Development Control Committee

Members Training Session, 2nd November 2017

A number of points or queries have recently been raised by Members asking for some guidance. Paraphrasing, these points are as follows:

- **Retrospective Planning Applications, how do we deal with them?**

These normally arise from some enforcement action and amount to an attempt to "regularise" a non-compliance with planning control. There does not appear t have been any significant increase in their numbers over recent years. They should be dealt with in exactly the same manner as any proposed future development (to avoid any allegations of "pre-disposition").

- **How many developers/householders use independent building control – "Approved Inspectors"?**

As a Local Authority the Council have no means of preventing the use of Approved Inspectors who compete with our own Building Control Service. In October LABC offered written evidence on this subject to the Hackett Inquiry into the Grenfell House Fire as follows. This points out that Local Authorities have no effective means of competing on a level playing field basis:

> *"Should competition within building control continue, a level playing field must be introduced so that local authorities can compete without the additional obstacles that aren't placed on Approved Inspectors. Currently, for example, there is no requirement for an Approved Inspector to assess plans for compliance with the regulations, issue a plans certificate to say that plans comply with the building regulations or even attend site to inspect work in progress. All this reduces the service costs to Approved Inspectors, unbalances the two systems and does not lend itself to public and consumer protection.*
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> *Local authorities have to accept any building regulation submission regardless of the quality of the designer and contractor and have to charge the customer prior to undertaking any work. Approved Inspectors simply have to issue a notification to the local authority that they intend to work with the customer. It is commonplace for Initial Notices to be received immediately following the submission of a planning application, often without the building owner's involvement or consent. This option to secure work at the earliest stage is not open to public service building control. Local authorities also have to make public their basis for costing work and hourly rates. This means that Approved Inspectors know what local authorities will charge and can adjust their pricing accordingly.*
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> *Some Approved Inspectors regularly use a loophole created by DCLG that enables them to exclude considering parts of the building regulations carried out by competent persons schemes (such as plumbers, electrical engineers or heating engineers); again this option is not open to public sector building control and can have direct impact on consumer protection as there is no one body taking responsibility for ensuring overall compliance. This would have significant impact on high risk buildings where Approved Inspectors could provide a final certificate*

without confirmation that work carried out by competent person scheme operators had been appropriately signed off and indeed allows for 'gaps' in the crossover between trades.

All these simpler processes allow Approved Inspectors to reduce the cost of delivering a service in ways that local authorities can't match. They incentivise customers (builders or their clients) to use private sector building control and this threatens the ability of local authorities to sustain an economic service. If local authorities cut resources because of a decline in revenue caused by these inequalities, then local authority service levels and the ability to carry out enforcement and public protection will worsen and this, in turn, accelerates the decline".

Clearly this situation is inequitable and arguably against the broader public interest – including issues of public safety and consumer protection. However, under current legislation there is nothing that this Council can do as a remedy.

- **How many applications come in from independent Approved Inspectors, has there been an increase or plans to deal with this?**

At present (2017) the split between use of Approved Inspectors and use of OWBC Building Control is around 80/20 in favour of Approved Inspectors. This leaves the Council with two full time Building Control Officers to provide a "full service" department including such matters as:

Pre-application advice; Over the phone application completion service; Building Regulations enforcement when required; Conditional approvals where required; LANTAC (Local Authority National Type Approval Certificate) scheme for dwellings, commercial and industrial buildings; Daily access to building control surveyors for technical advice; On-site inspection of key stages of building work to determine compliance with the requirements of the Building Regulations; Same day inspection of building work if notified by 10:00 a.m.; The control of dangerous structures; The control of demolition of buildings in excess of 49.5 cubic metres; A Building Regulations Property records search and compliance certificates where available ; The issuing of street names and property numbers, etc etc.

- **How many purpose built flats and how many flats by conversion do we have within the Borough?**

Unfortunately the Council have no reliable means of knowing the answer to this question. Even 2011 Census data will only reveal the size of the dwelling and not whether it was purpose built or arising from a conversion. Furthermore the term "flat" might refer to any dwelling regardless of its size or number of rooms.

- **How does the Council deal with applications for "back land" development?**

Members should bear in mind that most development was "back land" to somewhere else at some point in the past, "ribbon development" (consisting of single depth properties erected along a pre-existing road) having been discouraged since the 1920 and 1930s. Published Ministerial planning policy used to actively discourage back land development although the

current NPPF (2012) no longer does so, being rather more concerned with "garden grabbing". It should be noted that the definition of 'previously developed land' contained in the NPPF includes land within the curtilage of developed land with a note that it should not be assumed the whole of the curtilage should be developed AND excludes land in built up areas including private residential gardens.

However, Policy LP2 of the saved Oadby and Wigston Local Plan remains a material consideration in relation to any current planning application. It states:

> *3.16 Backland development often allows an underused or vacant piece of land to be brought into a beneficial use. However, it is important that this type of development does not cause an unduly adverse impact on properties neighbouring the development of their access. A substandard means of access will not be accepted solely in order to allow a development to take place.*
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> ***LANDSCAPE PROPOSAL 2:***
> ***Planning permission will not be approved for the development of backland, or its access if it will cause unacceptable noise or loss of amenity to the occupiers and users of the adjoining land.***

Members will note that this policy is not an in principle objection to such back land development – only to its potentially adverse impacts upon a neighbour.

Planning Enforcement.

In addition to the above points raised by Members I had in mind to give a brief over view of planning enforcement matters. Members will be aware that having greatly reduced the number of cases "in hand" over recent years the Planning Control Team currently has one part time Planning Enforcement Officer who deals with this entire task - although tree related matters are all referred to the Council's Tree Officer. The Planning Enforcement "Toolkit" includes:

- Land Registry Searches.
- Legal "Right of Entry" onto any land.
- Requisitions for information (sections 330 & 16 TCPA 1990).
- Planning Contravention Notice. (premises only).
- Contact with outside agencies.

Although actual or apparent breaches of planning control are frequently reported from a number of sources, each is "logged" and then investigated. In some cases the issue may be a matter for other departments or organisations (such as Environmental Health or the Highway Authority) the very great majority are not taken any further. Members will be aware that, like other Authorities, OWBC do not act upon anonymous complaints – (although they may well be investigated) as the great majority of complaints arise from some form of neighbourly dispute. There are also very widespread public misunderstandings of what might or might not be the proper and lawful subject of planning control.

- Section 171A of the 1990 Act defines a breach of planning control as*: "The carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted".*

- Enforcement of such breaches will apply to all forms of development and include other legislation e.g., that relating to listed buildings and conservation areas, advertisements, or trees and hedgerows.
- LPA's have the power to take whatever enforcement action may be necessary in the public interest
- Powers are discretionary, but it represents the teeth of the control system and the Council can be guilty of maladministration if it does not take appropriate action
- Cannot be taken simply to remedy the absence of a valid planning permission
- The decisive issue is whether the breach would unacceptably affect public amenity
- Action should be commensurate and "proportionate" with the breach
- Central government advises LPA's to exercise care when using their discretionary powers of enforcement and make sure it is expedient to do so. "Expediency" of action should be assessed **in the light of the provisions of the development plan and to other material planning considerations**
- Enforcement action is the most complex area of development control with detailed legal requirements that attract more litigation than other areas. This is why most planning enforcement actions may well take a long while to bring to a conclusion.
- Types of Planning Enforcement:

    - Planning Contravention Notice
    - Section 330 notices
    - Breach of Condition Notice
    - Enforcement Notice
    - Stop Notice
    - Waste Land Notices (section 215 or untidy land)
    - Injunction
    - Prosecution
    - Direct action

- Planning Enforcement Cannot deal a wide range of matters such as:

    - Noisy animals.
    - Acts of God - Flooding.
    - Bonfires and their mess and noxious odours.
    - Fly Tipping.
    - Noisy neighbours.
    - Cars and other vehicles etc parked on the highway.
    - Boundary disputes.
    - High Hedges.
    - New windows in existing properties.
    - Vehicle sales and repairs etc on Highway land.
    - Advertisements on the highway or attached to highway furniture.
    - Disposal of asbestos and other toxic waste.
    - 6ft tall inflatable Father Christmases/Snowmen or other external seasonal decorations.

- In any given case and after investigation the potential "outcomes" are:

    - Not a Planning matter therefore no action.
    - Mediation to achieve a compromise. (Takes time)
    - Best dealt with by another agency.
    - Matter is "de minimis"/Not expedient

- Breach is lawful and immune. (Time barred).
- Breach not harmful.
- Remedy achievable. (Takes time)
- Retrospective planning application.
- ENFORCEMENT ACTION NECESSARY AND EXPEDIENT.