitoring s106 agreements, applying a standard fee of £750 per main obligation, or other negotiated sum at the discretion of the Development Control Manager .
- 5.2 This standard fee of £750 per main obligation monitored is calculated by identifying standard activities required to monitor an average agreement, estimating the time to undertake these, and applying the officer's hourly 'charge out rate' against this.
- 5.3 The Council receives around £5,000 each year through these monitoring fees, reflecting approximately as a salary cost the proportion of total work undertaken by planning enforcement officers in monitoring s106 agreements.
- 5.4 Earlier in 2015 there was a successful legal challenge to the imposition of a standard monitoring fee by Oxfordshire County Council. However, the outcome of this judgement indicated that fees may be awarded where they can be justified, broken down by specific monitoring activities related to that development, rather than by reference to a standard formula.
- 5.5 Estimates relating to the cost of monitoring s106 Agreements on specific developments in Gloucester can be confidently made, using the experience of monitoring over 200 legal agreements and robust record keeping as evidence of the work involved.
- 5.6 Consequently it is proposed that a monitoring fee of £750 per main obligation continues to be sought. However should this methodology be challenged then a more specific itemised breakdown be provided and an alternative fee considered,

with 'negotiation' of the final figure at the discretion of the Development Control Manager. Developers should note that as the £750 standard fee is an average, some 'alternative fees' will be higher.

## **6.0 Caseload and progress**

- 6.1 Due to heavy workload, no progress report was produced for the April to June 2015 quarter. Consequently this report covers the six month period from April 1<sup>st</sup> to September 30<sup>th</sup> 2015.
- 6.2 143 new enforcement enquiries were investigated during this period, with a total of 134 concluded. In all, a total of 162 different planning investigations were worked on between April and June, and 204 between July and September. 117 cases remain under investigation. A more detailed breakdown of performance, including types of cases investigated, and reasons for closure, is provided in Appendix 1.
- 6.3 The following identifies some of the areas of work undertaken during the quarter, excluding specific cases identified in Appendix 2, or in section 7.0 below:
- A high number of operational development investigations have been opened this year as there seems to be a noticeable trend towards building extensions or outbuildings, rather than 'upsizing' to bigger properties.
  - The team have addressed a high number of untidy garden complaints, as is usual during the spring and summer months
  - The team has been working with the Council's Townscape Heritage Initiative Officer, identifying possible enforcement approaches where grant incentives are having little effect on improving the appearance of key individual properties.
  - The team continues to work with a number of developers across sites within the City where the housing has been completed without the requisite landscaping, public open space and play area schemes being fully implemented.
  - A full review of live s106 obligations, and progress against their compliance (including payments and public works due) was undertaken at the financial year end, and a report on progress presented to Planning Committee in June

## **7.0 Formal action**

- 7.1 When the Council's requirements are not met, following a reasonable time period to comply, and where the breach is considered to merit action in the public interest, then formal action will be pursued to remedy a planning breach. This usually involves some or all of the following:
- Service of a Notice
  - Prosecution
  - Works undertaken and re-charged to the landowner (works in default)
- 7.2 Appendix 2 identifies those cases where a Notice has been served or was in force at 1<sup>st</sup> October 2015, showing progress against the Council's stated requirements. 7 new Notices were served between April and September 2015, with 5 Notices complied with in the same period. 11 Notices are currently awaiting compliance.

### 7.3 Enforcement appeals:

- Unit 4, 151 Bristol Road – Unauthorised change of use from storage unit to car repairs. This Notice was the subject of an enforcement appeal, which was determined by the Planning Inspectorate in the Council's favour. The use has ceased, and works to restore the front elevation to its previous appearance has now been completed.
- 90 Longford Lane – Unauthorised conversion of an outbuilding to a unit of self-contained accommodation, independent from the main dwellinghouse. A planning application was made in 2013 to seek permission for this change of use, refused by Planning Committee, and dismissed on appeal. The owners have nevertheless converted the building into self-contained accommodation, are using as such, and have appealed the enforcement notice on the grounds that there is no breach of planning regulations.

### 7.4 Direct action was undertaken during the quarter in respect of the following untidy land, by a Council appointed contractor, following non compliance with s215 Notices:

- 15 The Moat, Quedgeley
- 51 Salisbury Road

The costs incurred in undertaking direct action are usually charged to the owner, but in all cases will remain as a charge (with interest) against the property until such time as it is paid.

## 8.0 Other work

- 8.1 The Planning Enforcement team have played a full role in the Rugby World Cup, as members of a multi-disciplinary team, providing match day duties and intelligence primarily related to licensing, unauthorised advertising and marketing, and trading standards issues.
- 8.2 Work to review systems and update the Planning Enforcement Plan has concluded with the proposed changes brought as recommendations in this report
- 8.3 Following twice undertaken direct action to clear overgrown gardens at 71 Nine Elms Road, at a cost of around £6,000 to the Council, and with the owner refusing to either repay the debt or start looking after his land, the Council is seeking an enforced sale of the property. This is subject to agreement from Full Council, and is being proposed through housing legislation by the Private Sector Housing manager, with the support of the planning enforcement team. Not only would this ensure that the Council receives the debt owed to it, but will best ensure that the land is passed to a new owner who would look after its condition.

## 9.0 Alternative Options Considered

- 9.1 Most this report is for information only, and therefore the consideration of other options is mostly not relevant.

- 9.2 Updated Planning Enforcement Plan – various options were considered when reviewing the above Plan over a period of almost a year. Discussions between officers have resulted in what is considered to be the best option to deliver the planning enforcement service most efficiently. Without these changes being made it is likely that the number of cases the team can (effectively) investigate each year would reduce.
- 9.3 The option to stop requesting s106 monitoring fees was considered, however this will result in the council providing a service with no income to cover it, creating a further strain on the council budget. However, this is an unnecessary step, as the fee can still be requested where they can be justified

## **10.0 Reasons for Recommendations**

- 10.1 To give Members the opportunity to scrutinise the work of the planning enforcement team, be aware of individual cases, and have the opportunity to ask any questions or raise any other matters of interest.
- 10.2 To recommend changes to the planning enforcement function that officers believe will allow them to provide the best service possible within restraints, for the residents of Gloucester, and to protect their built and natural environment
- 10.3 To enable the Council to continue recouping the costs of monitoring s106 agreements, in the light of possible challenge

## **11.0 Future Work and Conclusions**

- 11.1 The Planning Enforcement team currently has 117 cases under investigation, and will receive further enquiries during the October to December quarter, working to try to resolve or meet a satisfactory outcome in as many of these cases as possible.
- 11.2 The Planning Enforcement team will implement any changes approved through the Enforcement Plan, where necessary working with other officers (eg IT) to realise these changes.

## **12.0 Financial Implications**

- 12.1 The cost to the Council is officer time which includes legal officer's time, in carrying out enforcement duties. Where direct action is taken the costs of any works is sought from those responsible for the breach, and remains as a charge against the land until such time as it is paid. Financial Services have been consulted in the preparation this report.

## **13.0 Legal Implications**

- 13.1 The Council has a range of powers available to it to enforce breaches of planning legislation. These powers are supplemented by the policies and procedures

adopted by the Council, which are followed when dealing with potential breaches. Having adopted policies and procedures for planning enforcement helps to minimize the risk of Judicial Review and maladministration complaints and ensures that appropriate enforcement action is taken. Whilst prosecution is an option open to the Council, it isn't always the most cost effective method of enforcement, and it may not necessarily lead to a planning breach being remedied; it can often only lead to the securing of a conviction. Direct action is a last resort, but is necessary in some circumstances, and often more cost effective. Legal Services have been consulted in the preparation this report.

#### **14.0 Risk & Opportunity Management Implications**

14.1 The only risk to this authority (should the recommendations not be approved) is a reduction in s106 income, and less efficient enforcement monitoring service, dealing with less investigations.

#### **15.0 People Impact Assessment (PIA):**

15.1 There are no risks for customers and staff, in the areas of gender, disability, age, ethnicity, religion, sexual orientation and community cohesion in this report

#### **16.0 Other Corporate Implications**

16.1 It is considered that there are no other corporate implications not already covered within the report

**Background Documents:** None