

Agenda Item 10

Executive Member	Councillor Duncan Irvine – Executive Member for Planning		
Strategic Management Team Lead Officer	Jack Straw – Corporate Head of Service		
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Date	18 th April 2017		
Ward (s) affected	All	Key Decision	No
Subject	Recommendations of the Planning Enforcement Panel		
RECOMMENDATIONS			
<p>The Executive is asked to consider the recommendations made by the Planning Enforcement Scrutiny Panel, as approved by the Scrutiny Committee on 14th March 2017 and decide whether they should be implemented or not.</p>			
EXECUTIVE SUMMARY			
<p>The appended report details the work of the Planning Enforcement Panel who have formulated five recommendations which were endorsed by Scrutiny Committee on 14th March 2017.</p> <p>This report sets out the Panel’s recommendations for the Executive’s consideration. The Executive is asked to decide whether these recommendations should be approved for implementation or not.</p>			
CORPORATE PRIORITIES			
Environment			
<ul style="list-style-type: none"> • Protect and enhance the natural and built environment and ensure our areas of natural beauty are well looked after. 			
<p>The role of the Planning Enforcement Service is to ensure that potential breaches of planning control are investigated and appropriate action taken to ensure the District’s built and natural environment is not harmed through unauthorised development.</p>			
The Executive has the authority to determine the Recommendations			

1.0 BACKGROUND

- 1.1 At the Scrutiny Committee meeting held on 28th October 2014 it was agreed that a Scrutiny Panel would be set up to review the Council’s approach to planning enforcement. The remit of the Panel is detailed in Appendix 1 sections 2 – 6.
- 1.2 A summary of the work of the Planning Enforcement Panel can be found in the appended report, which was considered by the Scrutiny Committee on 14th March 2017. The recommendations arising from the work of the Panel are that:
1. A copy of the National Planning Practice Guidance on Ensuring Effective Enforcement is distributed to all Members.
 2. Each month an updated Schedule of Enforcement Cases is provided for all Members through MOSS to include any additions to the Public Register of

Enforcement Notices.

3. Alleged breaches of planning control should be submitted through the “Report It” function on the MVDC website in the interests of ensuring the efficient management of the planning enforcement caseload.
4. The Public Register of Enforcement Notices is published on the MVDC web site.
5. Reporting facilities for developers to notify the Council of development commencements should be made as accessible as possible with the aim of improving the current level of use

- 1.3** The Scrutiny Committee endorsed the recommendations of the Planning Enforcement Panel and is now asking the Executive to formally approve them for implementation.

Financial Implications

See Appendix 1 paragraph 7.0

Legal Implications

See Appendix 1 paragraph 8.0

2.0 OPTIONS

The following options are available to the Executive for determination.

Option 1: Do not accept the Recommendations

Do not accept the recommendations from the Scrutiny Committee and leave current tourist information provision at its present level.

Option 2: Amend the Recommendations for Implementation

The Executive may decide to implement some or all of the recommendations in an amended form.

Option 3: Approve some of the Recommendations for Implementation

The Executive has the option to approve selected recommendations from the Scrutiny Committee and reject the others.

Option 4: Approve all of the Recommendations for Implementation.

The Executive has the option to approve all of the recommendations put forward by the Scrutiny Committee.

3.0 CORPORATE IMPLICATIONS

Monitoring Officer commentary

See Appendix 1 paragraph 9.1

S151 Officer commentary

See Appendix 1 paragraph 9.2

Risk Implications

See Appendix 1 paragraph 9.3

Equalities Implications

See Appendix 1 paragraph 9.4

Employment Issues

See Appendix 1 paragraph 9.5

Sustainability Issues

See Appendix 1 paragraph 9.6

Consultation

See Appendix 1 paragraph 9.7

Communications

None required for this report.

BACKGROUND PAPERS

Scrutiny Committee report – 28th October 2014: Agenda Item 11

Scrutiny Committee Minutes – 28th October 2014

Scrutiny Committee report – 14th March 2017: Agenda Item 8 Appendices 1 - 3

Scrutiny Committee Report – 14th March 2017

Strategic Management Team Lead Officer	Jack Straw – Corporate Head of Service
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Date	14 th March 2017

Ward (s) affected	All	Key Decision	Yes
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Subject	Report of the Planning Enforcement Scrutiny Panel.
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RECOMMENDATION

The Planning Enforcement Scrutiny Panel invites the Scrutiny Committee to recommend to the Executive that:-

- A copy of the National Planning Practice Guidance on Ensuring Effective Enforcement is distributed to all Members and substitutes of the Development Control Committee.
- Each month an updated Schedule of Enforcement Cases is provided for all Members through MOSS to include any additions to the Public Register of Enforcement Notices.
- Alleged breaches of planning control should be submitted through the “Report It” function on the MVDC website in the interests of ensuring the efficient management of the planning enforcement caseload.
- The Public Register of Enforcement Notices is published on the MVDC web site.
- Reporting facilities for developers to notify the Council of development commencements should be made as accessible as possible with the aim of improving the current level of use

EXECUTIVE SUMMARY

In October 2014 it was agreed by the Scrutiny Committee to establish a Panel of Members to examine and review the delivery of MVDC’s planning enforcement service. The Panel met twice in 2015 and following revision to its Terms of Reference met on two occasions in September and October 2016.

At their 2016 meetings the Panel reviewed the level of enforcement case work and the arrangements for monitoring the work and keeping Members informed. It looked at how those who express concern about potential breaches of planning control are kept informed of MVDC’s response. It reviewed the level of staff resources working on planning enforcement matters in relation to the case load and also looked at how best the outcomes of enforcement action could be reported to Members of MVDC.

This report explains the findings of the Planning Enforcement Scrutiny Panel and its recommendations to the Scrutiny Committee.

CORPORATE PRIORITY OUTCOMES

Environment

- **Protect and enhance the natural and built environment and ensure our areas of natural beauty are well looked after.**

The role of the Planning Enforcement Service is to ensure that potential breaches of planning control are investigated and appropriate action taken to ensure the District's built and natural environment is not harmed through unauthorised development.

1. Introduction / Background

- 1.1 As part of its work programme, the Scrutiny Committee agreed in 2014 to set up a Planning Enforcement Scrutiny Panel. The Panel met in March 2015 and November 2015. At the meeting of the Scrutiny Committee in July 2016 it was agreed to revise the Panel's Terms of Reference to take account of partnership arrangements and to strengthen the Panel's monitoring and reporting responsibilities. These are set out in Appendix 1 of this report.
- 1.2 The Panel met on two occasions in September and October 2016 and has agreed the content of this report.
- 1.3 At the September meeting of the Panel, the Enforcement Team explained that planning enforcement is not a mandatory service and local authorities take action at their discretion. The key concept in relation to effective planning enforcement is "proportionality". In deciding whether enforcement action is taken, MVDC has to have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action and those affected by the breach of planning control. In practice, this means that MVDC attempts in the first instance to speak to all relevant parties in an attempt to resolve any issues without recourse to formal action. Nevertheless there are occasions when formal enforcement action has to be taken.
- 1.4 The Panel reviewed the National Planning Practice Guidance – Ensuring Effective Enforcement. See Appendix 2. It considered this is a most useful document which provides in question and answer format a comprehensive overview of the planning enforcement process, the powers available to local authorities and the circumstances under which it is appropriate to use them. The Panel felt this is a document that would be particularly useful for members of the Development Control Committee as it provides a most helpful digest of all aspects of planning enforcement including its scope and procedures.
- 1.5 The Panel also noted MVDC's Local Enforcement Plan. See Appendix 3. This identifies the local priorities for enforcement action so that MVDC's limited enforcement resources are put to best use. The Panel was advised that new enforcement cases are initially assessed by the Planning Enforcement Team in terms of urgency, and assigned an appropriate category. Whilst these categories define the deadlines by which an initial site visit will be carried out, in practice MVDC's response times are quicker than prescribed by the Local Plan, with most notifications followed up within 24 to 48 hours. It was noted that MVDC's Enforcement Team has developed a good awareness of the names and locations which arise most commonly in association with complaints, and this has helped to target monitoring resources where most urgently required.
- 1.6 The Panel then addressed the issues raised in the Terms of Reference that had been established by the Scrutiny Committee. The Panel's response to

each issue raised by the Scrutiny Committee is set out in the following sections of this report.

2.0 Review of current enforcement activity.

- 2.1 The Panel received details of the Enforcement Team's case work. It was advised that between 1st January 2016 and 31st December 2016, 320 cases of an alleged breach of planning control were registered. On 24th February there were 119 open cases of alleged breaches of planning control¹.
- 2.2 The Panel reviewed with the Enforcement Team the current open enforcement cases and the actions being taken.
- 2.3 The Panel also recognised that the Enforcement Team carries out a significant amount of work to monitor the conditions and any legal agreements that are attached to planning permissions to ensure they are discharged appropriately before and during implementation of the planning permission. Monitoring compliance with conditions and legal agreements is undertaken by:
- Checking the Building Control daily commencement sheet to identify where development is starting.
 - Reviewing the electronic mailbox to check for developers' confirmation that development has started on site. The Panel was advised that a planning decision notice includes a paragraph requiring the applicant to tell MVDC when the planning permission is being implemented.
 - Observation by the Enforcement Team throughout the course of the working day when out and about in the District checking sites.
 - Responding to information from individuals, local groups and organisations about the commencement of development.
- 2.4 The Panel was advised that during 2016, around 150 developments had been visited by the Compliance Officer in the Enforcement Team. Some of the sites have received more than one visit and for some many more. With so many developments under construction across Mole Valley and with limited resources, it was recognised that it is necessary to prioritise and target developments for compliance visits. In deciding which to select for visits, the Panel noted that the Enforcement Team gives consideration to the likelihood of complaints; the track record of the developer and agent; the weight of objection to the application during its determination; information from the public and whether the Development Management Team has requested the site be monitored.
- 2.5 The Panel's attention was drawn to the provisions of the Proceeds of Crime Act (POCA). This enables local authorities to retain 37% of the recovered costs where the unauthorised use of buildings and land has been successfully prosecuted in the Courts.
- 2.6 The Panel felt that the percentage of developers using the electronic mailbox to notify MVDC of the commencement of development was low. It concluded that any review of the content of the MVDC website should ensure that reporting facilities for developers to notify the Council when development is commenced is made as accessible as possible with the aim of improving the current level of use.

3.0 A Review of Monitoring Systems and updating Members

¹ Figures updated since the November meeting of the Working Group

- 3.1 The Panel concluded that it would be beneficial for MVDC Members to receive a schedule of planning enforcement cases each month. The schedule would be updated each month and list all open cases of alleged breaches of planning control. Each will have a unique reference; a description of the alleged breach and the date of notification. The cases would be listed by ward for ease of reference for Members. It is also planned to include a column showing the current status of the Enforcement Team's response to the alleged breach of planning control, for example, awaiting further information, Enforcement Notice served.
- 3.2 The Panel was advised that MOSS is being redesigned to make it more user friendly for Members and that this would be a suitable channel for receiving monthly enforcement updates. Since the Panel met the redesigned MOSS facility has been introduced.

4.0 Ensuring those raising concerns about breaches of planning control are kept informed.

- 4.1 The Panel noted that where customers draw attention to potential breaches of planning control, the Enforcement Team keep them informed by telephone, email or letter of any actions that have been taken in response to their enquiry. For example, a customer will be advised if enforcement action is being taken or that a case is closed because the matter has been resolved or no breach had taken place. The Panel was generally satisfied with this arrangement but did conclude that a continued effort needs to be made to encourage members of the public to proactively contact MVDC if they had concerns about potential breaches of planning control. It felt strongly that adequate reporting facilities should be in place to enable this and were pleased to note that an on-line facility for reporting alleged breaches of planning control was to be introduced. Since the Panel met in November, a Planning Breach "Report it" portal has been added to the MVDC website to improve the management of complaints about alleged breaches of planning control. Members' attention has been drawn to this facility in an article on MOSS² and have been asked to encourage residents to use the on-line "Report it" portal where there is concern about an alleged breach of planning control.
- 4.2 Work is also in hand to develop the enforcement case management system such that in due course there will be an on-line facility that will show the current status of open enforcement cases. It is planned to develop this function over the coming months.

5.0 Level of staff resources

- 5.1 At the time the Panel met, the Enforcement Team comprised a Senior Enforcement Officer and a Compliance Officer. The Panel was advised that the Planning Support Team also help with the administration of the Enforcement Team's case load and noted that members of the Development Management Team have also worked on alleged breaches of planning control.
- 5.2 The Panel was advised that other local authorities in Surrey have larger Enforcement Teams.³
- 5.3 The Panel was keen to ensure that MVDC's commitment to taking enforcement action is clearly understood by all communities to reduce the likelihood of breaches of planning control. It also emphasised the need to respond to

² MOSS item dated 17th February 2017.

³ E.g. Tandridge has 5 members of staff in its Enforcement Team; Reigate & Banstead 4; Elmbridge 3; Epsom & Ewell 1.2; Sevenoaks 5.

breaches of planning control as quickly as possible and that those alleging the breach are directed to the appropriate authority if it is not MVDC, for example the Surrey County Council for highways matters or the Environmental Health Team if the matter relates to noise or bonfires for example.

5.4 Having considered the amount of casework the Senior Enforcement Officer and Compliance Officer are handling, the complexity of the cases and in the light of the need to manage the expectations of MV's communities, the Panel believed there is a case to increase the capacity of the Enforcement Team by an additional Senior Enforcement Officer. The Panel agreed the case should be pursued through the 2017/18 budget setting process.

5.4 The Panel's recommendation about increasing the staff resource in the Enforcement Team have been agreed by the Executive as part of the 2017/18 budget setting process and endorsed by Council on 21st February.

6.0 Reporting outcomes of formal action to Members.

6.1 The Panel recognised there is a requirement to maintain a public register of Enforcement Notices and recommend this should be published on the MVDC website. It was further suggested that the monthly MOSS update of alleged breaches of planning control includes additions to the register of enforcement actions.

7.0 Financial Implications

The cost of an additional Senior Enforcement Officer has been incorporated in to MVDC's 2017/18 budget.

8.0 Legal Implications

None

9.0 Corporate Implications

9.1 Monitoring Officer Commentary

The Monitoring Officer is satisfied that all relevant legal implications have been taken into account.

9.2 S151 Officer Commentary

The s151 officer confirms that all relevant financial implications and risks have been taken into account in this report.

9.3 Risk Implications

None directly as a result of this report.

9.4 Equalities Implications

The delivery of the planning enforcement service must be accessible to all.

9.5 Employment Issues

None directly as a result of this report.

9.6 Consultation

None

9.7 Communications

None.

BACKGROUND PAPERS

None