

**DELEGATED**

**AGENDA NO**

**PLANNING COMMITTEE**

**DATE 22 AUGUST 2012**

**REPORT OF CORPORATE DIRECTOR,  
DEVELOPMENT AND  
NEIGHBOURHOOD SERVICES**

## **Proposed Submission to Government on Legislative changes to Enforcement**

### **Summary**

Following a resolution at Full Council on 2<sup>nd</sup> May 2012 Members are concerned that there have been numerous instances over recent years when developers and residents have undertaken new build projects, building alterations or other construction works that required planning approval but these people have either not submitted an application or disregarded the conditions or approved plans and only after being found out have been requested to submit an application for retrospective approval.

Many members have been annoyed and frustrated at this lack of respect for the planning process and now consider that legislation should be put in place to penalise those that intentionally disregard the planning procedures.

It was therefore agreed that the Council submit a comprehensive proposal to government based on the evidence of recent cases. To enable all groups to participate in preparing this proposal, The Planning Committee has been mandated to prepare a submission taking into consideration all of the problems experienced by this authority and submit it to the appropriate minister and to also seek support from the Local Government Association.

This report therefore contains the comprehensive proposal which subject to members' comments will be submitted to Government

***Recommendation: That Members endorse the proposal contained in the report to be submitted to the Secretary of State for Communities and Local Government and the support of the Local Government Association be sought to bring about the introduction of the requested new legislation***

### **Background**

1. At the meeting of Full Council on 2<sup>nd</sup> may 2012 Members passed a resolution that:-

There have been numerous instances over recent years when developers and

residents have undertaken new build projects, building alterations or other construction works that required planning approval but these people have either not submitted an application or disregarded the conditions or approved plans and only after being found out have been requested to submit an application for retrospective approval

2. In a number of cases they have been required to alter their developments to comply with their original planning approval but in others the changes have been reluctantly accepted as a retrospective application, in the face of strong opposition from local residents.

3. Many members have been annoyed and frustrated at this lack of respect for the planning process and it's time that legislation was in place to penalise those that intentionally disregard the planning procedures.

4. Members appreciate that it would be better to submit a comprehensive proposal to government based on the evidence of recent cases and to enable all groups to participate in preparing this proposal, it is therefore proposed that the Planning Committee be mandated to prepare a submission taking into consideration all of the problems experienced by this authority and submit it to the appropriate minister and to also seek support from the Local Government Association."

5. The purpose of this report is to therefore to set out the experience of recent cases and provide a comprehensive proposal which would address the issues which have arisen.

Recent examples include -

Changes to number of occupants of buildings by internal changes resulting in a different type of use to that previously consented.

Not building the scheme in accordance with approved plans, then subsequently not building in accordance with an agreed amended scheme and not complying with planning conditions attached to the planning permissions.

External and internal alterations to bring about a change of use and requiring regular monitoring to ascertain when the new unauthorised use has commenced to enable action to be taken.

Development which is not readily detectable from the public highway impacting on neighbours and difficult to monitor for activity to justify that it is expedient to take enforcement action or prevent the use becoming lawful by being undetected by the passage of time. This places the onus on neighbours having to be prepared to lose their anonymity by giving evidence of the harm to their amenity they are suffering which often results in neighbours deciding that they don't want the matter taken further.

Landowners not submitting an application to regularise the situation so the Local Planning Authority has to consider all the material planning considerations / reports / expense to determine that it is not expedient to enforce even if the development / use is acceptable in planning terms and developers / agents have dragged these cases on by numerous months or even years by exploiting the current protracted processes

available within the planning system. The available level of resources/cost of identifying breaches of planning control and evidential requirements of proving development has taken place be it a change of use or new building works across the Borough.

6. The current Government had originally indicated that where needed it would give local planning authorities new enforcement powers to tackle planning applications that, having been granted, turn out to be substantially misleading, for instance misleading neighbours about the scale and design of the development proposed. No further progress has been made in bringing in legislation to change this situation as it would be likely to be found unlawful by the Courts. The Localism Act has only introduced a power (yet to be brought into force) for a local planning authority to apply to the magistrates court for a planning enforcement order to enforce against breaches of planning control that have been deliberately concealed until the period for taking enforcement action has expired.]

7. The Department of Communities and Local Government consulted on local planning authorities being allowed to set their own local planning application fees. This would have enabled, but not compelled, local planning authorities to charge a higher fee for retrospective planning applications. The Government was only supporting the recovery of additional investigatory costs and not a punitive fee being charged. A Ministerial announcement on planning fees has made clear that local set fees are not being progressed at this time and there will be a 15% increase on the existing level of fees.

8. To overcome the limitations on the Council being able to charge a punitive planning fee, the Government should be encouraged to introduce primary legislation which will result in the imposition of a fine on any developer/owner of land who has carried out works in breach of planning control under the following circumstances:-

- **The carrying out of works without the benefit of planning permission. The level of fine to be determined by the scale of the development and the cost of assessing its impact.**
- **Not in accordance with a grant of planning permission or that has been refused retrospective planning permission or on appeal or an Enforcement Notice which has been upheld.**
- **The new legislation should also provide for any person who 'aids, abets, counsels or procures the commission by another person of a summary offence' will be guilty of a like offence. This should include "planning agents and builders.**

9. This would require such breaches to be made criminal offences and will then provide an effective deterrent to unauthorised work for the following reasons:-

The scale of the fine will reflect the impact of the works on the amenity of the area, the residents and occupiers of the area and the enhanced value of the site that would have arisen if the unauthorised works had remained. This would be similar to the Tree Preservation Order legislation which provides when determining the amount of

any fine for an offence the Court must have regard to any financial benefit which has accrued, or is likely to accrue, in consequence of the offence.

If the unauthorised works are committed by a company the legislation should provide that a director, manager or secretary of the company is guilty of the offence if it can be proved it was committed with their consent, or connivance, or was attributable to their neglect. This will overcome the difficulties of not being able to prosecute an individual within a company.

This will hopefully also encourage Planning Agents to seek work to obtain (non retrospective) planning permissions and builders to only undertake work which has obtained planning permission and build in accordance with the approved plans.

## **Conclusion**

10. The Comprehensive proposal contained in this report is to address the enforcement issues and concerns which Members have requested are referred to Government for action and will require primary legislation to make the ignoring of the planning procedures identified a criminal offence with punitive fines .

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## **WARD AND WARD COUNCILLORS**

All

### **Financial Implications:**

As Report

### **Environmental Implications:**

As Report

### **Human Rights Implications:**

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

### **Community Safety Implications:**

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report

## Background Papers