

**REPORT OF MRS JENNY CLIFFORD, THE HEAD OF PLANNING, ECONOMY AND REGENERATION**

**SCHEME OF DELEGATION AND THE CONSIDERATION OF ENFORCEMENT CASES**

**REASON FOR REPORT:**

To consider whether Planning Committee wish to continue to determine all instances where non urgent formal enforcement action is proposed irrespective of the scale of the proposal. Members are asked to consider whether the scheme of delegation should be amended to allow the consideration of enforcement cases (except in specific circumstances) under delegated powers rather than referring them to Planning Committee.

**MATTERS FOR CONSIDERATION:**

The scheme of delegation in relation to planning enforcement matters.

**RECOMMENDATION:**

**That the scheme of delegation be amended in relation to planning enforcement to read as follows:**

**‘PLANNING SERVICES**

**Scheme of Delegation to the Head of Planning, Economy and Regeneration**

**To exercise all powers of the Council as Local Planning Authority (including the conduct of appeals and enquiries) under the Planning Acts, the Localism Act and the Growth and Infrastructure Act (unless expressly delegated to another officer) except where:-**

**In the case of Formal enforcement action:**

- 1. In the opinion of the Head of Planning, Economy and Regeneration, or the Group Manager for Development, the proposed enforcement action raises matters of significant public interest and /or significant cost to the Council for which there is no budget and/or would prevent a person from residing or continuing to reside on land within the district;**
- 2. The action relates to land in which the Council, a Member or an Officer has an interest;**
- 3. The action is the issue of an enforcement notice, stop notice, temporary stop notice or legal proceedings, in which case the notice or proceedings will be issued by the Group Manager for Legal Services or a solicitor employed by the Council, in consultation with the Head of Planning Economy and Regeneration or the Group Manager for Development.**

**(Note: Formal action does not include the service of a Planning Contravention Notice or Section 330 requisition for information).’**

**FINANCIAL IMPLICATIONS:** Effective enforcement performance has the potential for financial implications through generating planning fees and preventing the need for costly direct action.

**LEGAL IMPLICATIONS:** Government monitors planning performance in terms of speed and quality of decision making. An efficient enforcement process can reduce the risk of unlawful

development. However, the Legal Services will continue to be involved with the issue of formal notices and legal proceedings, in accordance with the existing delegation in Article 16 of the Constitution. Further, officers will still need to consider the equalities and human rights issues before taking action and the best way of doing this is to set them out in a delegated officer report for the file.

**RISK ASSESSMENT:** Reputational risk can occur as a result of unauthorised works continuing whilst waiting for a Committee meeting to take place.

**EQUALITIES IMPACT ASSESSMENT:** Equalities and human rights issues are assessed in advance of taking formal enforcement action. This will continue irrespective of whether an enforcement case is considered under delegated powers or via Planning Committee. Of significance is the need to properly assess and record these considerations. Equalities issues are not expected to be prejudiced through consideration of delegated powers. In addition, where enforcement action would result in someone being made homeless, Committee consideration of the case is proposed.

#### **RELATIONSHIP TO CORPORATE PLAN:**

One of the Corporate Plan priority areas is Environment, including focus upon protecting the built and natural environment. Effective operation of enforcement powers is an important component of the planning system and in providing public confidence in the system.

**IMPACT UPON CLIMATE CHANGE:** No climate change issues are identified arising from this report.

## **1.0 BACKGROUND**

- 1.1 The existing scheme of delegation to the Head of Planning and Regeneration is worded as follows:

### ***“PLANNING SERVICES***

*Scheme of Delegation to the Head of Planning and Regeneration.*

*To exercise all powers of the Council as Local Planning Authority (including the conduct of appeals and enquiries) under the Planning Acts, the Localism Act and the Growth and Infrastructure Act (unless expressly delegated to another officer) except where:-*

#### ***In the case of Enforcement:***

- 1. Formal enforcement action is proposed other than a Breach of Condition Notice or in the case where urgent action is required to commence enforcement proceedings, consisting of the service of a Temporary Stop Notice, Enforcement Notice, Stop Notice or commence Injunction proceedings. These proceedings to be only instigated in consultation with one or more of the following: Planning Chairman, Vice Chairman, Ward Member.*
- 2. Other than in consultation with the Legal Services Manager prosecution proceedings regarding any unauthorised advertising/fly posting.*

*(Note: Formal action does not include the service of a Planning Contravention Notice or Section 330 requisition for information)."*

- 1.2 The effect of the existing scheme of delegation is therefore for all formal action other than a breach of condition notice to require committee authorisations. The only exception to this is where urgent action is required for the issue of a Temporary Stop Notice, Enforcement Notice, Stop Notice or to commence Injunction proceedings.

Provision is in place for these to be instigated urgently in consultation with Members as listed.

- 1.3 Several reports have identified the scheme of delegation in relation to planning enforcement as an area for review. In March 2017, a report on the outcomes of a productivity review in the Planning Service was considered at meetings of Planning and Scrutiny Committees. This review was undertaken via the Local Government Association's productivity expect programme, giving access to external advice to undertake a review of aspects of the service with a particular focus on how best to realise efficiency and productivity gains. This review was delivered on a peer basis via a consultant holding a Head of Planning position in another authority. A series of recommendations were made across a range of topics. For enforcement these recommendations included changing the scheme of delegation to allow the Head of Service to authorise the serving of enforcement notices. The consultant noted that Planning Committee almost always agreed the enforcement action recommended to be taken. The administrative burden and delays of 2-3 weeks (due to Committee lead in time) were commented upon.
- 1.4 An audit of planning enforcement took place in July 2017. One of the findings from this exercise was that whilst Enforcement Officers have the power to issue a breach of condition notice, a temporary stop notice or a planning contravention notice, all other enforcement notices are required to go through Planning Committee before approval before issuing the notice. The report recognised this as a risk of reputational damage and to be time consuming. The recommendation made was to seek delegated powers. The target date for completion was set at the end of March 2018. Completion is therefore overdue and this is currently an outstanding audit recommendation.
- 1.5 It is also to be noted that a Local Enforcement Plan for Mid Devon was adopted in April 2018. This sets out how planning permission implementation is monitored, how planning enforcement operates, how complaints will be investigated and action taken where appropriate. It also sets out a scheme of prioritisation of complaints and performance standards which are monitored and reported.

## **2.0 CONSIDERATION BY PLANNING COMMITTEE.**

- 1.1 In practice, the majority of cases where formal enforcement action is proposed are currently considered by Planning Committee as they have not been deemed to be urgent (defined as highest priority in the Local Enforcement Plan). This is irrespective of the scale of the breach. Over an 18 month period between January 2018 and the end of June 2019, the following 12 enforcement reports were presented to Planning Committee. The outcome is also indicated and in all cases the resolution of Committee was in accordance with the recommendation:
1. *ENF/17/00076/COU – Untidy site having an adverse effect upon the visual amenity of the locality arising from the unauthorised deposition of excavated soil on the land – land and buildings at NGR 296197 122000, Ashleigh Park, Bampton*). Authorisation granted in accordance with recommendation
  2. *ENF/16/00243/UDRU– Erection of two storey building in rear garden – 6 Forestry Houses, Chenson, Chulmleigh*. Authorisation granted in accordance with recommendation
  3. *Enforcement Case ENF/17/00213/LB – Dilapidation of listed building in particular thatched roof at the Three Tuns, Public House, 14, Exeter Road, Silverton* Authorisation granted in accordance with recommendation

4. *ENF/17/00070/RURAL – Unauthorised building operations concerning the extension of a former tractor storage shed and the unauthorised change of use of the land from woodland to a mixed use of woodland and recreational use – Culm Wood, (Gaddon Down Plantation), Ashill).* Authorisation granted in accordance with recommendation.
5. *ENF/17/00160/COU – Change of use of land from agriculture to mixed use agriculture and the siting and use of a caravan for human habitation together with domestic paraphernalia ancillary to such use and the storage of two non-agricultural motor vehicles – land lying to the north of Petton Cross, Shillingford* Authorisation granted in accordance with recommendation.
6. *Enforcement Case ENF/17/00266/RURAL – Unauthorised material change of use of land from agriculture to a mixed use of agriculture and the slaughtering, process, packing, freezing, storage and distribution of meat, together with ancillary operational development comprising the erection of two structures and a concrete base – land and buildings at NGR 307589 114376 (Land at Escotts Farm, Uffculme).* Authorisation granted in accordance with recommendation.
7. *ENF/17/00072/RURAL – Unauthorised building operations concerning the construction of a mixed used building comprising a farm workshop, storage, smoker, cold store, food processing area, farm office, welfare facilities, kennels and stables – land at NGR 317450 1100777 (Tickle Penny) Clayhidon.)* Authorisation granted in accordance with recommendation.
8. *ENF/18/00114/LB – Urgent and appropriate repairs to the Grade II\* Listed Building part of the Manor House Hotel are required in order to preserve it and prevent damage arising from decay and potential poor underlying structural integrity of parts of the Fore Street frontage – Manor House Hotel Part) at 2 Fore Street, Cullompton).* Authorisation granted in accordance with recommendation.
9. *ENF/18/00083/UNTIDY – Untidy site having an adverse effect upon the visual amenity of the locality. Eastmere Farm, Lapford, Crediton).* Authorisation granted in accordance with recommendation.
10. *ENF/17/00326/RURAL – Unauthorised operational development in the permanent fixing of a shipping container on the land and unauthorised material change of use from agriculture to a mixed use of agriculture and the storage of materials not required for agriculture – Bradford farm, Uplowman)* Authorisation granted in accordance with recommendation.
11. *ENF/19/00036/LB – without listed building consent, the insertion of uPVC sliding doors and windows to the 20<sup>th</sup> century rear single storey extension and uPVC dormer windows to the south elevation – Loram Cottage, Copplestone).* Recommendation agreed.
12. *ENF/19/00053/COU – Change of use of land and buildings to a use for human habitation and to the other to facilitate the storage of materials required or intended for use in the building works – agricultural buildings on Ratsash lane, Uffculme.* Authorisation granted in accordance with recommendation.

1.2 The cases above and their outcomes follow a wider pattern in the consideration of enforcement reports at Planning Committee over a longer period, in that the resolutions are rarely at odds with the recommendations.

1.3 Given the high levels of agreement by Planning Committee with officer recommendations, the inherent delay as a result of Committee timescale and lead in

times, it is considered that a review of levels of delegation is warranted. The Committee process not only has implications on timescale for action, but also makes additional demands on officer time. This impacts upon the ability of the team to efficiently deal with other cases which increases the reputational risk to the Authority.

1.4 Officers have also checked the extent of delegated powers to take planning enforcement action with other Councils in the area. It is clear from this that the extent of delegated authority to take planning enforcement action in Mid Devon is significantly less than that at other councils in the locality.

1.5 Members are requested to relook at the resolution in respect of enforcement to consider whether wider formal enforcement action could be determined under delegated powers. This would be subject to criteria as set out in the recommendation. The proposed exceptions would be where:

- Matters of significant public interest arise,
- There would be significant expenditure for the Council without budget (such as in some instances of direct action)
- A person would be prevented from residing or continuing to reside on land within the district;
- The action relates to land in which the Council, a Member or an Officer has an interest;
- In addition where the action is the issue of an enforcement notice, stop notice, temporary stop notice or legal proceedings, the notice or proceedings will be issued by the Group Manager for Legal Services or a solicitor employed by the Council, in consultation with the Head of Planning Economy and Regeneration or the Group Manager for Development

These are considered appropriate safeguards within which the wider delegated powers would operate. In addition, it is proposed that Ward Members would be consulted prior to the taking of formal action relating to land within their Ward.

### **Summary**

Members are therefore asked whether subject to specific criteria, enforcement action as specified can be delegated and accordingly that the scheme of delegation be amended to read as follows:

### **PLANNING SERVICES**

#### ***Scheme of Delegation to the Head of Planning, Economy and Regeneration***

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2. *The action relates to land in which the Council, a Member or an Officer has an interest;*
3. *The action is the issue of an enforcement notice, stop notice, temporary stop notice or legal proceedings, in which case the notice or proceedings will be issued by the*

*Group Manager for Legal Services or a solicitor employed by the Council, in consultation with the Head of Planning Economy and Regeneration or the Group Manager for Development.*

*(Note: Formal action does not include the service of a Planning Contravention Notice or Section 330 requisition for information).*

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**List of Background Papers:** None

**Circulation of the Report:** Cllr Graeme Barnell  
Members of Planning Committee