

BIRMINGHAM CITY COUNCIL

REPORT OF THE DIRECTOR OF PLANNING, TRANSPORT & SUSTAINABILITY.

ECONOMY & SKILLS OVERVIEW & SCRUTINY COMMITTEE

2 MARCH 2022

WARDS: ALL

Planning Enforcement

PURPOSE OF REPORT

To present to the Committee an overview of existing practices, enforcement policies and procedures.

RECOMMENDATION

That the contents of the report be noted.

CONTACT OFFICER

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BACKGROUND

Several services including Planning Enforcement provided evidence to the Scrutiny Inquiry in to Exempt Accommodation on the 24 September 2021.

Planning officers outlined the difficulty for Planning Enforcement with regard to Exempt Accommodation. A significant number have been investigated over the past 12/18 months and most of the properties investigated do not require planning permission.

Due to the definition of HMOs in Schedule 14 of the Housing Act 2004 some of the typical HMO properties are being managed by a registered social landlord and due to this legislation, it has not been possible to classify these properties as small HMOs therefore the Article 4 will not apply.

It is also important to highlight the strong links we have made with other service areas as a result of the SEA pilot. This collaborative approach introduced by the Pilot, including regular tasking group meetings, ensures the properties generating the greatest impact are always prioritised and directed to the appropriate service area.

Fundamentally HMO's and Exempt Accommodation are different uses in planning law.

We have recommended that Exempt accommodation should come under the planning regime for HMOs; this would mean amendments to the definition of an HMO in Schedule 14 of the Housing Act 2004 so that Exempt Accommodation controlled or managed by a non-profit registered provider of social housing can count as an HMO. This may require a change to primary legislation, but the Government should consider whether this can be changed by statutory instrument, such as via the Town & Country Planning (Use Classes) Order 1987, which would be quicker.

Recommendation R05 from the Inquiry, titled 'Strengthening Planning Controls' stated:

"There is a gap between Councillors' and residents' expectations of planning enforcement and the service delivered by the Planning Department. We ask the Leader and the relevant O&S Committee to review existing practices, enforcement policies and procedures".

The Leader has therefore asked me to present to the O&S Committee a review of existing practices, enforcement policies and procedures.

PROGRESS

The Planning Enforcement Team forms part of Planning Management within the Planning and Development team of Inclusive Growth.

A review into the operation of the team was undertaken in November 2020 and it was concluded that the enforcement team would be divided into North and South teams. The North team managed by James Fox, Acting Principal Enforcement Officer and the South team managed by Mark Franklin, Principal Enforcement Officer.

Head of Enforcement, Householder and Technical Services is James Wagstaff. There are eight senior enforcement officers (two are part time) who investigate complaints received and one enforcement officer who registers the complaints and has a small caseload.

It is considered the above management structure of the team is more efficient and effective way of managing the workload.

February 2021 saw the loss of 1x Senior Enforcement Officer (SEO) to long term sick leave and the introduction of 2x Graduates onto the team. Due to the high volume of case work, 2 agency staff were appointed on a 6-month contract. As of October 2021, the officer has returned from long term sick leave, but is unable to operate in the substantive role as a SEO. For a temporary period, this officer is registering complaints. The officer currently registering complaints has increased his caseload and one agency staff member has left. We have secured the remaining agency member of staff until the end of March 2022 using monies gained from our Proceeds of Crime confiscation orders.

The Birmingham Local Enforcement Plan (BLEP) was reported to Cabinet in May 2021 and subsequently adopted. It is a live document on the Council's webpages and is highlighted to be read by those wishing to make complaints as part of the complaint form.

As the Local Planning Authority, the City Council has statutory enforcement powers regarding breaches of planning legislation. The Council's Enforcement Team deals with six principal types of case:-

- Where development occurs without planning permission

- Where planning conditions have not been complied with
- Unauthorised works to listed buildings (including internal alterations)
- Illegal display of advertisements including fly posting
- Section 215 actions to improve the appearance of untidy land affecting local amenity
- Unauthorised works to protected trees

The Enforcement Team work within a complaint process and therefore bear the brunt of the public's disappointment and dissatisfaction when action is not taken. Nationally, the enforcement function is perceived in a negative manner. Due to the complexities of the enforcement process, confidence in the system to hand out effective and efficient solution is low. We therefore provide bi-annual reports to Committee as stated in the Birmingham Local Enforcement Plan as well as ongoing annual training for Members of Planning Committee as well as proactively attending Ward meetings.

Legally, the process for dealing with enforcement cases can be challenging with processes increasing in complexity throughout the process with large amounts of time and costs involved.

Any successful prosecution is somewhat curtailed as fines handed down go directly to Central government and not the Council. The Council can submit a costs claim for the action undertaken, but this figure is often nominal and does not always reflect the significant and technical work undertaken. Senior officers are working closely with the Council's legal department to identify costs incurred when taking cases to Court for these costs to be recovered and ring-fenced for projects to be undertaken in enforcement.

FINANCIAL IMPLICATIONS

Service improvements will be met from within existing budget provisions.

IMPLICATIONS FOR POLICY PRIORITIES

Strategic objectives

Any changes to enforcement procedure and resources will assist in improving the speed and quality with which complaints and subsequent enforcement action is pursued and contribute to all the Council's Strategic Objectives.

Director of Planning, Transport & Sustainability