

Report of	Meeting	Date
Executive Member (Planning and LDF)	Council	17 July 2012

NATIONAL PLANNING POLICY FRAMEWORK & LOCALISM ACT 2011: ENFORCEMENT & NEIGHBOURHOOD PLANS

PURPOSE OF REPORT

1. To seek approval for various matters arising as a result of the enactment of various provisions of the Localism Act 2011 and the National Planning Policy Framework (The Framework), including consequential provisions to the Scheme of Delegation and matters for the provision of a Local Enforcement Plan and the Council's approach to Neighbourhood Planning.

RECOMMENDATION(S)

2. That the Executive Cabinet/Council adopt the approach within PPG18: Enforcement as an interim approach to planning enforcement;
3. That a Local Enforcement Plan be prepared within 12 months for consideration by the Council.
4. That members note the enactment of the powers defined in the Localism Act 2011 to decline to determine planning applications on sites previously subject to enforcement notices, together with the provisions and regulations for neighbourhood planning; and authorise the Head of Governance to make detailed amendments to the Constitution and Scheme of Delegation in accordance with this report.

Confidential report Please bold as appropriate	Yes	No
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CORPORATE PRIORITIES

5. This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	
A Council that is a consistently Top Performing Organisation and Delivers Excellent Value for Money			/

BACKGROUND

6. Certain provisions within The Localism Act 2011 have recently been enacted and regulations published by the Secretary of State, including the power to decline to determine planning applications that have been subject to enforcement notices; and arrangements for neighbourhood planning.
7. The Framework (NPPF) was published in late March 2012. The previous drafts made no reference to matters relating to enforcement, but the published version requires a proportionate response to be made to suspected breaches of planning control, and for local planning authorities to consider publishing a local enforcement plan.
8. This reports sets out how the Council should respond to these matters.

ENFORCEMENT: LOCAL ENFORCEMENT PLAN

9. A single paragraph (207) in the Framework details the national policy approach to enforcement as follows: *“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”*
10. The Framework does not cancel the existing circulars (C10/97: Enforcing Planning Control; and 0C02/05: Temporary Stop Notices which also provides guidance. There is a need to have and provide guidance upon which to base decisions about enforcement cases. Planning Policy Guidance Note 18 provides a policy framework that has been used for a number of years and provides a sound basis upon which to continue to make decisions until such time that formal approval of a Local Enforcement Plan can be made, but PPG18 is no longer extant following the Framework.
11. It is considered appropriate to adopt the previous approach in PPG18 (attached) and to continue the constitutional arrangements whereby the Development Control Committee decide whether it is expedient to take enforcement action. In addition, it is considered appropriate for officers be tasked to prepare a local enforcement plan within the next 12 months, under the guidance of the Executive Member, with reference to the Development Control Committee, and that the plan be considered for approval by the Council at a future date.

ENFORCEMENT: POWER TO DECLINE TO DETERMINE

12. Section 123 of the Localism Act 2011 makes provision to decline to determine a retrospective planning application if an enforcement notice has been issued in relation to any part of the development. This is a fairly significant piece of legislation that would have a great impact upon an applicant. The exercise of this power would need to be very carefully considered – the presence of a previous enforcement notice by itself would not be sufficient on its own to decline to determine. The nature of the proposed/retrospective development, the nature of previous breaches and notices, together with the development plan etc. would all need to be carefully considered.
13. Procedurally, an officer report will be prepared explaining the facts of the matter, together with the rationale for declining to determine such applications for consideration by the responsible officers and members.
14. As this is a technical judgement, it is recommended that the decision to decline to determine applications under such circumstances be delegated to the Director for Partnerships, Planning & Policy and the Head of Governance (who currently has the delegated authority to issue enforcement notices), in consultation with the Executive Member for Planning and the Chair and Deputy Chair of the Development Control Committee.

15. A record of the decision will be duly made and the applicant will be informed of the decision to decline to determine. If that decision is challenged, then the matter constitutionally should rest with the Chief Executive and Head of Governance in the usual way. The decision would be reported in the usual weekly lists of decisions made.

NEIGHBOURHOOD PLANNING

16. The Localism Act 2011 (Part 6, Chapter 3, Sections 116-121; and schedules 9-10) introduced new rights and powers to allow local communities to shape new development by coming together to prepare neighbourhood plans and to permit development through neighbourhood development orders.
17. It is recognised that not all areas will want to undertake neighbourhood planning, and, therefore, there is not a statutory duty to prepare Neighbourhood Plans or Orders – but there will be a right to do so.
18. The Neighbourhood Planning (General) Regulations 2012 (SI 2012, No.637) have since been published and are reported as ‘light touch’ which allows processes to be developed to reflect local circumstances. The regulations do not detail how local authorities should make decisions and this is for the Council to decide, and therefore some matters could be delegated to officers or a committee, or the Executive Member, or be decided by Full Council. This report seeks to determine the decision making framework and the authority for appropriate amendments to be made to the constitution accordingly.
19. Neighbourhood plans have to meet a number of conditions before they can be put to a community referendum and legally come into force. These conditions are to ensure plans are legally compliant and take account of wider policy considerations (e.g. national policy):
 - they must have regard to national planning policy
 - they must be in general conformity with strategic policies in the development plan for the local area (i.e. such as in a core strategy)
 - they must be compatible with EU obligations and human rights requirements.
20. The Framework, Core Strategy and Site Allocations & Development Management DPD will still maintain their primary roles e.g. in respect of housing targets, an NDP cannot have less housing but it can have more. There are presently no restrictions as to what kind of content can be in a NDP; apart that it may not include provision about development that is excluded as set out in the Localism Act 2011. This includes development that is a County Matter, e.g., schools, colleges, minerals and waste etc.; and development that consists (whether wholly or partly) of a nationally significant infrastructure project.
21. The Council has certain responsibilities in relation to these new rights and powers, which can be summarised as follows:
 - Determining applications to designate a Neighbourhood Area – this is the area to which the Plan or Order will relate.
 - Determining applications to designate Neighbourhood Forums – these are the bodies permitted to prepare the Plans or Orders
 - Checking that the plan complies with all legal requirements
 - Publicising the plan and receiving representations
 - Organising and paying for the examination including appointing an
 - inspector
 - Organising and paying for the referendum
 - Providing technical advice and support to qualifying bodies.

Designation of Neighbourhood Area

22. The body preparing the plan must submit an application to the Council to determine the area that the plan will relate to – this must include a map identifying the area, an explanatory statement that the applicant is a “relevant body” i.e. a Parish Council or Neighbourhood Forum. The Neighbourhood Area could relate to the entire Parish area or a part of it, or any part of the area of another Parish Council if the other Parish Council has given their consent. Parish Councils could also agree to prepare joint plans.
23. The Council must publicise the application on its website and in ‘any such other manner as they consider is likely to bring the area application to the attention of people who live work

or carry on business in the area to which the application relates'. This application must be open to consultation for at least 6 weeks.

24. In determining the application the Council must ensure that the area is appropriate and that Neighbourhood Areas do not overlap. The Council will be responsible for publishing a map setting out the areas that are designated as Neighbourhood Areas.
25. At the same time as the Council is deciding whether to designate a Neighbourhood Area, the Council must consider whether the area should be designated as a business area (one which is wholly or predominantly business in nature), and if so, an additional referendum is required to allow non-domestic ratepayers to vote on whether a neighbourhood development order should be approved.
26. It is recommended that the designation of Neighbourhood Areas is delegated to the Director of Planning & Partnerships in consultation with the Executive Member for Planning where no objections received. This is a technical exercise and delegation would allow a quicker response. If there are objections it is recommended that the designation is determined by Executive Cabinet.

Designation of Neighbourhood Forums

27. In areas where there are Parish Councils, then Parish Councils are the relevant body for preparing plans. In non-parished areas, community groups can form neighbourhood forums to prepare NDPs. Applications for such forums to the Council must include the name of the proposed forum; a copy of the written constitution; the name and a map of the neighbourhood area; the contact details of at least one member to be made public and a statement which explains how the forum meets the conditions of the Act.
28. The Council must publicise the application on our website and in 'any such other manner as they consider is likely to bring the area application to the attention of people who live work or carry on business in the area to which the application relates'. This application must be open to consultation for at least 6 weeks.
29. In determining the application the Borough Council must ensure that the group meets the conditions of the Act and that there is only one Forum for each area. The Forum must meet the following conditions:
 - Be established for the express purpose of promoting or improving the social, economic and environmental well-being of the area
 - Its membership is open to individuals who live or work in the area or are elected members of a County or District Council for the area
 - Includes a minimum of 21 individuals each of whom live or work in the area or is an elected member
 - Have a written constitution
30. It is recommended that the designation of Neighbourhood Forums is delegated to the Director of Planning & Partnerships in consultation with the Executive Member for Planning where no objections received. If there are objections it is recommended that the designation is determined by Executive Cabinet.

Requirements check

31. When the body submits the plan to the Council, the Council is required to check that the plan and all accompanying documents comply with legal requirements. These require the plan to be in accordance with national policies and the strategic policies in the development plan and that they do not breach any EU obligations including those relating to habitats, equalities, human rights etc. This is essentially a technical exercise, and it is therefore recommended that the carrying out of such checks is delegated to the Director of Partnerships, Planning & Policy in consultation with Head of Governance, in consultation with the Executive Member for Planning.

Publicising the plan and receiving representations

32. As soon as possible after receiving the plan, the Council is required to publicise details of it on its website and in 'any such other manner as they consider is likely to bring the area application to the attention of people who live work or carry on business in the area to which the application relates'. The plan must then be made available for a minimum of 6 weeks for

consultation. Any representations will be sent to the Council. It is recommended that the programme for consultation is delegated to the Director of Partnerships, Planning & Policy in consultation with the Executive Member for Planning.

Examination

33. The Council has a duty to organise and fund the examination. The Council must appoint an independent person to carry out the examination with the agreement of the body preparing the plan. After the appointment the Council must send the independent person copies of all the relevant documents and any representations received as part of the consultation.
34. The LPA must also advise the examiner on representations received and other matters.
35. The person appointed to undertake the examination is responsible for how the examination will be carried out. It is expected that this will normally be through consideration of written responses, but the examiner could hold hearings if they felt this was necessary. The examiner will consider whether the plan meets the basic conditions set out in the Act and if this is the case recommend the plan proceeds to a referendum.
36. It is recommended that the Director of Partnerships, Planning & Policy is given delegated authority to appoint the independent person and seek with agreement of the preparing body; to organise the examination; – all in consultation with the Executive Member for Planning. The response to representations received will be reported for approval by Full Council.

Referendum & Duty to Adopt

37. The referendum gives the Community the final say on whether a plan should come into force in their area. The Council has a duty to make all the necessary arrangements for and the referendum and its funding. Separate regulatory provision applies to referendums. If a majority vote in favour of the plan in the referendum then the Council must bring it in to force and it will become part of the formal development plan for the area.
38. It is recommended that the Chief Executive is given delegated authority make arrangements for the referendum; and that were the outcome is positive, the adoption of the plan be considered by Full Council.

Provide technical advice and support

39. Schedule 4B(3) of the Localism Act states that the local planning authority must *'give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of or in connection with, facilitating the making of proposals for neighbourhood development order (or plans) in relation to neighbourhood areas within their area. Nothing in this paragraph is to be read as requiring the giving of financial assistance'*.
40. Assistance is likely to include:
 - meeting local communities interested in neighbourhood planning at an early stage, setting out the general scope/areas of support that can be provided
 - advising &/or assisting local communities to prepare a plan that will be fit for independent examination
 - attending briefings and meetings
 - advising on consultation and engagement
41. Technical assistance is likely to include the following, which could be subject to administrative or printing charges:
 - area and site plans
 - technical reports/extracts
 - technical information held on sites
 - any other information that is in the public domain
42. The cost and funding of Neighbourhood Planning has been the subject of much debate. The DCLG provided some funding to LPAs for a pilot programme at £20,000 per plan. The impact assessment for the Localism Bill noted that plans were anticipated to cost between £17,000 and £63,000 to prepare. The impact assessment anticipated the following average costs for local authorities:
 - Examination costs - £5,000 - £10,000

- Referendum costs - £7,000 - costs could be reduced if undertaken with other elections
 - Other (unquantified) costs of officer time in respect of defining neighbourhood area and providing expertise and advice to neighbourhood planning groups
43. The ideas being promoted by the government for funding the preparation of plans include the use of New Homes Bonus, Community Infrastructure Levy or even third party developer contributions towards the costs of a plan that includes their development. This incentive based financing is clearly a signal that government is expecting plans to address housing growth. It is also anticipated that councils may get some allocation through formula grant from 2013/14.
44. No formal applications have been made, nor have any formal approaches been made by Parishes or community groups, but interest has been expressed by a community group in relation to Whittle-le-Woods, who were advised to liaise with their Parish Council.
45. Once the Core Strategy is adopted it is possible that some parishes could come forward with requests for NDPs. There is a question however as to how much support and assistance the Council can provide in terms of officer time, materials and resources to Neighbourhood Plans. It is therefore recommended that the resource implications of any such requests are considered by the senior management team of the Council in consultation with the Executive Members for Planning, and Corporate Resources.

IMPLICATIONS OF REPORT

46. This report has implications in the following areas and the relevant Directors' comments are included:

Finance	/	Customer Services	
Human Resources		Equality and Diversity	
Legal	/	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

COMMENTS OF THE MONITORING OFFICER

47. The constitution and scheme of delegation can be appropriately amended in accordance with this report and the approval of the Council.

COMMENTS OF THE STATUTORY FINANCE OFFICER

48. At this stage it is impossible to predict the likely cost of developing neighbourhood plans as clearly it is dependent on the appetite of the community to engage in the process. That said, the costs are potentially significant and it is clear that the Government is expecting Council's to make their own local agreement to finance such costs, even though there is the potential for some grant in future years?
50. At this stage, I would recommend that no funding is earmarked for any potential plans that may come to fruition, but this may change if the new system develops and I will advise members accordingly.

LESLEY-ANN FENTON
DIRECTOR OF PARTNERSHIPS, PLANNING & POLICY

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Jennifer Moore	5571	06 July 2012	

Background Papers			
Document	Date	File	Place of Inspection
Localism Act 2011 SI 2012 No 637 National Planning Policy Framework, 2012 & PPG18			www.legislation.gov.uk or Planning/Legal Services www.dclg.gov.uk or Planning Services
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Jennifer Moore	5571	06 July 2012	