

AGENDA

POLICY DEVELOPMENT AND REVIEW COMMITTEE MEETING

Date: Wednesday, 15 October 2014
Time: 7.00 pm
Venue: Council Chamber - Swale House

Membership:

Councillors Monique Bonney, Andy Booth (Vice-Chairman), Lloyd Bowen (Chairman), Derek Conway, John Coulter, Peter Marchington, Gareth Randall and Ben Stokes.

Quorum = 3

Pages

1. Apologies for Absence and Confirmation of Substitutes

2. Minutes

To approve the Minutes of the Meeting held on 3 September 2014 (Minute Nos. 208 - 212) as a correct record.

3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

Advice to Members: If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any

item on this agenda, he/she should seek advice from the Director of Corporate Services as Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

Part One - Substantive Item

4. Review of Planning Enforcement Strategy and Charter 1 - 28

The Committee is asked to consider the Planning Enforcement Strategy and Charter.

The following guests have been invited to attend for this item:

Councillor Gerry Lewin (Cabinet Member for Planning)
Councillor Barnicott (Chairman of Planning Committee)
James Freeman (Head of Planning Services)
Andrew Jeffers (Development Manager)
Peter Hinckesman (Enforcement Team Leader)

Part Two - Business Item

5. Committee Work Programme 29 - 30

The Committee is asked to review and discuss the Committee's Work Programme for the remainder of the year.

Issued on Monday, 6 October 2014

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Director of Corporate Services Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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| Policy Development and Review Committee Meeting | |
| Meeting Date | 15 October 2014 |
| Report Title | Review of the Planning Enforcement Strategy and Charter and the Planning Enforcement Service Review |
| Cabinet Member | Cllr Gerry Lewin, Cabinet Member for Planning |
| SMT Lead | Pete Raine |
| Head of Service | James Freeman |
| Lead Officer | James Freeman |
| Key Decision | No |
| Classification | Open |
| Forward Plan | Reference number: |
| Recommendations | <ol style="list-style-type: none"> 1. To consider the scope for undertaking a review of the Planning Enforcement Strategy and Charter and the Planning Enforcement Service. 2. To consider the programme for completing the review as set out in paragraph 3.8 of the report |

1 Purpose of Report and Executive Summary

- 1.1 The purpose of this report is to set out the scope and programme for undertaking a review of the Council's Planning Enforcement Strategy and Charter and the Planning Enforcement Service.

2 Background

- 2.1 Planning Enforcement relates to anything that requires planning permission but does not have it, or failing to comply with a planning condition. Additionally, the Planning Enforcement Service also issues Section 215 Notices requiring land to be cleaned up when its condition adversely affects the amenity of the area.
- 2.2 Any planning enforcement service would need to abide by government advice in dealing with breaches of planning control. Enforcement action is discretionary, and section 172 of the Town and Country Planning Act 1990 states that Local Planning Authorities may only issue an enforcement notice where it appears to them that:
 - there is a breach of planning control; and
 - it is expedient to issue the notice having regards to the provisions of the Development Plan and any other material considerations.

- 2.3 The Planning Act specifically allows for retrospective planning permission to be sought and granted.
- 2.4 The Planning Enforcement Service is currently part of the Development Management Team within Planning Services (see Appendix I – Structure Chart). There are currently 2.6 Full Time Equivalent (FTE) officers directly involved in planning enforcement. However, it should be recognised that the service also involves the advice and guidance of Development Managers (equivalent to 0.5xFTE), Legal Services, and can often involve other services across the Council e.g. Housing Services in relation to gypsy and traveller issues.
- 2.5 The Council adopted the Swale Planning Enforcement Strategy and Charter in June 2011 (see Appendix II). This included the setting out of priorities in pursuing enforcement action, and the approach of the service in dealing with the general public and with Councillors.
- 2.6 The Council currently monitors the performance of the service in terms of its response times to the receipt of complaints against the Enforcement Strategy priorities. Cases for which enforcement action has been taken are reported to the Planning Committee on a six-monthly basis, and more recently there have been reviews of cases older than six months via the Planning Committee Working Group. It is intended that with the introduction of the new Planning IT systems and the embedding of the shared service, a new case monitoring database will be introduced allowing for the opportunity for real-time case progress to be made available to Councillors (and potentially the general public, subject to confidentiality matters being resolved).
- 2.7 Appendix III sets out the current extent of enforcement action compared to all other Kent authorities using the latest monitoring figures issued by the DCLG. It is evident from the tables that Swale Borough Council issues more enforcement notices than most other shire authorities nationally. Whilst this can to some extent be accounted for by the number of notices relating to holiday home and gypsy and traveller cases, even taking that into consideration, the Council appears to be an ‘active’ authority.
- 2.8 Responsibility to progress and monitor enforcement action lies with the Planning Committee. Delegation is currently given to the Head of Planning in relation to Enforcement Notices, Breach of Condition Notices (BCNs), s215 Amenity Notices, Stop Notices, Tree Preservation Orders (TPOs) Temporary Stop Notices (TSNs) and Listed Building Enforcement Notices, in consultation with the Chairman or Vice-Chairman of Planning and a relevant Ward Member (see Appendix IV). Details of any enforcement action taken under officer delegated powers is reported retrospectively to the Planning Committee.

- 2.9 The results from recent Customer Service Excellence¹ reviews and ongoing issues raised by Councillors, indicate that Planning Enforcement is a major issue within the local community. Many Councillors have raised concerns that they are not adequately involved and/or kept updated on the progress of cases, and that they find it difficult to understand how decisions are made to progress or not progress action, and the length of time it often takes to resolve cases.
- 2.10 The Council's Scrutiny Committee undertook a review of Planning Enforcement in 2011/12. This largely focussed on resources and performance management.

3 Proposal

- 3.1 It is considered that the main elements of the review should include:
- a review of the Planning Enforcement Strategy and Charter;
 - how the service is provided – particularly the links with the Development Management Officers and Legal Services and other key service areas;
 - the processes and procedures for dealing with and agreeing action – particularly in liaison with Ward Members / Cabinet Member for Planning / the Planning Committee Chair, and a review of the delegations;
 - the transparency of case monitoring with members and the public (noting the need for legal confidentiality); and
 - the monitoring of the performance of the service – opportunities for introducing new Performance Indicators (PIs) which look at the whole life of an active enforcement case.
- 3.2 The Strategy and Charter was first introduced in June 2011. The timing of this Committee's review of the Strategy and the whole planning enforcement service provides a significant opportunity to involve members in its redrafting to ensure it deals with the key issues. It also enables updating to take into account policy set out in the National Planning Policy Framework (including the National Planning Policy Statement for Travellers) and related guidance.
- 3.3 It is also considered that the growing importance within the local community to pro-active planning enforcement would suggest that there is a need to review how best to provide a service to meet these concerns in the most effective and efficient way without necessarily having to draw on additional public monies. The review is invited to look at the options for how the service should be integrated within the Development Management structures, and focus on its relationship with Legal Services.

¹ The replacement for the national Chartermark customer service accreditation.

- 3.4 The review will also provide an opportunity to consider how decisions can be made more openly and expediently, including with member involvement where appropriate. This would require a review of delegation powers and the introduction of procedures to enable the involvement of ward member and key members in decisions to progress or not to progress cases, within available resources.
- 3.5 A vital element in the review is how case progress can be readily disseminated to councillors and the general public without incurring significant staff resources. This will involve the drawing up of a specification for a transparent case monitoring database system, although the timing for the implementation of such a system will depend on work programmes within the shared IT service.
- 3.6 Whilst it is important to have performance indicators relating to how quickly the service responds to an initial complaint, it is recognised that this only covers the first stage of an enforcement case. It will therefore be helpful for the review to consider what performance indicators can be introduced to provide a basis upon which the whole life cycle of an enforcement case can be monitored.
- 3.7 It is suggested that the service review should also include:
- benchmarking of costs and performance with neighbouring and ‘family’ local authorities, involving the Council’s Policy and Performance Team;
 - visits to other Local Planning Authority Enforcement Services; and
 - a peer review to be undertaken by the Head of Planning and Development Services at Maidstone Borough Council – noting that Maidstone Planning Enforcement service has been the subject of a recent successful audit report which has re-enforced councillors confidence in the service and was also an integral part of a successful peer review of the planning service.
- 3.8 The programme for completing the review:

| Activity | Deadline |
|---|-------------------------|
| Agree scope and brief for review | mid October 2014 |
| Complete benchmarking | end October 2014 |
| Peer Review | November 2014 |
| Draft New strategy and charter for SMT / Cabinet member | mid December 2014 |
| Consultation On Strategy | January / February 2015 |
| Report to Policy Development and Review Committee | end February 2015 |
| Report to Cabinet | March 2015 |

- 3.9 The above programme has been put forward on the basis that any Consultation Strategy and Charter will be drafted by the Head of Service in co-ordination with the Cabinet Member for Planning and the Chair of the Planning Committee. It would be possible for this Committee to review the document before it is issued for consultation, although this would extend the review period should this take place through a formal meeting.

4 Alternative Options

- 4.1 Without the review, the concerns from Councillors and the local community would remain and potentially erode public confidence in the service. In these circumstances, it is considered appropriate to undertake a comprehensive review looking at the whole service both in terms of resourcing and the procedures and practices currently undertaken.

5 Consultation Undertaken or Proposed

- 5.1 The report has had input from Strategic Management Team, the Cabinet Member for Planning, and the Planning Committee Chair.
- 5.2 As part of the review it is proposed that the Planning Enforcement Strategy and Charter be subject to consultation with all councillors, Parish/Town Councils other key agencies with an interest in planning enforcement in Swale Borough, and at the Local Engagement Forums. The Policy Development and Review Committee will be consulted at the end of the formal consultation in order for members of this Committee to be able to take account of representations made.

6 Implications

| Issue | Implications |
|----------------------------------|--|
| Corporate Plan | High performing service meeting customer needs. |
| Financial, Resource and Property | The costs of the review can be met from the existing Planning Services budget and therefore there are no financial implications. |
| Legal and Statutory | No implications identified at this stage although legal services will be involved in the review. |
| Crime and Disorder | None identified at this stage. |
| Sustainability | None identified at this stage. |
| Health and Wellbeing | None identified at this stage. |
| Risk Management and Health and | None identified at this stage. |

| | |
|------------------------|--|
| Safety | |
| Equality and Diversity | How the planning enforcement service responds to difficult to reach customers will be considered as part of the review |

7 Appendices

7.1 The following documents are to be published with this report and form part of the report

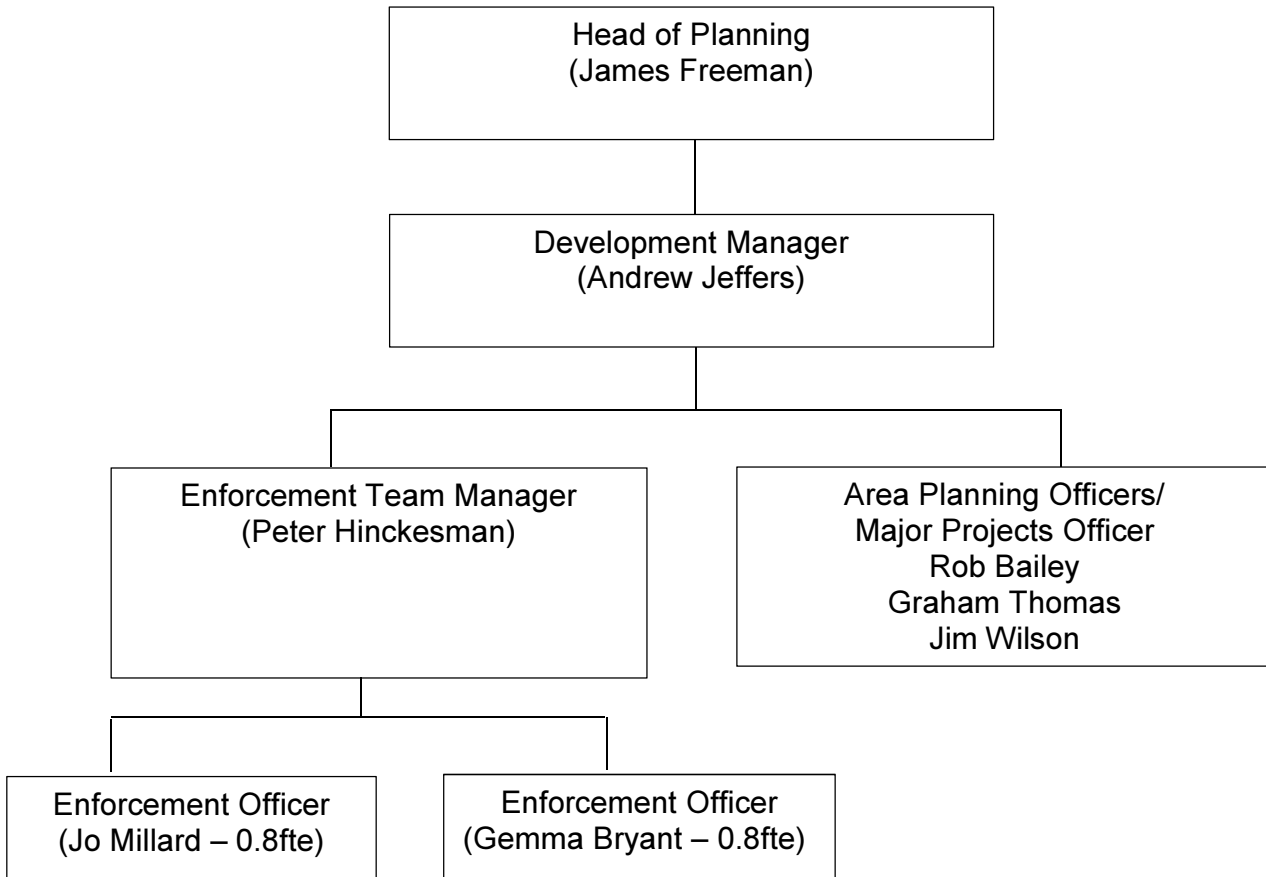
- Appendix I: Planning Enforcement Service Structure Chart – September 2014
- Appendix II: Swale Borough Planning Enforcement Strategy and Charter, June 2011.
- Appendix III: DCLG Planning Application Statistics: Enforcement Action Table P130, year ending March 2014
- Appendix IV: Swale Borough Council Constitution – Delegations to Head of Planning

8 Background Papers

8.1 None.

APPENDIX I

Current Enforcement Team Structure



SWALE BOROUGH COUNCIL: A STRATEGY AND SERVICE CHARTER FOR PLANNING ENFORCEMENT 2011

1. INTRODUCTION AND BACKGROUND

- 1.1 There is increasing public concern about activities that harm the local environment and damage the quality of people's lives. The Council recognises the importance of establishing effective controls over unauthorised development to assist in the conservation of the natural and built environment and to protect the quality of people's lives.
- 1.2 The enforcement service must demonstrate at all times that it deals with cases in an equitable and consistent manner. This strategy aims to explain how the service operates and how the demands placed upon it are balanced against the available resources.

2. OBJECTIVES FOR THE SERVICE

- 2.1 Powers to enforce planning controls are provided within the Town and Country Planning Act 1990 (As Amended), the Planning and Compensation Act 1991 and Control of Advertisements Act 1969 (As Amended). The aim of this strategy is to identify local priorities for enforcement action, so that the Council's scarce enforcement resources are put to the best use and enables the Council to focus on what matters with clear and consistent priorities to drive performance. It is also a key task within the Planning Service's Improvement Plan.
- 2.2 Government Guidance set out in Planning Policy Guidance Note 18 sets down clear advice as to when enforcement should be taken and the general approach to enforcement. The primary function of enforcement action is to protect the environment in the public interest. The statutory framework and the main principles of planning enforcement are set out in **Annex A**.
- 2.3 The Community Strategy and the Council's Corporate Strategy identifies across its four corporate priorities the need to care for the environment to protect and enhance the quality of the natural and built environment by building sustainability into policies and activities. Enforcement underpins this vision of protecting the countryside and preserving the local distinctiveness of the area, and is one of the means at the Council's disposal for achieving these aims.
- 2.4 In line with the Council's aspiration to become a high performing authority a supporting objective and key priority is effective local enforcement to ensure a robust, fair and rigorous approach.
- 2.5 All the above inform the Strategy and help to identify what is achievable within current legislation and Government guidance, available resources and to focus on what matters with clear and consistent priorities to drive performance.
- 2.6 The strategy identifies the resources and matches these with local priorities for action, in order to tackle the most serious planning enforcement problems that arise in the area.

To do this we will follow government advice and concentrate our resources on clearly defined priorities for action and promote a proactive regime where possible.

2.7 Therefore, the aims of the Planning Enforcement Service are to:

- be effective in dealing with breaches of planning control (received from members of the public and Councillors) giving rise to unacceptable harm on public amenity and/or causing harm to land or buildings;
- limit resources used in pursuing minor breaches causing no harm to amenity;
- resolve most complaints by persuasion and negotiation – however, when this is not possible then the Planning Enforcement Team has the power to commence enforcement actions;
- operate in an equitable, proportionate and consistent manner and to follow the advice in the Good Practice Guide for Local Planning Authorities; and
- educate and inform stakeholders about the process, our standards of service, our procedures and provide widely available information to all our customers.

3. ENFORCEMENT SERVICE RESOURCES AND WORKLOAD

3.1 The Enforcement Service is managed by the Development Manager and comprises of a small specialist team of 2.3 FTE officers, together with support from Development Management Officers equivalent to approximately 1FTE officer, and further support from Conservation/Design officers and the Planning Administration Team when required. A 0.5 FTE officer is also employed to monitor S.106 agreements (see paragraph 5.2 on proposals to enhance the S.106 monitoring service). The service also employs a tree consultant on a one-day-a-week contract.

3.2 Annex C sets out the workload dealt with over the past three financial years and the performance against the two current local indicators.

3.3 The majority of complaints received relate to minor matters and often arise from neighbour disputes. Examples of these are small extensions and outbuildings erected under permitted development rights, which do not require planning permission. Considerable officer time is taken up in investigating these, visiting the site and checking dimensions and reporting back to the parties involved.

3.4 Similarly, a large number of complaints concern unauthorised development that is acceptable and can be regularised by the submission of a retrospective planning application. A great deal of officer time is spent chasing such applications and any fees derived from the submission of an eventual planning application would not, in most cases, recover the enforcement costs involved. Therefore, whilst the Council has a duty to investigate all alleged breaches, the resources must be used wisely to allow officers to concentrate on serious breaches and to avoid the Local Planning Authority coming into disrepute through abuse of its enforcement powers, rather than pursuing enforcement action against minor breaches that cause no harm to public amenity.

4. PROCEDURES FOR DEALING WITH PLANNING ENFORCEMENT CASES

4.1 The attached Customer Charter in Annex B sets out the procedures for dealing with an enforcement case.

4.2 The Council accepts that a rapid initiation of enforcement action is vital to prevent a breach of planning control from becoming well established and more difficult to remedy. It also recognizes the need of establishing effective controls over unauthorised development. The Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is expedient to do so. The Council will investigate alleged breaches of planning control to determine whether a breach has occurred and if it has, to determine the most appropriate course of action by:

- paying due regard to Development Plan policies and to all other material considerations;
- paying due regard to Government guidance and legislation;
- not taking action against trivial or minor technical breaches of planning control which do not adversely affect public amenity or causes harm to land or buildings;
- where action is necessary in the public interest, ensuring that appropriate actions are being taken in parallel with negotiations with the individual / organisations breaching planning control;
- not taking not taking action solely to regularise development or obtain a fee
- taking account of the Human Rights Act 1998.

4.3 In order to deal effectively with the large number of allegations about breaches of planning control, it is proposed that cases are given priority based on the seriousness of the breach as set below:

| | |
|-------------------|---|
| A – Major | First site visit within two working days of receipt of complaint – performance standard 98% |
| § | Works that are irreversible or irreplaceable and constitute a serious breach |
| § | Demolition of listing building |
| § | Breaches of Article 4 Direction |
| § | Unauthorised development in conservation area, Special Protection Area, Area of Outstanding Natural Beauty or other national landscape designations |
| § | Injunction proceedings |
| § | The felling of trees covered by a TPO or works to trees in conservation areas |
| § | |
| B – Medium | First site visit within five working days of receipt of complaint – performance standard 90% |
| § | Activities that cause harm to residential amenity |
| § | Change of use |
| § | General development |
| § | Breach of condition (depends on seriousness of the breach) |
| § | Non-compliance with plans |
| § | Non-detrimental works to a listed building |

| | |
|---|--|
| § Siting of caravan or mobile home § Non-compliance with enforcement/stop notice § Unauthorised works to a listed building § | |
| C – Minor | Site visit within ten working days of receipt of complaint – performance standard 90% |
| § A-boards on private land § Sheds § Means of enclosure § Dropped kerbs § Satellite dishes § Minor operations § Any low impact to residential amenity § Unauthorised Adverts | |

- 4.4 Planning and Listed Building legislation gives authorised officers extensive rights to enter land and buildings, at any reasonable hour, to carry out investigations and other duties. Because of the nature of enforcement work, it is often not prudent or possible to give advance notice of an intended visit. Only where it is considered necessary and appropriate will 24 hours notice be given if access is required to a dwelling house.
- 4.5 On site visits officers will have regard to the Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE), as well as as any Act(s) that amend or revoke this legislation or become relevant. An officer may, where she/he considers an offence has occurred, interview an alleged Contravener ‘under caution’ PACE) where appropriate. They will work within the principles of the Concordat and seek the full co-operation of the owner/occupiers. If access is denied the Council may consider seeking warrant entry. Refusal of entry (to an officer exercising their right of entry in accordance with their powers) will be regarded as wilful obstruction and the person may be prosecuted.
- 4.6 After the first site visit (and also during the investigation process) the investigating Officer will consider whether it is necessary to re-consider the prioritisation of the complaint.
- 4.7 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of the performance of their official duties and will take appropriate legal action where necessary.
- 4.8 Consideration is being given to the introduction of an on-line complaints service, and this has been included as an action in the Service Improvement Plan 2011-2013.

5. COMPLIANCE MONITORING SERVICE

- 5.1 Given the limited resources available to deal with planning enforcement issues, the focus of the service will be dealing with complaints and consequential enforcement actions arising – a reactive service. However, where capacity allows monitoring will be

undertaken on major sites in terms of checking whether they are being carried out in accordance with agreed plans and conditions. This limited more pro-active work will be undertaken on an ad hoc basis as resources allow.

- 5.2 It is intended to have in place a full time S.106 (Planning Obligations) Monitoring Officer funded partly through the collection administrative and monitoring fees arising from S.106 agreements by the end of the year. The appointed officer will use a new database to continually monitor progress on S.106 agreements and to ensure that monies are collected as required as permitted developments build out to completion.
- 5.3 There will be a need to ensure that the monies collected and distributed to the various implementing agencies are also monitored to ensure they are being spent on new infrastructure and services associated with the impacts of the new development. Consideration will need to be given to how the database can be made available for Councillor and / or public viewing taking into account the practicalities and associated costs that may be involved.

6. DEALING WITH PROSECUTIONS

- 6.1 In accordance with enforcement legislation as set out in Annex A, we will follow the relevant policy advice and best practice when undertaking enforcement action, and deciding whether it is expedient to take formal action. The general principles relate to two critical tests, evidential and public interest. A criterion for deciding whether it is in the public interest to prosecute is attached at Annex A.
- 6.2 The Enforcement Strategy has been drawn up with the principles of the Government's Enforcement Concordat in mind. Details of this Government Document are at Annex A. The adoption of the Planning Enforcement Strategy will address all these issues, and make the planning enforcement service more transparent to its users.
- 6.3 There is a need to achieve a reasonable balance between protecting amenity and other planning interests of acknowledged importance, and enabling acceptable development to take place, even though it may initially have been unauthorised. Equally, enforcement should not be used as a punishment for having carried out development without permission, but rather as a way of responding to development that would have been refused planning permission because it is unacceptable.
- 6.4 We also monitor major development sites to ensure that development is carried out in accordance with the approved plans and planning conditions are fully complied with as required (but please note also Paragraph 6.1 above).
- 6.5 The enforcement process, involving the investigation of complaints about unauthorised development, is set out in Annex B. This describes the main features of the service and the standards we have set ourselves for the various actions we take.
- 6.6 Swale Borough Council as the enforcing authority will use discretion in deciding whether to initiate prosecution. Other approaches to enforcement can often achieve compliance with the regulations but where circumstances warrant it action will be taken through the Courts to have the work put right and/or fines levied for contravention of the Regulations.
- 6.7 Swale Borough Council as the enforcing authority will consider prosecution when:

- it is appropriate to ensure the need for compliance with the law, especially where there would be a general expectation that a prosecution would take place or where through the conviction of offenders others may be deterred from similar failures to comply with the law; or
- there is judged to have been potential for considerable harm arising from the breach or the gravity of the offence.

7. MONITORING PERFORMANCE

7.1 The performance of the enforcement team is to be monitored using the following revised local performance indicators as already set out in paragraph 4.3.

| Category | Performance standard | Performance target |
|------------|---|--------------------|
| A – Major | First site visit within two working days of receipt of complaint | 98% |
| B – Medium | First site visit within five working days of receipt of complaint | 90% |
| C – Minor | First site visit within ten working days of receipt of complaint | 90% |

7.2 Other additional indicators could also be used to monitor the service's performance, including:

- resolving^{2*} 80% of all enforcement complaints within three months of receipt; and
- notifying all interested parties to a complaint of the Council's decision (whether or not to enforce) within 10 working days of making the decision.

These measures have not been monitored previously and will be dependant upon new recording system being able to provide the information and being able to record case start and closure times. Therefore this measure will be subject to review by June 2012.

7.3 It is anticipated that the Strategy will be reviewed on an annual basis reporting through to the Planning Committee and the Executive Member for Sustainable Planning every October in advance of the drafting of service plans and budgetary cycle. The review will provide an overview of the workload undertaken, including:

- Number of complaints and response times (Local performance Indicators);
- Number of complaints where:
 - no breach is determined;
 - resolved breach without resorting to enforcement action;
 - enforcement action taken;.
- Number of enforcement notices / stop notices / PCN's / BCN's / Injunctions / prosecutions served;

² The definition of 'resolving' would normally mean the formal closure by an officer of a case with an affirmative decision made; or where the Council has received a valid retrospective' planning application with the aim of regularising the unauthorised development.

- Number of successful enforcement appeals with explanation and any lessons learnt;
 - Commentary on long term outstanding cases (more than three months) with current position statement; and
 - Performance in relation to items listed in paras 7.1 and 7.2.
- 7.4 Additional to the annual review, reporting on all active cases which have exceeded 3 months will be reported to the Sustainable Planning Portfolio Holder on a quarterly basis.
- 7.5 The status of this strategy is guidance and if there is conflict between this strategy and national legislation or policy, then the national legislation or policy will prevail.

James Freeman
Head of Planning Services

SUMMARY OF THE LEGISLATION AND GOVERNMENT POLICY ON PLANNING ENFORCEMENT

REGULATIONS

The power to take enforcement action is discretionary and comes from section 172 of the Town and Country Planning Act 1990. Advice on the legislative provisions and procedural requirements is contained in Department of the Environment circular 10/97.

Regard must be given to section 73A of the Town and Country Planning Act 1990, as amended. This provision enables planning permission to be granted for building works or changes of use undertaken without planning permission. The Government's Good Practice Guide states:

'The authority's approach to enforcing planning control over unauthorised development should not therefore be stricter, for planning purposes, than it would be when considering the merits of a prior application for planning permission before development starts. The authority should not use their enforcement powers solely to compel someone who has carried out unauthorised development, which is acceptable on its planning merits, to pay the planning application fee the authority would have received if an application had been submitted to them.'

POLICY GUIDANCE

The approach that should be taken is set out in Planning Policy Guidance Note18 –Enforcing Planning Control. Local Planning Authorities (LPAs) must have regard to this guidance in deciding whether enforcement action is expedient to remedy a breach of planning control, where earlier attempts to do so by informal negotiation have proved unsuccessful. The decisive issue should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. The factors to be taken into account are:

- if unauthorised development is acceptable on its planning merits, it will not be expedient for an LPA to issue an enforcement notice solely to regularise the development. This would be regarded as unreasonable behaviour, and the LPA risks an award of costs in any enforcement appeal;
- if unauthorised development is unacceptable but relocation is feasible, a reasonable time limit should be set for relocation; and
- where unauthorised development is unacceptable but relocation is not feasible the LPA should take vigorous enforcement action to prevent serious harm to public amenity.

Best practice advice is set out in Enforcing Planning Control: Good Practice Guide for Local Planning Authorities published in 1997. This is a practice manual for LPAs on all aspects of enforcement work. It covers the fundamental requirement such as:

- Investigations;
- Negotiations;
- Drafting and procedures for issuing notices;
- Appeals;

- Prosecution;
- Stop Notices;
- Injunctions; and
- Default Action.

LPA's must work within the legislative framework, having full regard to relevant judicial authority, appeal decisions and national policy guidance. Careful consideration has to be given to other legislation that impacts on enforcement work, such as the Human Rights Act 1998, the Race Relations Act 1976 the Police and Criminal Evidence Act 1984 and the Regulation of Investigatory Powers Act 2000 (RIPA). These militate against resolving cases quickly, as thorough investigation of the full facts and assessment of all the circumstances are required prior to formal action.

WHAT IS A BREACH OF PLANNING CONTROL?

A breach of planning control is defined in the Town and Country Planning Act as:

“the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted” (Section 171A).

In addition to the above and for the purposes of this Strategy the Borough Council considers that breaches of planning control can include:

- building work, engineering operations and material changes of use carried out without planning permission;
- development that has planning permission but is not carried out in accordance with the approved plans;
- non-compliance with conditions or the terms of legal agreements (Section 106 obligations) attached to permissions;
- works carried out to a Listed Building, which affect its special architectural or historic character, without listed building consent being granted;
- removal of, or works carried out, to protected trees without consent being granted or proper notification given;
- display of advertisements which need express consent, under the Advertisements Regulations and are displayed without consent being granted; and
- the state of land or a building adversely affecting the amenity of the neighbourhood under Section 215 of the Town and Country Planning Act.

Enforcement Notices

It should be noted that in the majority of cases it is not an offence to carry out development without planning permission. An offence in law only occurs if the Council has taken formal civil action (e.g., by serving a Notice) and the recipients have failed to comply. It is thus necessary for the Planning Authority to first issue a formal Notice.

The recipient of a Notice has a right of appeal to the Secretary of State against the issue of the Notice or its terms, and to make an application for costs in the course of doing so, which would be considered on the basis of unreasonable action taken by the Authority. It must be appreciated that if an appeal is made, this inevitably leads to delays in bringing a matter to Court or reaching any conclusions.

Injunctions

In certain exceptional cases the Planning Authority will seek to obtain an injunction using powers laid out in Section 187B of the Town and Country Planning Act 1990. Such applications are made to the County or High Court, and it is for the Court to decide what is appropriate to restrain any breach of planning controls.

Failure to comply with such an Injunction can result in an unlimited fine or imprisonment. An Injunction can be issued against a person whose identity is unknown, as long as she/he/they can be identified by some other means.

In the case of unauthorised advertisements, works to protected trees or listed buildings it is possible to proceed directly to the Courts with a prosecution case.

(a) Listed Buildings

A person is guilty of an offence under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 if unauthorised works to a Listed Building which would affect the character of the listed building as a building of special architectural or historic interest are carried out without the Local Planning Authority's consent or if works are carried out without complying with a condition attached to a consent. There is no time limit on bringing a prosecution, in cases affecting Listed Buildings.

Thus the current owner of a Listed Building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether listed building consent is later obtained or the unauthorised works are later made satisfactory. A person found guilty of an offence may be liable to a fine of up to £20,000 for each separate offence and/or a term of imprisonment of up to two years.

In addition, the Planning Authority may consider it expedient to issue a Listed Building Enforcement Notice, to require remedial works to be carried out. The decision whether to prosecute and or issue an enforcement notice will be based on guidance in the government's document "Best Practice Guidance — Listed Buildings Prosecutions" December 2006.

(b) Advertisements

Anyone who displays an advertisement without the appropriate consent is open to a prosecution in the Magistrates' Court for an offence under Section 224(3) of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the Planning Authority may not initially consider it necessary to prosecute for an advertisement offence. The maximum fine on conviction is currently £1,000 with an additional daily fine of one-tenth of the maximum penalty if the offence continues after conviction.

(c) Trees

The Planning Enforcement Team works closely with the Council's specialist Tree Consultant on all arboricultural matters. The Tree Consultant should be consulted for advice before any works are carried out to all protected trees, and to any trees in a Conservation Area.

Unauthorised works to trees protected by a Tree Preservation Order or within a Conservation Area can result in fines up to £20,000. Notices can also be served by the Local Planning Authority requiring the replacement of protected trees that have been felled.

Formal Notice must be given to the Local Planning Authority before works are carried out to most trees in a Conservation Area. In these cases the Planning Authority has powers to serve Notices requiring replacement trees.

(d) High Hedges

The Planning Service is also responsible for dealing with complaints under the Anti Social Behaviour Act 2003 regarding high hedges. There is, however, a charge for this service and persons wishing the Council to undertake this work should first seek further information from the Council. Where appropriate, Remedial Notices can be issued, requiring a hedge to be reduced in height or to be managed in accordance with a long term maintenance plan. The Borough Council will obtain specialist arboricultural advice before issuing any Remedial Notice. Complainants should also initially try to resolve these matters through the Swale Mediation Service. The service can be contacted on 01795 471 415.

PRINCIPLES OF PLANNING ENFORCEMENT

The enforcement of planning control rests on three fundamental principles, namely that:

- the use of enforcement powers is discretionary but proportionate;
- developing without planning consent, which has been granted, is not an offence; and
- planning permission may be sought retrospectively.

Local planning authorities' enforcement powers are discretionary. This provides flexibility to tailor their approach to each case to fit the nature and circumstances of the breach or alleged breach. Minor breaches can often be resolved informally through negotiation and persuasion; more complex cases, or where there is clear and deliberate abuse of the system, may require formal enforcement action. If enforcement became a duty this flexibility would be lost and difficulties would be created. But some argue that this discretion leads to inconsistencies of approach both within and between authorities, in the enforcement system, and in the planning system as a whole.

Parliament has given to local authorities the primary responsibility for taking whatever action may be necessary in the public interest. Local planning authorities have a duty to consider taking enforcement action. PPG18 advocates this, and also adopting a proactive approach. There is a risk that the enforcement system would fall into disrepute if all breaches of planning control were enforced against, no matter how trivial. This would place an intolerable burden on local authorities, and could impact similarly on the Planning Inspectorate and the Courts. There are always cases where development is ultimately in the public interest even if it is unlawful.

Performance Indicators for the Planning Enforcement Service for the last two years – 2008/09 and 2009/10

Over the past two year periods, April 2008 to March 2009 and April 2009 to March 2010, the following table sets out the total number of cases dealt with, the number of notices served and the percentage targets achieved in each case.

| Performance indicator | Year | | |
|--|---------|---------|---------|
| | 2008/09 | 2009/10 | 2010/11 |
| Complaints received | 453 | 433 | 421 |
| Enforcement notices served | 54 | 41 | 29 |
| Stop notices served | 5 | 12 | 4 |
| Planning Contravention Notices (requiring information) | 6 | 9 | 8 |
| Breach of Condition Notices | 3 | 5 | 2 |
| Section 215 Notices | 3 | 2 | 7 |
| 5 day acknowledgement and site visit | 90.2% | 88.3% | 89.5% |
| 10 day response to complainant | 91.0% | 88.3% | 92.6% |

Swale Borough Council Planning Enforcement Service

Customer Charter

This document sets out what can be expected from enforcement officers and other officers of the Council's Planning Enforcement and Compliance Service.

The Council has adopted a Planning Enforcement and Compliance Strategy, that aims to

- Be effective in dealing with breaches of planning control that cause unacceptable harm on the public amenity and/or land or buildings
- Limit resources used in pursuing minor breaches that cause no harm to amenity
- Operate in a fair, proportionate and consistent manner and follow the advice in the *Good Practice Guide for Local Planning Authorities*
- Educate and inform stakeholders about the process, our standards of service, our procedures and provide widely available information to all our customers.

Procedures for Dealing with Planning Enforcement Cases

Most investigations result from complaints from the public, Councillors or Parish and Town Councils. All these individuals and groups have a role to play in planning enforcement, as they are the local 'eyes and ears' of the Planning Authority in the community. Their contribution towards planning enforcement is greatly appreciated by the Borough Council.

How to make a complaint /raise a concern

The Planning Enforcement Team can be contacted by letter, telephone, email or in person. It is best to make an appointment if you wish to speak to an officer in person. The appointment can either be at Swale House, Sittingbourne or, in certain circumstances, home visits can be arranged.

Written enquiries are preferred and in all cases we need the following information:

- The precise location of the site or property, the complaint relates to
- The exact nature of concern, i.e. the potential breach of planning control
- The date the unauthorised development or works began and a note of whether and when they continue
- An indication of any harm caused
- Where it is known, details of the identity of the person or organisation responsible.

All investigations are carried out on a strictly confidential basis and the details of the person who has complained will **not** be revealed by the Planning Enforcement Team, unless directed to do so by a Court.

How we handle the information we receive

There is a need to prioritise initial responses to complaints. Site visits and any action that needs to be taken will be prioritised according to the degree of harm that is likely to be caused to the amenity in question and how significant an alleged breach of planning control has been reported. As formal action will only be taken where the alleged breach would warrant a refusal of planning permission that could be supported on appeal, the fact that enforcement action is discretionary also needs to be taken into account.

When Enforcement and other Officers visit a site they will identify themselves and explain the reason for their visit. The owner/occupier or people working on site may be interviewed to obtain factual information, and photographs and measurements may be taken if required. A detailed note will be made on the investigation file, which is used to record all visits and discussions at meetings or over the phone.

It should be noted that under the various Planning Acts, Enforcement and Planning Officers have the right of entry onto non residential land and buildings. They have further powers to enter residential properties, and can apply for a warrant from the Magistrates Court to gain access if their initial attempts to gain entry (on the giving of twenty four hours notice) are unsuccessful.

In more complex or controversial cases, or where it has not been possible to establish the facts through normal investigation, or where co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice (under Section 171C of the Act), can be served that will relate to any breach of planning control that is alleged by the Council. This requires the recipient to provide specific information. Failure to respond satisfactorily to such a notice within the required timescale is a criminal offence.

Once the investigation has been concluded ,which can take a considerable period of time (including many site inspections and discussions with officers who specialise in listed buildings or tree matters, for example) a decision will be taken as to what action is considered necessary. The Planning Authority will then aim to keep the person who has made the complaint informed of progress.

Resolving your complaint

The vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier or by the submission of a retrospective application for consideration. Legislation and central government guidance require that all formal action must match the degree of risk or harm associated with the breach .Therefore formal action is not always appropriate.

The Council will, however, take effective enforcement action when it is essential to protect the amenity of the area, the public, or highway safety, and to maintain the integrity of the planning process within Swale.

Decisions about the issue of any Enforcement or Stop Notice or the pursuit of other legal actions will generally be taken by the Planning Committee, but on urgent matters, the

Head of Planning Services, has delegated powers to take any necessary action in accordance with the Council's Constitution.

If an Enforcement or Stop Notice is issued the Council must be able to justify its actions in the event of an appeal being made to the Planning Inspectorate. Appeals must be made before the compliance date stated in the Notice takes effect. Appeals can be lodged on a number of grounds and the person appealing (known as the appellant) can request that his/her appeal is dealt with by a written procedure, or ask for an Informal Hearing or Public Inquiry.

When it becomes an offence

A criminal offence occurs where an owner/occupier fails to comply with the requirements of a valid Enforcement or Stop Notice. The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts. In the case of a persistent offence against an unauthorised activity an injunction may be sought through the County or High Court.

In exceptional circumstances the Council will also consider taking direct or default action to resolve a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised works. The Council will seek to recover its costs in these cases, possibly in the form of a charge on the land, that would be recoverable at the time of sale of the land or property.

The Principles under which our enforcement service are provided

Standards

The performance of the enforcement team is to be monitored using the following revised local performance indicators as already set out in paragraph 4.3: .

A – Major alleged breach

The first site visit will be made within 2 working days of receipt of the complaint - performance standard 98%

B – Medium alleged breach

First site visit within 5 working days of receipt of complaint – performance standard 90%

C- Minor alleged breach

First site visit within 10 working days of receipt of complaint – performance standard 90%

Other additional indicators will also be used to monitor the service's performance, including:

- resolving³ 80% of all enforcement complaints within three months of receipt; and
- notifying all interested parties to a complaint of the Council's decision (whether or not to enforce) within 10 working days of making the decision.

These measures have not been monitored previously and therefore will be subject to review by April 2012.

Unless circumstances dictate, all authorised enforcement notices will be served within 10 days from the date of Planning Committee authorisation.

Court action and any other action necessary following the failure to comply with the requirements of an Enforcement Notice will be undertaken in consultation with the Head of Legal Services at Swale Borough Council.

Openness

We will provide information and advice in plain English on the rules that we apply and will share this information as widely as possible. We will be open about how we go about our work and will discuss general issues and try to help anyone experiencing difficulties.

Helpfulness

We believe that prevention is better than cure and that our role therefore, involves advising on, and assisting with, compliance. We will provide a courteous and efficient service, give an officer's name, telephone number and a contact point for further dealings with us. We will encourage people to seek our advice before committing a possible breach.

We will ensure that, wherever possible our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

We will ensure that the service is accessible by making documents available for completion and return online and that we have a direct email address for ease and clarity.

Proportionality

We will ensure that any action required is proportionate to the risks involved and as far as the law allows we will take account of the circumstances of the case and the attitude of the operator when considering what action to take.

³

The definition of 'resolving an enforcement complaint' would normally mean the formal closure by an officer of a case with a definite decision made or where the Council has received a valid 'retrospective' planning application with the aim of approving the previously unauthorised development.

We will take care when dealing with small businesses, voluntary and community organisations to ensure that they can meet their legal obligations without unnecessary expenses, where possible.

Consistency

We will carry out our duties in a fair and consistent manner. Advice from an officer will be put clearly and simply and will be confirmed in writing or by email and, on request, an explanation as to why any action is necessary and over what time-scales.

However where a retrospective planning application is required to be submitted, as with all applications where an applicant is seeking pre application advice, then the applicant will be charged as per any other applicant – see the Council’s website for further information about the procedures for charging for certain types of pre application - see the following link <http://www.swale.gov.uk/pre-application-planning-advice/> .

Before formal action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve matters unless immediate action is required (for example, where works are being carried out that will cause irreversible consequences).

Where immediate action is considered necessary, an explanation why such action is required will be given at the time and confirmed in writing or by email.

Where there are rights of appeal against formal action, advice on the appeal process will be clearly set out in writing or by email at the time the action is taken (this advice is usually issued with the enforcement notice).

Following the completion of investigations the actions available to the Council are:

- Take immediate enforcement action (see next section)
- Invite a retrospective planning application and negotiate a permission with certain conditions attached
- Take no further action
- Establish that the matter is not a breach of planning control (for example, permitted development or the works have been completed for more than 4 years, or there has been a change of use more than ten years ago).

What Happens if we Decide on Formal Action

There are a number of legal powers available including:

- Planning Contravention Notice (PCN) - Often the first course of action is aimed at getting information to determine what action, if any, should be taken

- Breach of Condition Notice (BCN) – This is used if a condition attached to a planning permission is not being complied with
- Enforcement Notice – These order unauthorised development to be stopped, altered or removed and may also order that land or buildings be put back to their original condition (the person who receives a notice has the right to appeal against the enforcement)
- Stop Notices and Temporary Stop Notices – These can be issued if the unauthorised development is causing very serious, immediate harm that cannot wait for an enforcement notice to be served
- Injunctions – These are court orders preventing unauthorised development taking place.
- Prosecutions – These may be appropriate for offences.

Contact Details - *To be added at publication stage.*

DCLG Planning Application Statistics: Enforcement Action Table P130, year ending March 2014

| Local Planning Authority | Enforcement Notices issued | Stop Notices | Temporary Stop Notices | Breach of Condition | Planning Contravention Notice's (PCN's) | Enforcement Injunctions Granted | Enforcement Injunctions refused |
|--------------------------|----------------------------|--------------|------------------------|---------------------|---|---------------------------------|---------------------------------|
| Swale Borough Council | 41 | 5 | 6 | 1 | 5 | - | - |
| Ashford | 5 | - | - | - | - | - | - |
| Canterbury | - | - | - | - | 1 | - | - |
| Dartford | 3 | 1 | - | - | 1 | - | - |
| Dover | 12 | - | - | - | 25 | 1 | - |
| Maidstone | 7 | 1 | - | 8 | 5 | - | - |
| Medway | 10 | - | - | 2 | 10 | - | 4 |
| Sevenoaks | 2 | - | - | 4 | - | - | - |
| Shepway | 4 | - | - | - | 2 | - | - |
| Thanet | 5 | - | - | - | 2 | - | - |
| Tonbridge and Malling | 4 | - | - | 5 | 6 | - | - |
| Tunbridge Wells | 4 | - | - | - | 2 | - | - |

**DELEGATIONS TO THE HEAD OF PLANNING WITH REGARD TO
PLANNING ENFORCEMENT**

Trees, Hedgerows and High Hedges

3. To respond to notifications under the Town and Country Planning Act 1990 of intention to cut down, uproot, top or lop a tree within a Conservation Area or for trees covered by Tree Preservation Orders.
4. To determine Felling Licence applications.
5. To make and confirm, where there are no objections, Tree Preservation Orders.
6. Refusals of permission to cut down trees and approvals to lopping, silvacultural thinning of woodlands and routine cutting of coppice woodland not affecting draw trees.
7. Authority under Regulation 12 of the Hedgerows Regulations 1997 (as amended) and Section 214B of the Town and Country Planning Act 1990 (as amended) to enter onto land.
8. To respond to hedgerow notifications in consultation with the appropriate Ward Member(s).
9. Subject to consultation with the Head of Legal, to serve notices relating to dangerous trees, in accordance with Section 23 of the Local Government (Miscellaneous Provisions) Act 1976.
10. To consider and determine the Council's response to the formal complaints in relation to high hedges, to issue remedial notices and determine all other matters in relation to high hedges in accordance with Part 8 of the Anti-Social Behaviour Act 2003.

Enforcement

11. To serve Enforcement Notices and/or to issue "breach of condition notices" to secure compliance with planning conditions.
12. To serve Notices under the Town and Country Planning Act 1990 requiring the proper maintenance of land and the removal or obliteration of any placard or poster.
13. To make representations on behalf of the Council where appropriate to the granting or variation of Goods Vehicle Operators Licences under Section 12 of the Goods Vehicles (Licensing of Operators) Act 1995.
14. In cases of urgency between meetings to serve a "Stop Notice", a "Temporary Stop Notice" an Enforcement Notices or a Listed Building Enforcement Notice (following consultation with the Chairman or the Vice-Chairman of the Planning Committee and a relevant Ward Member).
15. To serve a requisition for information under Section 330 of the Town and Country Planning Act 1990.

Conservation of Historic Environment

16. In cases of extreme urgency between meetings to to serve a Building preservation Notice under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
17. To serve Urgent Works Notices and carry out works where it is considered urgently necessary for the preservation of a listed building.
18. To input to consultations by Church Authorities under the Ecclesiastical Exemption Regulations.

POLICY DEVELOPMENT AND REVIEW COMMITTEE - FORWARD LOOK

| Policy, plan or strategy | 15-Oct | 19-Nov | 14 Jan | 25 Feb | 18-Mar | 27-May |
|--|--------|--------|--------|--------|--------|--------|
| Communications Strategy (reviewed 8 July 2014) | | | | | | |
| Corporate plan (reviewed 8 July 2014) | | | | | | |
| Community Asset Transfer Policy (reviewed 3 September 2014) | | | | | | |
| Volunteering Strategy (reviewed 3 September 2014) | | | | | | |
| Planning Enforcement Strategy and Service Charter | √ | | | ? | | |
| Domestic Refuse and Recycling Collection Policy and Procedures | | √ | | | | |
| Local First | | √ | | | | |
| Sports Development Framework | | √ | | | | |
| Discretionary Housing Policy | | √ | | | | |
| Corporate Equalities Strategy | | | ? | | | |
| Economic Development Strategy | | | ? | | | |
| Community Safety Strategy | | | ? | | | |
| Play, tree and cemetery policies | | | | | ? | ? |

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