

Report to the Cabinet

Report reference: C-061-2013/14
Date of meeting: 2 December 2013



**Epping Forest
District Council**

Portfolio: Planning
Subject: Budget Arrangements to Facilitate Direct Enforcement Action
Responsible Officer: John Preston (01992 564111).
Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) That the taking of direct action by the Council using section 178 of the Town and Country Planning Act (as amended) be confirmed as being delegated to the Director of Planning & Economic Development;**
- (2) That the costs of taking such action be met from the existing DDF budget for Appeals and Contingencies (DC110 3680); and**
- (3) That the costs of taking such direct action will be placed as a charge on the land or property, so that they are eventually recouped.**

Executive Summary:

When the Council uses the enforcement powers available to it under the Town and Country Planning Acts, the service of an enforcement notice generally leads to the breach of planning control being resolved. Such notices are often the subject of appeals, and on some occasions prosecutions are undertaken, which serve to delay the impact of the notice.

Much more rarely the requirements of the notice are not met by the owner or developer taking action to comply with the notice, and the Council itself then has a power to take direct action under section 178. In practice, this may also involve the Council using professional contractors.

Section 178 is clearly an important "back up" power to secure planning control when other steps have not been successful.

Whilst the taking of most enforcement action is delegated to officers, decisions about direct action have previously been taken by Councillors, perhaps partly reflecting that it is an unusual power that is being used, but also partly because in the past there has not been a budget set aside to allow for direct action.

In considering the need to take direct action, it suggests that there is a serious breach of planning control, and that the normal steps have been taken, but without resolving the breach of control. This also implies that time will already have elapsed, and the requirement to obtain Cabinet approval for the budget for direct action adds further time to the process.

In considering the use of direct action at sites in Ongar and in Theydon Bois in the past few

years, it is suggested that there should have been a budget arrangement to cover direct action.

The Council's normal budgetary approach is not to have funds set aside in budgets which are not being used, because the funds if unused for the particular purpose could have been used for more pressing purposes.

It is possible for the costs of direct action to be treated as a simple debt, and also to be placed as a charge on the property, so as to ensure those costs are recouped in due course; in particular when a site is sold. Clearly however, such expenditure may not be recouped in all cases within a short or set period.

It is suggested that budget is therefore applied to these purposes, within limits, and by using some existing budget for this purpose as well as the original purpose of the budget.

Reasons for Proposed Decision:

The recommendations herein are confirming the previous delegation of powers, rather than making a new arrangement. Those powers in practice have been limited by the need to separately gain budgetary approval from Cabinet on each and every occasion. They should provide a small simplification to procedures.

The budget proposed to be used already exists, and steps will be taken to recoup the funds expended.

Other Options for Action:

To leave the existing arrangements for direct action, requiring a Councillor decision to agree the action, and Cabinet to agree one off budgets in each case.

To introduce a budget solely for direct enforcement action.

Report:

1. The enforcement of planning control is an important role for the Council in the protection of the District from unauthorised and unacceptable development, including harmful development. It is part of the system of planning control, or management of development.
2. Whilst most of those promoting the development of their land or property go through the correct channels, and obtain prospective permission, and comply with any conditions imposed, some do not.
3. The Council can take enforcement action where it is expedient to do so, and, contrary to what some might think or want, it is not an offence to undertake development without gaining prospective planning permission.
4. The process of taking enforcement has many democratic safeguards built in, but can then take time to deal with matters. Sometimes those suffering adverse impacts from unauthorised development consider the processes take too long, or consider that insufficient is being done to bring matters within control.
5. Although there is a propensity to appeal enforcement notices, and to take time to comply with their requirements, they are generally complied with. If they are not complied with then the next step is usually to commence a prosecution for the failure to comply. The failure to comply with an enforcement notice is an offence.

6. In a few instances notices are not complied with to an agreed timetable, and to secure compliance it is possible for the Council to act directly (or for the Council to employ professional contractors to secure compliance with the notice.)

7. Most enforcement action is now within the delegated powers of officers, rather than requiring the approval by Committee, and it is logical for direct action to be delegated in order to secure compliance with the terms of the notice. Those terms are not made any different just because the owner or developer has not complied with them.

8. In dealing with some cases over the past few years, there was a strong sense that objectors had already experienced the adverse impacts of development, and that the system was being played and becoming very drawn out. Members recognised that requiring a report to be brought forward (because there was no specific budget) could be seen as simply adding to the time to deal with the matter, and that the case for direct action was already very clear.

9. The Council agreed some while ago to have a District Development Fund budget to deal with occasions where costs were awarded against the Council in a planning appeal, and to deal with similar contingencies. That is a depleting budget pot rather than one which is repeated every year, and it is not bottomless. However, as direct action is an unusual occurrence, and to avoid having several budgets, it is suggested that this budget is used to cover direct action as well. That budget has some £46,000 in it at present.

10. Although the Council is prepared to fund direct action to ensure that the particular notice is complied with, it will seek to reclaim that expenditure, because the responsibility to comply with the notice rests with the owners and those with interests in the land. It will seek to issue a simple debt, but will also seek to place a charge on the land so that if the simple route does not work, that in due course the costs can be recouped.

Resource Implications:

The report explains that this is about using an existing budget for an additional purpose and that at present the budget has sufficient resource within it. It explains why a separate budget is not proposed, and that steps will be taken to recoup the expenditure.

Legal and Governance Implications:

Before taking any enforcement action, the Council's legal views are taken, and the drafting of the notices is undertaken by the Council's legal section. This report is really about securing compliance with the notice rather than any new step. From a governance point of view the comments made about this step reinforcing the planning system are important.

Safer, Cleaner and Greener Implications:

There are no particular implications, other than that the steps proposed are about preserving the character of the District.

Consultation Undertaken:

None.

Background Papers:

Text for background papers...

Impact Assessments:

Risk Management

Because what is proposed is about securing compliance with notices already judged necessary, and which may have been tested at appeal or by a prosecution in the court already, it is not really introducing new risks. By confirming that delegated powers are to be used, and selectively using an existing budget, a prudent approach is being used, but which can allow quicker results. Steps will also be taken to recoup the expenditure incurred.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.