

REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

SUBJECT: DELEGATION OF ENFORCEMENT

Purpose of the Report

The purpose of this report is to seek delegation of certain enforcement matters.

Background

In September 2010 Members endorsed a number of proposed actions and timescales for improving the planning service. Members also adopted the Enforcement and Compliance Policy at its meeting on 22nd June 2011.

The Enforcement Policy is now in operation and a number of changes have also been made to working processes and practices, including the introduction of the SWIFT database, and the appointment of a Principal Planning Officer with specific responsibility for the Enforcement team.

All Enforcement Officers are members of NAPE (National Association of Planning Enforcement Officers) which is a subsidiary of the Royal Town Planning Institute and are undertaking regular professional training. The greater integration of the enforcement team with the planning officer team is also in place.

As a result of these changes the majority of initial complaints are being dealt with in 12 weeks (the target set by the Welsh Government) and currently standing at 88% with a much reduced backlog of cases (currently 115 cases). These figures have been reduced from around 500 outstanding cases in July 2009, 430 of these being over 12 weeks old.

It is recognised that further improvements can be made and the main change that is considered necessary is increased delegation for taking certain enforcement action.

Current situation - delegation

At present, officers have delegated powers to close cases where:

1. it is found that there has been no breach or
2. the breach is lawful as a result of the passage of time or
3. the breach is resolved through negotiation or
4. the breach is resolved through the submission of an application, or
5. it is considered that it is not expedient to take action due to the nature of the breach (i.e. minor breaches such as changes to an approved scheme that make no material difference to the final scheme)
6. And to serve Planning Contravention Notices.

However, the current scheme does not provide any delegation for progressing cases where it is necessary to take positive action where a breach is identified. In effect, the delegation gives powers to close cases but does not provide for any positive progression at officer level.

Under the current scheme any breach of planning control requiring further action to be taken is reported to committee, irrespective of its nature or complexity. This is time consuming, onerous and a burden on an already heavy workload.

In some circumstances as set out in Appendix A, it is recognised that it is entirely appropriate that any actions should be considered by the Development Management committee.

Other authorities

Twenty-two of the 25 authorities in Wales have delegated powers for dealing with enforcement matters; these vary from full delegation to defined categories.

Current situation – Planning Contravention Notices

These notices are a formal request for additional information and take a standardised form. We are using these at the initial stages now of investigation as there is a requirement to comply with the timescales for return. The use of these assists in keeping to our 12 week target for closure on cases. Only the Chief Executive, the Director of Park Direction and Planning, the Head of Development Management and the Authority's Solicitor are authorised to sign Planning Contravention Notices.

Proposals - Delegation

It is considered that the ability to deal with a greater number of enforcement matters at officer level without recourse to the Development Management Committee would assist in improving the service as where breaches are identified and require positive action the case has to wait for the next available committee meeting to gain authority to proceed. Delegation to proceed with enforcement action would:

- Significantly speed up the processing of a case by anything up to 7 weeks.
- Demonstrates a timely commitment to enforcement
- Can effectively 'stop the clock' on cases at the earliest stage possible
- Can reduce the stress for the alleged transgressor
- Bring the case to a succinct conclusion

As such, it is considered that delegated powers should be made available in much the same way as they are given for processing planning applications and would be consistent with the way applications are handled.

The Authority has a new and up-to-date adopted Development Plan and decisions to take enforcement action should be considered with regard to whether the development that has taken place constitutes a deviation from the Development Plan and therefore whether an action is appropriate. The reason for an action to be taken would be fully reported on the file. The authorisation for taking action should only be

given to the Chief Executive, Director of Park Direction and Planning, the Head of Development Management and the two Principal Planning Officers. The Authority's solicitor will also be required to check all enforcement notices.

In addition, the serving of a Stop Notice (which is only used on rare occasions) should only be authorised by the Chief Executive or Director of Park Direction and Planning in consultation with the Chair or Vice Chair of the Development Management committee.

Appendix A sets out the recommendations for a delegated scheme which is based on a categorised system. It is considered that this would offer consistency between applications and enforcement and would still enable matters to be brought to committee where necessary, including some cases where no action is proposed.

Should members agree with the scheme of delegation being changed as set out in Appendix A, it is considered that this should be effective from 1st March 2012 and that cases opened after this time are dealt with under the new framework for delegation.

Proposals - Planning Contravention Notices

It would assist with efficiency if other officers could be authorised to sign these documents which are being used more frequently now that the Enforcement Policy is being implemented. It is requested that authority be given for Principal Planning Officers to also be authorised to sign Planning Contravention Notices. To ensure that there is a check and balance within the system officers must ensure that another officer signs off Notices pertaining to their own cases.

Financial considerations

There are no additional financial implications; cases where officers are aware that the serving of an enforcement notice could progress to a claim against Authority (i.e. in the case of a Stop Notice) such cases will be brought before Committee for consideration.

Risk implications

With checks and balances set out within the system there is limited additional risk to the Authority. The efficiency of the service and the effective limitation to the timescales would be a benefit to the Authority's targets, officer time and private sector perceptions.

Conclusions

It is therefore considered that widening the scheme of delegation to enable certain categories of breaches of planning control to be dealt with by officers without recourse to the committee will enable complaints to be dealt with more efficiently and effectively and improve the service provided in respect of enforcement matters. In addition the ability for Principal Officers to sign Planning Contravention Notices will be of great benefit.

Recommendations:

That the Committee resolves the following:

- 1. The scheme of delegation set out in Appendix A be adopted from 1st March 2012.**
- 2. The Principal Planning Officers be added to the list of those authorised to sign Planning Contravention Notices and that no officer signs PCNs which relate to cases on which they are the case officer.**

SCHEME OF DELEGATION – ENFORCEMENT

EVERY CASE IS DELEGATED UNLESS:

1. There is a breach of planning control and the case is contrary to the provisions of the Development Plan but it is recommended that enforcement action should not be taken (this would not include cases that are lawful by virtue of the passage of time or are of such a minor nature that it is not expedient to take action)
2. There is a breach of planning control and the case complies with the provisions of the Development Plan but it is recommended that enforcement action should be taken
3. The case relates to a Member of the Authority, or a Member of his /her immediate family or a Member who has left the Authority less than twelve months prior to the commencement of the investigation.
4. The case relates to a site in which an officer employed by the Authority has an interest.
5. The case is one which the Chief Executive, Director of Park Direction and Planning, the Head of Development Management or the Authority's Solicitor/Legal advisor decides should be referred to committee because it raises matters of significant public and/or Member interest or where the matter is considered to be contentious or controversial or which could have financial implications for the Authority. Justification for this approach is to be recorded on the file.
6. The case relates to land in which the Authority has an interest or has a financial interest as landowner.
7. Any Member may ask for a particular case to be brought before the Committee by writing to the Head of Development Management and giving full reasons which should be based on planning grounds
8. Prosecution action is required - unless in relation to a breach of the advertisement regulations or in relation to works to a listed building which are criminal offences and often require immediate action as a result.

This scheme of delegation relates to the taking or not of enforcement action, breach of condition action, action under Section 215 of the Town and Country Planning Act, action in respect of unauthorised advertisements etc

The delegation for taking action is given to the Chief Executive, Director of Park Direction and Planning, the Head of Development Management and the two Principal Planning Officers. The Authority's solicitor will also be required to check all enforcement notices.

The delegation for serving a Stop Notice is given to the Chief Executive or Director of Park Direction and Planning in consultation with the Chair or Vice Chair of the Development Management committee.

Background Documents

(For further information, please contact Vicki Hirst, Head of Development Management)