

REPORT FOR: **CABINET**

Date of Meeting:	17 November 2011
Subject:	Draft Planning Enforcement Policy and Draft Prosecution and Direct Action Policy
Key Decision:	Yes
Responsible Officer:	Stephen Kelly, Divisional Director - Planning
Portfolio Holder:	Councillor Keith Ferry, Portfolio Holder for Planning Development and Enterprise
Exempt:	No
Decision subject to Call-in:	Yes
Enclosures:	Appendix 1 Reference from the Planning Committee on 11 October 2011 Appendix 2 Draft Planning Enforcement Policy and Prosecution and Direct Action policy

Section 1 – Summary and Recommendations

This report sets out to secure approval for public consultation on the updated Planning Enforcement Policy and Draft Prosecution and Direct Action policy, prepared to support the effective operation of the Council's planning enforcement function.

Recommendations:

Cabinet is requested to:

- (1) approve for purposes of public consultation the attached Planning Enforcement Policy and Prosecution and Direct Action Policy for a period of not less than 6 weeks in line with the Council's Statement of Community Involvement (SCI);
- (2) authorise the Divisional Director – Planning, in consultation with the Portfolio Holder for Planning, Development and Enterprise, to make any minor corrections and adjustments to the documents prior to public consultation, consistent with the objective of ensuring clarity and accuracy of the publication.

Reason: (For recommendation)

The revision and updating of the Planning Enforcement Policy is a specific priority in the Place Shaping Service Plan 2010/11 which focuses on the delivery of robust and transparent planning enforcement in Harrow. Publication of an up to date policy will assist in delivery of a transparent and effective planning enforcement service and in meeting the Council's Corporate Priorities as well as best practice in planning enforcement.

Section 2 – Report

Introductory paragraph

The Council's planning enforcement service receives some 700+ requests to investigate breaches of planning regulations every year. In recent years, the demand for investigation of complaints has placed considerable pressure on the enforcement service of 3 full time officers and a manager. The Council adopted in 2000, its first enforcement policy which was little more than a schedule of service commitments, and has little current value as a tool for proactive enforcement.

Over the last 30 months, in response to feedback from members and the community, the planning service has applied a particular focus to planning enforcement. In line with greater officer delegation, significant strides have been made in pursuing planning breaches through formal notices, through the courts and indeed through direct action. It is appropriate and important that this more robust approach to enforcement is reflected in an updated policy, which for the first time seeks to set out an approach to prosecution and works

in default (Direct Action), where this is the most expedient means to resolve a breach.

The proposed policies in respect of planning enforcement, prosecution and direct action are set out in appendix 2. These seek to provide more information for both those subject to investigation and those within the community who contact the Planning Service in respect of potential breaches. For members too, a clear and consistent approach to planning enforcement is important in restoring public confidence in the service and the process.

Options considered

The existing, 2000 enforcement “policy” could have been retained. This document is now considered inadequate to support the more pro-active approach of the planning enforcement team and provides little or no assistance to those affected by or responding to breaches of planning control.

Background

The Planning Committee, at its meeting on 11th October 2011, endorsed the consultation drafts appended to this report and agreed that they should be referred up to the Cabinet for consideration. Consultation on the policy would be carried out in accordance with the Council’s published Statement of Community Involvement (SCI). This provides, inter alia, for a minimum of not less than 6 weeks consultation, via the Council’s consultation portal and automatic notifications of those on the current database – comprising circa 1400 people. In addition, officers are proposing, to hold an “Agents Forum” with invitations to all those agents who have made retrospective planning applications in the last 12 months where the policy will be presented for comment and discussion.

The outcome of the consultation would be reported back through the democratic process and the policy would require adoption by Cabinet.

Financial Implications

The adoption of the policy has no direct financial implications. The policies relating to Enforcement and Prosecution/Direct Action may result in modest savings by reducing the management input required to address enquiries and complaints surrounding enforcement decision making – through a more transparent process – and reduce the time spent providing general information to the community on the Council’s approach to planning enforcement. Additionally, by providing clear guidelines for officers to make decisions about how enforcement investigations should be progressed, it could potentially streamline the management of enforcement cases and reduce the costs associated with providing information on the enforcement process.

Environmental Impact

The effective management of the built environment in the public interest, through these policies will contribute to the achievement of the Council's climate change objectives, and the delivery of the spatial vision set out in the emerging Harrow LDF.

Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

The absence of a clear policy for the application of planning enforcement powers exposes the Council to reputational risks, arising from the allegation of inconsistent application of the legislation, as well as introducing scope for allegations of bias and unequal treatment of cases/investigation.

The absence of a prosecution policy, in specific cases may undermine the Council's effectiveness (with consequential impact on cost) in the event that it seeks to use the courts to secure a remedy to a breach of planning control.

Equalities implications

Was an Equality Impact Assessment carried out? Yes

An initial Equalities impact assessment has been carried out on the draft policies. This will be placed alongside the documents during consultation and will be re-visited as part of the review of all representations received, prior to formalisation of the policy. Given the re-active nature of the service to initial complaints, and the policy based assessment of the decision making process within planning enforcement – which requires that regard be had to the development plan and any other material planning consideration – the principle issues arising from such a policy relate to the means to ensure effective and consistent capture and monitoring of the effects of the policy and the process on protected categories, as opposed to any foreseen adverse impact of the policy on a particular category at the present time.

Performance Implications

There are no specific, national, regional or local benchmarks for the operation of the planning enforcement team at the current time. The policies seek to set out service standards in order to enable future performance monitoring of the service.

Corporate Priorities

The Draft Enforcement Policy and Prosecution & Direct Action Policy will contribute to the delivery of the Place Shaping Service Plan priority outcomes for the Planning Division and in meeting Harrow Council's corporate

objectives to 'Keeping neighbourhoods clean, green and safe' and 'Supporting our Town Centre, our local shopping centres and businesses'.

The publication of a more transparent approach to planning enforcement will also assist the Service in meeting the Council's aspirations for "United and involved communities: A Council that listens and leads" by providing a clear lead on planning enforcement whilst enabling community involvement in the setting of policy relating to the way that the service operates and prioritise its enforcement actions.

Section 3 - Statutory Officer Clearance

Name: Kanta Hirani	<input checked="" type="checkbox"/>	on behalf of the Chief Financial Officer
Date: 26 October 2011		
Name: Abiodun Kolawole	<input checked="" type="checkbox"/>	on behalf of the Monitoring Officer
Date: 26 October 2011		

Section 4 – Performance Officer Clearance

Name: Martin Randall	<input checked="" type="checkbox"/>	on behalf of the Divisional Director Partnership, Development and Performance
Date: 25 October 2011		

Section 5 – Environmental Impact Officer Clearance

Name: Andrew Baker	<input checked="" type="checkbox"/>	on behalf of the Divisional Director (Environmental Services)
Date: 25 October 2011		

Section 6 - Contact Details and Background Papers

Contact: Stephen Kelly – Divisional Director - Planning 020 8736 6149

Background Papers:

- Planning Policy Guidance Note No. 18 (December 1991) – ‘Enforcing Planning Control’
- Department of the Environment Circular 10/97 (July 1997) – ‘Enforcement of Planning Control- legislative provisions and procedural guidance’
- Circular 03/07 (Control of Advertisements) (England) Regulations 2007
- Circular 02/05 Temporary Stop Notice
- Best Practice Guidance on Listed Building Prosecutions (Dec 2006)
- Section 215 Best Practice Guidance (Jan 2005)
- Circular 02/02 (Enforcement Appeals Procedure)
- Circular 03/09 (Costs Awards in Appeals & Other Planning Proceedings) Town and Country Planning Act 1990 (as Amended)
- Planning Policy Guidance 18 – Enforcement of Planning Control 1994
- Harrow Council Enforcement policy 2000

**Call-In Waived by the
Chairman of Overview
and Scrutiny
Committee**

NOT APPLICABLE

[Call-in applies]