

REPORT ON THE REVIEW OF ROCHFORD DISTRICT COUNCIL'S PLANNING ENFORCEMENT ACTIVITY

1 PURPOSE OF REPORT

- 1.1 This report has been prepared in response to the decision by the Overview & Scrutiny Committee to conduct a review into the planning enforcement activity of Rochford District Council.
- 1.2 Members of the review team took steps to review every aspect of planning enforcement from the initial report to officers to the conclusion of the case.
- 1.3 The main aim of the review was to examine any possibilities to improve this area of Council business for the benefit of the residents of Rochford District.

2 REPORTING TO ROCHFORD DISTRICT COUNCIL

- 2.1 It was determined that the Council currently has a variety of ways in which residents and other interested parties can report alleged breaches in planning consent to the Council.
- 2.2 These range from (but are not exclusive to):-
 - Members of the public
 - Elected Members of the Council
 - Parish Councils
 - Council officers from other departments such as Environmental Health and Revenues and Benefits
 - Other bodies – Essex County Council or the Environment Agency
- 2.3 Medium for the reporting of alleged breaches:-
 - Telephone
 - Emails
 - Comments on planning applications from neighbour consultations
 - 'ACHIEVE' form available via the Council website
 - Via letter
 - Officers seeing breaches whilst out on site visits.

- 2.4 It was determined that it is rare that an officer is unable to identify the accused property from the online form. The property is identified by an address most of the time, but where it is in a field, for example, officers are usually successful in identifying the piece of land or will request clarification from the complainant. There is, however, the potential to improve this function with the addition of a BOT for interactivity between informants and the Council, together with the use of 'What3Words' as a means to pin point the exact location of an alleged breach.

3 STAFFING AND WORKLOADS

- 3.1 The current staffing level in the Planning Enforcement team at Rochford District Council is one senior planner and one junior planner.
- 3.2 The junior planner has only been with RDC for about 6 months and so is still relatively new to the role. His workload is being managed by the senior planner in line with his experience.
- 3.3 Between February 2022 and June 2022 and the period January 2020 to July 2021 the team only consisted of one senior planner.
- 3.4 The review team was provided with some considerable amount of data by the Planning department. Doing a year-on-year comparison between the month of August 2019 and August 2022, the number of total allegations received by the Council has increased by 29% with no additional staff.

4 COUNCIL ACTION ON RECEIPT OF AN ALLEGATION

- 4.1 All newly received reports are triaged by the team.
- 4.2 All allegations are followed up with a site visit within 30 days by a member of the team to identify the site and ascertain if any breach of a planning condition is apparent. Some of these site visits determine that no breach was occurring and the allegation is made either innocently by mistake or sometimes for more malicious reasons. At this point the case is closed and the complainant informed.
- 4.3 In most cases, identified planning breaches can be dealt with, and are normally dealt with, by way of negotiation between the Council and the developer. This includes making alterations, ceasing the activity, submitting the necessary details for the discharge of conditions or the submission of a planning application to attempt to regularise the breach.
- 4.4 In those rare cases where the developer refuses to listen to the officer's advice and does not make the necessary alterations to the development etc. formal enforcement action is taken by issuing an Enforcement Notice. In cases where significant harm is being caused by the development a 'STOP' or 'Temporary STOP' notice is issued.

- 4.5 In taking the decision to go down this route officers must be mindful of the guidance contained within Government publications, most notably the **National Planning Practice Guidance (NPPG)**.
- 4.6 Each case must be taken on its merits and we were informed that the typical 'trigger' for STOP notices to be issued is for a 'relevant activity' happening or unauthorised work to a listed building. If a developer is continuing work despite a number of failed applications for consent – this might also attract a STOP notice to prevent any further development of the site. A final example provided to us was if at a location, members of the travelling community started to 'hard surface' a large area in preparation for moving in.
- 4.7 The officers informed us that in taking the decision to issue a STOP or Temporary STOP notice they must be very careful in ensuring that they have assessed the potential risk for a claim for compensation from the developer. Issuing a STOP notice is a strong use of the Council's powers and the Council will need to demonstrate that they have acted reasonably in taking this action or be liable for costs. For example, if a STOP notice is served too soon and subsequently discovered that it was not appropriate, the Council could be liable for the developer's loss of earnings or financial costs of laying off contractors.
- 4.8 Sometimes officers discover that a planning condition set by either the planning officer or by Members of the Development Committee is simply unable to be discharged or enforced because it does not meet the required 6 tests for conditions. This is not common but when it does happen the enforcement team advises the developer there is the option to apply to vary the wording of the condition, or simply the condition cannot be complied with or enforced. The officers never overrule the original decision.
- The six tests are:-
- Necessary;
 - Relevant to planning;
 - Relevant to the development to be permitted;
 - Enforceable;
 - Precise; and
 - Reasonable in all other respects.
- 4.9 Where a planning officer is found to have issued a condition which is unenforceable, this is fed back to the officers and discussed further in the team's 6 weekly group meetings.
- 4.10 We asked that this is also fed back to Members in future planning training.

5 PROACTIVE ACTIVITY

- 5.1 The review team sought to identify what proactive activity was undertaken by the Council following the granting of planning consent and specifically in relation to compliance with any planning conditions.
- 5.2 We were informed that at present no proactive activity was taking place into following up planning conditions. This is primarily due to the lack of resources to enable them to do this.
- 5.3 There is an officer who follows up on all Section 106 agreements to ensure that there is compliance here, but this currently sits with Daniel Goodman, in the Strategic Planning team, simply as there is no one else to do this and it is not the work of the Local Plan team.
- 5.4 We were also advised that at this time Brentwood Borough Council does not have any proactive officers either.
- 5.5 The review team asked the planners how it might affect their workloads and the number of open cases if they were able to undertake more proactive activity against developers breaching planning conditions.
- 5.6 Officers informed us that it would dramatically reduce the number of allegations of breach of planning conditions received by the Council if there was an officer who could follow up all planning consents to ensure compliance.
- 5.7 We were also advised that this work would not be sufficient for a full-time member of staff, but we were also advised that an extra member of staff could monitor all planning consents across Rochford District as well as Brentwood Borough and also take ownership of the Section 106 agreements to ensure compliance.

6 SUMMARY

- 6.1 The review team found that the small team of officers within the Council's Planning Enforcement department is overstretched.
- 6.2 The workload which is being carried by them at present is 29% higher than it was 4 years ago with no uplift in staff.
- 6.3 We found that the officers are motivated and using their professional judgment to prioritise those cases which need the more urgent work. For example, those going to appeal or court; however, this has the natural knock on effect of leaving other cases undealt with.
- 6.4 Despite this, the officers are able to comply with timescales for site visits.

- 6.5 It is also clear that a more proactive approach to how the Council monitors compliance with conditions attached to a planning consent would dramatically assist the planning enforcement department by reducing the numbers of allegations received and would also improve public confidence in the Council's activity in this important area of business.
- 6.6 There also appears to be a sound networking system in place across authorities in the area with information and data being shared (where appropriate) to highlight those developers who frequently breach conditions.

7 RECOMMENDATION

- 7.1 It is proposed that the Committee **RECOMMENDS TO THE EXECUTIVE**
- (1) That options are explored within the #OneTeam partnership to create additional planning enforcement capacity across both Councils with the aspiration to create one additional post that supports both Councils.
 - (2) That Member training be updated to include inappropriate conditions being attached to planning consents and to provide Members with a clear understanding on enforcement procedures and practice.
 - (3) That officers review the 'ACHIEVE' online reporting form to explore opportunities to improve the reporting process.

Cllr Mrs J E McPherson and Cllr M G Wilkinson

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