

**BIRMINGHAM CITY COUNCIL**

**ECONOMY AND SKILLS O&S COMMITTEE**

**1000 hours on 2<sup>nd</sup> March 2022, Committee Room C, Council House Extension,  
Margaret Street - Actions**

---

**Present:**

Councillor Saima Suleman (Chair)

Councillors Peter Griffiths, Chaman Lal and Simon Morrall.

**Also Present:**

Councillor Ian Ward, Leader

Ceri Saunders, Acting Group Overview & Scrutiny Manager

Baseema Begum, Scrutiny Officer

---

**1. NOTICE OF RECORDING/WEBCAST**

The Chairman advised the meeting to note that members of the press/public may record and take photographs.

**2. APOLOGIES**

Cllr Alex Aitken, Maureen Cornish and Zaheer Khan.

Cllr Lal gave apologies for leaving early due to another appointment.

**3. DECLARATIONS OF INTEREST**

None.

**4. ACTION NOTES**

The action notes of the last formal meeting of the Committee held on 15<sup>th</sup> September 2021 were agreed.

**5. UNDERSTANDING PLANNING ENFORCEMENT: EXISTING PRACTICES, ENFORCEMENT POLICIES AND PROCEDURES**

(see Item No. 5)

The Chair outlined the item for discussion and welcomed the Leader, Cllr Ian Ward who was attending in person and Mark Franklin, Principal Enforcement Officer who joined the meeting virtually.

Cllr Ward stated that he welcomed the opportunity for the Committee to look at the role of the Council's Planning function and its role in enforcement and ensuring that both members and residents were clear on what can be delivered.

Mark Franklin talked members through the key points in the presentation and made the following points: -

- Parliament has given local planning authorities the primary responsibility for taking whatever enforcement action they consider necessary in the public interest in their area.
- As set out within the national Planning Policy Framework, Birmingham has published a local enforcement plan (BLEP) to manage enforcement proactively in a way that is appropriate to the city.
- BLEP was adopted by Cabinet in May 2020 and assists the planning team in the prioritisation, consideration and determination of enforcement cases.
- Enforcement action is intended to be remedial rather than punitive and should always be commensurate with the breach of planning control to which it relates.
- Cases need to be investigated thoroughly with a set of key questions answered before action is taken.
- Negotiation is a key skill of any enforcement officer, and in most cases, breaches can be resolved through this process. However, as soon as it becomes clear that a breach cannot be resolved amicably and that there is ongoing planning related harm that is contrary to the public interest, formal action is always considered to remedy the breach.
- Managing of cases follows a process of assessing whether or not the alleged breach constitutes development as defined in the Town and Country Planning Act 1990.
- Firstly, it is the nature of the development. This is what would be considered as a big change and the new activity must be substantially different from that which it proceeded. What it does not include is internal works and those that do not materially affect the external appearance of a building and where no material change of use has occurred. This is key and has a great impact on any decisions being made in relation to proceeding with enforcement.
- The next step is checking if planning permission is required for the type of development taking place. In the case of housing renovations for example these do not require planning permission and are classed as 'permitted development'.
- The Council's planning complaint form picks up another key step which is determining change of use in a building and complainants are guided to the appropriate part of the general permitted development order.
- If planning permission is required, an assessment is made as to whether this would be forthcoming. In all cases the local authority invites individuals to make a planning application to regularise it.

- An expediency test is conducted on all decisions to be made regarding pursuing enforcement action where there has been a breach of planning control. Several factors are taken into consideration including the impact on public interest (e.g. harm, noise, etc).
- Deciding against taking action is probably the most difficult part for the general public and councillors to understand and accept and is the cause for most complaints, along with the time taken to progress and enforce a case.
- It is discretionary for the local authority to use enforcement powers. The Council has a duty to investigate all complaints received but not a duty to act if there is a breach.
- If action is taken it is in line with the level of breach. The Council must be able to defend its decision at any appeal ensuring that evidence is provided of a clear and significant breach or it may be at risk of paying legal costs if it is ruled against.
- The Council can issue a range of notices as part of the enforcement process (and follows statutory requirements) giving details to the recipient of how and why a breach is causing harm and how it can be remedied. An enforcement notice is the most common form of action taken. It does lead to getting unacceptable development removed or altered and potential prosecutions.
- In terms of legal action there is a statutory timeframe of when the Council must act and is detailed in the BLEP.
- Leeds is the only comparable core city in terms of size of their team and the number of complaints received. However, Birmingham has issued more notices than any other core city with a total of 96 notices issued, Leeds are in second place with 76.
- The most notable difference with other core cities last year is that they did not have any prosecutions, whereas Birmingham had two and secured confiscation orders, bringing monies back into the public purse.
- Currently officers are dealing with double the amount of expected cases as most cases last more than a year so there is a significant amount of pressure. In the last year 1366 cases were registered. However, as the only core city to undertake prosecutions last year the team has successfully recouped a sum of £80,000 back into the Council's fund.
- Improvements to the team are being made namely trying to reduce the caseload and reduce the number of complaints received at source. This includes sifting out early on if complaints are not planning related or are for other service areas to deal with.

Following the presentation and in response to Members' questions, the following were among the main points raised: -

- The total number of properties investigated relating to supported exempt accommodation last year was in the region of 200-250.
- Cases put forward for prosecution are successful because officers have undertaken the process with due diligence ensuring that every stage has been done correctly.

- In relation to the expediency test and the Council being too cautious in taking action on exempt accommodation properties in comparison to other core cities it was noted that it was not an issue for them, and that Birmingham has been dealing with the issue alone.
- There is a perception by the public that enforcement action is not being taken however the majority of exempt accommodation does not require planning permission in the first place. In these cases, there is no breach of planning control so there is no decision to make. This also relates to general properties. The understanding between planning permission and permitted development is not always understood by the general public.
- It was clarified that in the main complaints received in reference to supported exempt accommodation centre around anti-social behaviour, which is not controlled by planning legislation.
- Birmingham has served the highest number of enforcement notices during the pandemic at just under 100.
- The Council will always investigate any complaints made following the BLEP process whether there is evidence of a breach of planning control regardless of the time that a development has taken place (4/10-year rule) and make a decision using the expediency test. Where no complaints have been received within the set period the owner has the right to apply for a lawful development certificate.
- Members of the Planning Committee receive a report on complaints received twice a year with a breakdown by ward and category of why a case was closed. Many of these cases involve permitted development. Where a breach is found, the permitted development would be noted and then this can take away any potential breach. The expediency test itself takes away the ability to enforce.
- The government advocates that local authorities should negotiate and work with landlords and developers to resolve issues. Prosecution should be the last resort and so the emphasis is to work with owners to get remedial works done where needed.
- Legislation now commits the Council through the Birmingham Development Plan to put requirements on residential developers especially where homes are being built in city centre and commercial areas. Conditions are attached to planning applications to ensure noise is managed for example through triple glazing sealed windows to ensure that the night-time economy in those areas is also protected.
- The Council also encourages residential developers in certain city centre locations to work with commercial premises such as bars and restaurants nearby to come to a consensus before a planning application is made.
- It was noted that in relation to residential properties in commercial city centre areas there was a cross over between Licensing and Planning matters and there is a need for both Council service areas to work together better.
- It was noted that the Council could be more proactive in publicising and informing what it can do outside of enforcement to landlords and the public. This could include publishing successful cases and work undertaken including the prosecution taken to act as a deterrent to landlords where a confiscation

order under the 'Proceeds of Crime Act' has been secured and has resulted in the Council clawing back monies made in rent.

**RESOLVED: -**

1. The report was noted.
2. The Leader suggested that the report presented to Planning Committee twice a year on enforcement performance is circulated by Mark Franklin to all members of the Council for information and to highlight the successes of the team.

**6. EAST BIRMINGHAM INCLUSIVE GROWTH STRATEGY – UPDATE**

(see Item No. 6)

Mark Gamble, East Birmingham Development Manager joined the meeting virtually and outlined the key points in his presentation and during discussion with members the following points were made: -

- The update to committee charts the progress made from strategy to delivery since the last update in September 2021.
- Opportunities that are going to be available over the coming years principally relate to the High Speed 2 programme and the two new interchanging stations at Birmingham Curzon and the NEC. There will be an enormous amount of growth and development and it is crucial that these economic opportunities and benefits are seized for the people living in the East Birmingham inclusive growth area.
- Further projects relating to healthy living, green and blue infrastructure, low carbon/climate change and improving connectivity were highlighted as opportunities for jobs and development.
- East Birmingham has been specifically identified as one of the key areas in the Council's Levelling Up Strategy and will be the place-based delivery pilot.
- In February 2022 recruitment started for staffing to programme posts to allow the programme to scale up and move at pace. The budget for this is £3.6m for 3 years.
- 11 projects are currently underway and cover a range of different topics, themes and approaches, including planning and development.
- The East Birmingham board is a large group and includes ward members who represent the wider ward members forum. A member of a trade union has been invited and will be joining future meetings. The aim has been to try and make it as representative as possible with individuals from the social enterprise sector and higher education involved.
- Engaging with a variety of stakeholder groups is a key challenge and requires work. The programme has connected with over 100 organisations in the area including faith groups. Visits have been made to neighbourhood forums, Friends of Parks groups and the aim is to engage with as many different organisations and groups as possible. As the programme staffing team expands engagement work will scale up too.
- Housing development is being proposed for the Meadway area and to deliver as much affordable housing as possible quickly. There is also work underway

by the NHS who are looking to put in diagnostic services and it is anticipated that a local centre offering community facilities such as a library, GP surgery and multi-purpose meeting space to ensure maximum value for the community could be hosted here.

**RESOLVED:** -

1. The report was noted.
2. Further updates to be scheduled onto the work programme on a 6-monthly basis.

**7. WORK PROGRAMME**

(see Item No.7)

Cllr Suleman thanked the Committee for their support in her first term as Chair as this was the last meeting of the municipal year.

**RESOLVED:** -

1. The report was noted.

**8. REQUEST(S) FOR CALL IN/COUNCILLOR CALL FOR ACTION/PETITIONS RECEIVED (IF ANY)**

None.

**9. OTHER URGENT BUSINESS**

The Chair outlined that she would be presenting the Council-owned Assets Inquiry report at the Full Council meeting on 15<sup>th</sup> March. Cllr Morrall confirmed that he was happy to second as the report was a cross-party piece of work.

**10. AUTHORITY TO CHAIR AND OFFICERS**

Agreed.

---

The meeting ended at 11:45 hours