

**DELEGATED**

**AGENDA NO**

**PLANNING COMMITTEE**

**DATE 12 DECEMBER 2012**

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

**Outcome of submission to Government and the Local Government Association  
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 the proposal, The Planning Committee was mandated to prepare a submission to address these concerns.

At the Planning Committee meeting on 22<sup>nd</sup> August 2012 Members considered a submission taking into consideration all of the problems experienced by this authority to submit to the appropriate minister and to also seek support from the Local Government Association.

The request and report were sent to the Secretary of State for Communities and Local Government and also The Local Government Association. A response has been received on behalf of the Secretary of State which does not accept the proposed changes to legislation. A response has also been received from the Local Government Association which indicates that it takes very seriously the issue of unauthorised development, and strongly supports the principle of fair and proportionate powers for local planning authorities to address this. The Council's letter will be used as evidence of the urgency of the situation in the ongoing discussions with Government.

***Recommendation: That Members note the responses from the Secretary of State for Communities and Local Government and the Local Government Association.***

### **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 appreciated 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 report set out the experience of recent cases and provided a comprehensive proposal which would address the issues which have arisen.

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.**

6. 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.

### **Response from the Secretary of State for Communities and Local Government**

7. "The Government is clear that unauthorised development is unacceptable and unfair to the majority who abide by the rules. However, we believe that it is important where people have made a genuine mistake that they are able to rectify the situation without being penalised. That is why we do not believe it is appropriate to criminalise breaches of planning control. Instead we have given local planning authorities strong enforcement powers which they can use to tackle unauthorised development where they consider it is necessary.

8. As you are aware failure to comply with an enforcement notice is an offence and in determining the amount of any fine the court is required to have regard for any financial benefit which has accrued, or appears likely to accrue, as a consequence of the offence.

9. We consider that the prompt and effective use of the full range of enforcement powers available to local authorities will help dissuade local people from deliberately ignoring planning controls."

10. A response was also received from Councillor Mike Jones, Chair, Local Government Associations Environment and Housing Board

### **Response from the Local Government Association**

11. "I should firstly like to reassure you that the Local Government Association takes very seriously the issue of unauthorised development, and strongly supports the principle of fair and proportionate powers for local planning authorities to address this.

12. We recognise that there is scope for more effective deterrents to prevent deliberate breaches of planning control happening in the first instance.

For example, in terms of fees for retrospective applications, we believe local planning authorities should have the power to recoup the full enforcement costs of facilitating the submission of retrospective applications, as well as the costs of determining the application.

13. As part of our ongoing discussions with government on the matter of decentralisation of planning fees, we are pushing for local authorities to be given this choice, and I shall draw upon your letter as evidence of the urgency of this situation. “

**Corporate Director of Development and Neighbourhood Services  
Contact Officer Barry Jackson Telephone No 01642 526066**

## **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**

**Letters to the Secretary of State Department of Communities and Local Government and the Local Government Association.**