





Shaping the Jersey Planning and Building Enforcement system for the future

COMMENTS FROM DIRECTOR BUILDING CONTROL

7 NOVEMBER 2013

 - DIRECTOR FOR ENVIRONMENT
- PLANNING PERFORMANCE MANAGER
- DIRECTOR BUILDING CONTROL

- There have been historical problems but it is better now – previously there was a lack of performance and no-one addressed enf at the legal side. Not much prosecution and that is changing to underpin the credibility of control. *DIRECTOR - DIRECTOR CONTROL*
- Historically enf was a planning function with  the line manager. Bldg Con needed some resource over elements of th process so Enf now report to both services
- There used to be joint meetings but not now.
- There is a specific procedure document for Bldg Con (June 2011) although Enf Off don't necessarily stick to that procedure
-  SENIOR PLANNER is in post but there is confusion over how that relates to Bldg Con cases so liaises directly with Enf Off. There could be a conflict of priorities
- Bldg Con provide 30% of Enf costs but don't receive 30% of service
- Concern over commitment to Bldg Con with the time taken to deal with cases. It is not obvious from the system (Merlin) where and when progress is taking place.
- Understand that  meets weekly with Team but impression that the discussion is planning based. SENIOR PLANNER
- *STET* There are 6 cases needing prosecution files but Bldg Con have no real leverage due to (unclear) management chain
- Service should be proportionate and equitable
- Not necessarily require a separate manager fo BC but there needs to be a task and output balance within priority setting
- 30% of funding = 3 days a week (from 2 fte) – at least 1 day a week should be specifically allocated for BC and managed – given over to other tasks if no BC work is required.
- For BC the Bldg Insp identify potential issues and then pursue attempts at resolution either practically of through submission of apps. 2x final challenges are given before formalising enf approach

- Only when a notice is required do the Enf Team get involved.
 - BC Officers prepare Notices and ask Enf Officers to serve
 - Enf notices are only served when there is a willingness to go to prosecution
 - Cases are assessed on seriousness and discussions / conclusions are recorded
 - There is no formal matrix of assessing cases but all cases considered on their merits
 - Notices are discussed, considered prior to issuing
 - Notices are always pursued – credibility is key
 - The Enf Team monitor compliance along with BC inspectors
- Training in procedures do not appear to be available – don't know why
- There appears to be limited access to information (by person) – don't know why, the info should be available to all staff. Enf information should be no more available than any other system / information
- There is an inconsistency in information / evidence gathering. Seemingly similar cases can involve a personal visit or an e-mail request. Why?
- The use of the system (Merlin) needs to be radically different to be of any use. Fields are not completed and information is difficult / impossible to extract
 - There doesn't seem to be any system for properly monitoring, recording, reporting or any process for field completion or time recording
- Historically all non-compliance with Notices had been referred to the LoD but the level of service was very slow to the point of cases being dropped because the delay at LoD had been too long. (example of retaining wall failure) Some cases with a 2 year delay with LoD were dropped, others with a 3 year delay were pursued
 - Because of these delays Enf Officers used their initiative to get access to the Magistrates Court through the Centeniers. There is a frustration as to who brings charges
 - LoD are not relied upon as a quality check on a case file as regards technical issues. There is a pro-forma for a prosecution report [REDACTED] has indicated that this is a good approach
CROWN ADVOCATE
- Enf Officers have to interview anyone who is being prosecuted. Is that really necessary? It is undoubtedly helpful but is it required as interviews seem to be inordinately time consuming and in some cases refusal to attend for an interview can happen
- ~~Enf Officers like running at their own speed.~~ There appears to be an open ended process in place which isn't acceptable
- Lack of prioritisation has led to huge drifting for completing tasks. Enf are extending case deadlines without seeking advice
EXAMPLE – a complaint came to light through a property search that had been recorded but not concluded [REDACTED] EXAMPLE FILE
 - What has been agreed regarding this process for opening / closing cases. It would not be a big job to produce a process manual (with screen shots etc) but a process itself has to be designed and agreed in the first place

- There is a lack of reports over case numbers – how many, how often, how many outstanding all not available

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COMMENTS FROM DIRECTOR OF DEVELOPMENT CONTROL

7 November 2013

[REDACTED] - DIRECTOR FOR ENVIRONMENT
[REDACTED] - PLANNING PERFORMANCE MANAGER
[REDACTED] - DIRECTOR DEVELOPMENT CONTROL

Comments by [REDACTED] - DIRECTOR DEVELOPMENT CONTROL

- Has had less operational contact with the Enf Team since [REDACTED] appointment
- Previously there had effectively been 2 managers for the Team and this led to a gap in management and there had been phases of very close management and then no management
- [REDACTED] appointment is a vast help and Enf Officers are not reporting to [REDACTED] *Director Development Control*
- A managerial line needs to be established as a priority and it must be missing due to the evidence of problems. Behavioural and procedural incidents have highlighted shortcomings
- A senior resource needs to be established (to manage)
- There used to be 3x officers (2.8fte) and it was always an intention to make one of those a senior role. Then resource lost 0.8fte
- Enforcement needs a particular skill set. A planning qualification along with behavioural and cultural skills and where departmental expectations are enforced and strengthened
- [REDACTED] sees this managerial role as 0.5 of a post with the other half carrying an application caseload
- location – a geographic link is vital. Contact is very limited. Co-location cuts 2 ways with advice and support on offer along with monitoring of officers
- Admin support has not been available or has not been taken advantage of
- Both location and admin could be addressed with a move into the DC teams
- A Lack of formal processes – no manual is available – means there are mistakes with too much room for interpretation and not enough ability to support. Changes in process would lead to opportunities to support because identified tasks could be delegated / shared

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DIRECTOR DEVELOPMENT CONTROL

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- Merlin may be up to scratch but feeling that we are only using a fraction of its capability
- The enforcement manual (policy doc?) was a step forward
- DC may be out of step with other parts of the Dept in that POs take a hands off approach passing cases Enf Team rather than POs investigating
- Likely to be resource issues if POs had to carry an enf caseload and that would lead to concerns about them not following through to closing a complaint. Resource issues over the new appeals process and the retention of RfRs mjean that capacity is likely to be an issue
- Perhaps there could be an initial investigation by PO as they are best placed to make planning judgements
- Enf Officer role needs to be defined – are they an investigator? Just used where enf notices are required? Just used for prosecutions?
- Not aware of 70% / 30% split of funding with Bldg Con over financing Enf Off
- There is currently a resource issue in DC over the role of senior case officers. There are 3x trainees and some just recently qualified. Pulling the senior resources around may have drastic implications for the service as a whole. This balanced out against the need for a managerial role = a conclusion that a new resource is required (new post/fte)

Measurement of performance

- Has the same ability to access information as [redacted] - DIRECTOR BUILDING CONTROL
- Not receiving any information on performance and not sure if any is being generated. Expect [redacted] to look at caseload but don't discuss with [redacted] - CHIEF OFFICER
- DC had particular priorities for 2013 with decision performance crucial. Now this is in place there may be opportunity to re-focus elsewhere.
- Prosecution case files – thought they were ok?
- Previously all decisions as to whether to prosecute were through [redacted] now expect to be through [redacted] SENIOR PLANNING
- Another set of eyes must look at the file for evidential test and public interest test. There should be a sense test prior to it leaving the department
- Changes to prosecution route came because of failure in LoD to pursue some cases that left enf notices useless. Perhaps we need to build bridges with LoD and have input prior to prosecution.
- A generic line manager may be possible
- There appears to be a confusion about terminology in the process with complaints, enforcement, formal complaints etc
- Enf needs to be elevated in the DC section – included on weekly management team meetings for issues to be considered and discussed

Training


- Don't think it's a training issue but an understanding is required that Enf Officers are not a police force

- There needs to be a culture of dealing with customers who don't necessarily want to be our customers
- Behaviour can have the ability to overshadow the issues of a case no matter how strong the planning arguments are eg powers of entry – behaviours should outweigh statutory powers.

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COMMENTS FROM THE LAW OFFICERS DEPARTMENT (CRIMINAL DIVISION)

5 November 2013

 - DIRECTOR FOR ENVIRONMENT
- PLANNING PERFORMANCE MANAGER
(LoD) - DIRECTOR (CRIMINAL DIVISION)
(LoD) - CROWN ADVOCATE
(LoD) - HEAD OF CONSTITUTIONAL AFFAIRS

- Cases can be successfully prosecuted but that should be a last resort and Enforcement processes should be aware of this at all times
- A robust system is essential for the credibility of the planning system
- There needs to be appropriate infrastructure to support the process through to potential prosecution including the right format and content of Notices, correct serving of the Notices and the appropriate wording on all the documents used
- When instigating the serving of a Notice the question of the success and appropriateness of pursuing a prosecution must be considered. If the issue is not so grave or important to warrant prosecution than a Notice should not be served.
- There are concerns over the credibility of the current process in the eyes of Magistrates. Recent cases have not had the quality of case evidence to support them and lacked an obvious context as to why prosecution has been pursued
- Enforcement is about seeking to ensure the planning process is working not to prosecute people
- There appears to be an inconsistency over pursuing prosecutions on different cases and a certain lack of objectivity over some issues
- What level of training has been made available to Enforcement Officers over the particularities of planning and building issues?
- There needs to be a better way of producing evidence for prosecutions. Precise and robust evidence – not assumptions and loose ends – is the only submissions that should be made to support a prosecution

- The civil process (that is the planning application, appeal negotiations etc) needs to have been completed prior to a prosecution being initiated.
- Bringing a prosecution following Enforcement should be clear to all parties and should follow a staged approach where the right level of authorisation is achieved at each stage
- Certainly the LoD must have a sign off on commencing a prosecution
- It might be that LoD have input prior to a Notice being served given the point above about no Notice should be served where it would not be capable and appropriate to prosecute for non-compliance.
- Input on preparing and serving a Notice might be better from another part of LoD eg [REDACTED] area
EXAMPLE
- Such an input and advice would also create a checking system for the format of documents and their contents
- It would be useful; to look at other parts of the States and how they train and process complaints. Health and Safety Inspectorate provide good prosecution files and appear to have an active training regime
- There may be an opportunity for cross departmental support / contact with services such as customs, HIS etc – an Investigations Forum?
- There needs to be a better understanding of the current appeals process – complaints board etc – so as to ensure that prosecutions are not way laid or diverted by stories about pursuing other avenues of appeal at the point of prosecution
- Standard documentation and presentation should be adopted for ease of understanding and clarity
- Enforcement Officers/Planning Department should be aware of, and fully comply with, disclosure requirements (Cf. AG's Case Management and Disclosure Guidelines as a starting point).

Prior to the publication of the findings of the review [REDACTED] will write to the Chef de Police to clarify the route any prosecution should take, namely input from LoD prior to charges or scheduling in the Magistrates Court (happy to be corrected on the process words here).

[REDACTED] to be copied in to that correspondence for immediate action with the Planning and Building Enforcement Team

DIRECTOR FOR ENVIRONMENT

DIRECTOR (CRIMINAL DIVISION)

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COMMENTS FROM ENFORCEMENT TEAM MANAGER - [REDACTED]

SENIOR PLANNER

2 December 2013

- DIRECTOR FOR ENVIRONMENT
- PLANNING PERFORMANCE MANAGER
- SENIOR PLANNER

- Took up the post in April 2012 with no remit / guidance / instruction beyond taking charge. Took up post with 2/3 days' notice. Appointed by Director of Development Control
- Has requested on numerous occasions a job description - including other duties if appropriate but none has materialised [REDACTED] is now directly managing 7 people across 2 teams and mentoring on another team (TSO) SENIOR PLANNER

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- [REDACTED] has lead an Enf team in the past
- On going into the post [REDACTED] was disturbed by practices etc. [REDACTED]
- EG [REDACTED] - went to prosecution and lost on a technicality but no-one realised that the law doesn't allow enf action against a sign
- Now the team feels more open and has responded to challenges
- [REDACTED] feels that the Team is not broken but is certainly not working properly
- [REDACTED] identified problems and issues at every stage of an investigation and these were 'how we have always done it' issues
- Because there were faults at every level changes have been as a gradual process to allow business as usual to continue
- Q: were there discussions about improvements

Exemption 2b Applied - info given in confidence

- In the last 6 months there has been a higher profile for the ET and problems have been pushed down (and up) to [REDACTED]

- Officers have access to the team and their approach differs. BC have a zero tolerance approach by the time it reaches the team. DC seem to want to resolve issues.

- EG [REDACTED]

Example

Exemption 2b applied - information given in confidence

DIRECTOR BUILDING CONTROL

- Enf Officers tend to take the decision to prosecute for DC cases [redacted] or BC cases
- Q: Prioritisation of cases, why are we prosecuting
It is unclear as to when to prosecute but it involves significant work prior to pursuing prosecution or discussing with LoD

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- Expediency does not seem to enter consideration. In some cases even if permission would have been granted prosecution still occurs.
- There is no policy document as to when to prosecute other than the AGs generic and loose guidelines.
- Q: Is the Env Protection handbook translatable to ET?
[redacted] started drafting a letter of caution as a record of a breach but not a prosecution so as to build a case if required like Env Protection do.
- Templates for letters and communications were being developed with a view to examining how priorities are set with a suite of communications
- ET seem happy with that approach but there is a significant resource issue over the time that can be dedicated to the task [redacted] to drop planning applications?)
- Q: Could it be tied to another task
Not really. A full post could be dedicated to managing the Minors Team and ET including fixing ET. With support and direction very quick improvements could be made.

[redacted]

- Q: Are ET too dyed in the wool? [redacted] exemption 26 applied
- [redacted] EG reports to accompany Notices or nfa info given in confidence.

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- Q: Is [redacted] still up to speed with the UK?
[redacted] is a member of the National Association of Planning Enforcement (RTPI body)
- [redacted] looks to challenge Enf Officers to make sure things are correct. Took 2 x Minor Team planners to discuss an enf issue with [redacted] ENFORCEMENT OFFICER A
- When DC officers pass cases to ET they should engage and become involved in the case
- Q: Env Prot have a risk averse approach and are collegiate in considering prosecution with 3 x people deciding on such a course of action
[redacted] feels that it should be the responsibility of a single person should take responsibility. A cttee approach can lose sight of the breach and the role of enforcement
- Q: Who should make that decision
[redacted] not the Director as the public / political / professional profile is too high and he may not look at the case objectively. The Director and CEO get approached by politicians / individuals and this can lead to actual or perceived contradictions in approach. This happens sufficiently at the moment to be a concern.
- Q: What do you feel about the UK practice of prioritising cases
[redacted] Very good idea. It allows resource allocation and provides customer expectations
- Location is extremely poor, sat down in the dark. ET should be integral to the service and should not be shut away. Currently there is an us and them attitude and informal contact would inevitably lead to a better relationship and understanding of the implications of enforcement action A separate room for formal interviews will always be needed

PERFORMANCE MANAGEMENT AND REPORTING

- No measures or reporting of any type takes place at the moment
- iLAP could easily be used to generate performance and monitoring information (Crystal Reports) BUT info is not being inputted in a standard manner
- KPIs could easily be established and could be used to drive improvements
- [REDACTED] feels that improvements can be made as part of his ongoing role. Many improvements can be made quickly and can have an immediate effect
- Keeping of records is very different between [REDACTED] and [REDACTED]
- TSOs could help the ET and I@W could be used to keep comprehensive records of investigations and this should be backdated where possible
- Emotion and politics should be taken out of the process and replaced with professionalism
- Conditions need to be better to allow enforceability

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ENFORCEMENT OFFICE B

ENFORCEMENT
OFFICE A

ET - ENFORCEMENT TEAM

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