

Report to Planning applications committee

Item

11 March 2021

Report of Area Development Manager

Subject Performance of the development management service;
progress on appeals against planning decisions and
updates on planning enforcement cases.

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Purpose

This report updates members on the performance of development management service; progress on appeals against planning decisions and progress on planning enforcement action.

Recommendation

To note the report.

Corporate and service priorities

The report helps to meet the corporate priorities people living well, great neighbourhoods, housing and environment and inclusive economy.

Financial implications

There are no direct financial implications arising from this report.

Ward/s: All wards

Cabinet member: Councillor Stonard

Contact officers

David Parkin, Area Development Manager

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Background documents

None

Report

Background

1. On 31 July 2008 the planning applications committee considered a report regarding the improved working of the committee which included a number of suggested changes to the way it operates. In particular it suggested performance of the development management service be reported to the committee and that feedback from members of the committee be obtained.
2. The committee has also asked to be informed on the outcome of appeals against planning decisions and enforcement action.
3. The last performance report was presented to committee in November 2019.
4. In between times, the COVID19 pandemic has affected the pattern of the department's workload and changes to the scheme of delegation in April and July 2020 have affected the proportion of applications being dealt with at committee.

Performance of the development management service

5. The cabinet considers quarterly reports which measure the council's key performance targets against the council's corporate plan priorities. The scrutiny committee considers the council's performance data regularly throughout the year and will identify any areas of concern for review.
6. This report covers the first 3 quarters of the year 2020/21 and only highlight trends or issues that should be brought to the attention of the planning applications committee for information.
7. In Q1 of 2020-21, following amendments to the scheme of delegation in April, all decisions (164) were made at officer level.
8. For Q2 of 2020-21, 124 decisions out of 135 were dealt with by officers (a delegation rate of 92 per cent) and 11 decisions were dealt with by committee.
9. For Q3 of 2020-21, 175 decisions out of 186 were dealt with by officers (a delegation rate of 94 per cent) and 11 decisions were dealt with by committee.
10. For the year 2019-20, the delegation rate was 91%: this compares to a delegation rate of 90% in 2018-19; 91.4% in 2017-18, 86.4% in 2016-17 and 90.6% in 2015-16. The delegation rate for 2020/21 is expected to be higher given the rates set out above for Q1, Q2 and Q3.
11. It is also worth noting that the number of applications received by the department has altered, reflecting the disruption cause by the pandemic. The table below shows the number of applications received for Q1, Q2 and Q3 for 2020-21 against the same time frames for 2019-20.

Financial year	Quarter
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	Q1	Q2	Q3
2020/21	153	157	202
2019/20	218	190	188

Appeals

12. There are currently 5 pending planning appeals as listed within Appendix 1 to this report.

13. Appendix 2 shows the appeals determined in the first 3 quarters of 2020/21. A total of 14 appeals were determined: 10 appeals have been dismissed; 1 was partly allowed and partly dismissed; 2 were allowed. The final 'appeal' was the Anglia Square call-in, which was refused by the Secretary of State against the Inspector's recommendation. This equates to a success rate of 77 or 85% for the first 3 quarters, depending on how one counts the partial dismissal.

14. Some headlines from the appeal decisions are as follows:-

19/00007/CALLIN – Anglia Square – Refused by Secretary of State

15. The council resolved to approve the redevelopment of Anglia Square in December 2018. The decision was called-in for determination by the Secretary of State at the request of Historic England. A public inquiry was held in January and February 2020.

16. In a nutshell, the issues revolved around the level of harm caused by the proposed development, in particular to heritage assets, and how this should be weighed against the various benefits of the scheme.

17. The Inspector submitted his recommendation to the Secretary of State in June 2020, but the details of this were not revealed (as is normal practice) until the Secretary of State issued his decision in November 2021.

18. The Inspector's consideration of the proposal ran to some 207 pages. At the end of a lengthy summary, the Inspector concluded:

“Having found that the proposal would accord with the development plan as a whole, it is necessary to consider whether there are other considerations that indicate a decision other than in accordance with the development plan.

The proposal would cause harm to a number of listed buildings through development in their settings. In all cases this would be less than substantial harm in the terms of the Framework. Nevertheless, in each case that is a matter of considerable importance and weight. It should be noted that there would be harm that I would characterise as moderate to the Grade I listed Church of St Augustine and the Grade II listed Nos 2 – 12 Gildencroft. In respect of the other assets, there would be harm that I would characterise as minor. Even so, a number of highly graded assets would be affected, including the Cathedral, the Church of St Simon and St Jude, the Church of St Clement, the Church

of St George, St Helen's Church and St Andrew's Church (All Grade I) and Bacon's House and Nos 11 to 13 Fye Bridge Street (Grade II).*

Having carried out the balancing exercise required by paragraph 196 of the Framework I have found that the public benefits of the proposal would outweigh the harm. I have not identified any other considerations which indicate an outcome other than in accordance with the development plan. I shall therefore recommend that planning permission is granted".

19. Notwithstanding this recommendation, the Secretary of State disagreed and concluded:

"The Secretary of State recognises that the regeneration of Anglia Square is an important strategic objective, and he is supportive of the benefits in terms of economic development and housing that such a regeneration could bring. However, for the reasons given above, and given the importance of the affected heritage assets and the nature of the design flaws he has identified, the Secretary of State considers that the application is not in accordance with Policies JCS1 and DM1 in relation to the preservation and enhancement of heritage assets nor with DM9. Nor is it in accordance with JCS2 and DM3(a)(c) and (f) concerning design, DM12(b) in relation to heritage impacts, DM18 as it relates to DM1, and DM2 and DM13 in relation to residential amenity. The Secretary of State concludes that the proposal is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

The proposal would secure the regeneration of a strategic brownfield site, make a significant contribution to meeting housing need in Norwich, make a significant contribution to meeting the need for affordable housing in Norwich, provide a significant net gain in employment, helping to create the conditions in which businesses can invest, expand and adapt, and insofar as the current condition of the site is a barrier to investment, that barrier would be removed, and support the role that Anglia Square plays in the hierarchy of centres, promoting the long term vitality and viability of the LDC. Each of these benefits carry significant weight in favour of the proposal. The proposal has a neutral impact on the character and appearance of the NCCCA. There would be minor benefits to the setting of some listed and non-designated assets, which carry limited weight, as do the air quality benefits identified.

Although less-than-substantial in all cases, there would be harm to the setting of a number of listed buildings, in two cases towards the upper end of the scale. In accordance with the s.66 duty, the Secretary of State attributes considerable weight to the harm. In addition, there would be harm to the setting of some non-designated assets, and a non-designated building would be demolished and lost entirely.

The Secretary of State has concluded in paragraphs 62 and 63 of this Decision Letter that the identified 'less than substantial' harm to the significance of the designated heritage assets identified at IR536-537 is not outweighed by the public benefits of the proposal.

Overall, the Secretary of State concludes that the benefits of the scheme are not sufficient to outbalance the identified 'less than substantial' harm to the significance of the designated heritage assets identified at IR536-537 and in paragraphs 27-59 above.

He considers that the balancing exercise under paragraph 196 of the Framework is therefore not favourable to the proposal.

Overall, the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan. The Secretary of State therefore concludes that the application should be refused planning permission”.

20. The decision is currently the subject of a legal challenge by Weston Homes, seeking a judicial review of the refusal.

20/00005/REF - Change of use of Tattoo Studio (Sui-Generis) to Temporary/Serviced Accommodation Flat (Class C1) (Retrospective) at 2 Lower Goat Lane – Allowed

21. The council refused planning permission for the change of use, arguing that, as an isolated unit within the building, the proposal was indistinguishable from a flat for normal residential accommodation. As a flat, the unit did not provide sufficient space for permanent occupation. The appellant argued that the use of the unit for holiday accommodation could be controlled by condition. The Inspector agreed and allowed the appeal, granting permission subject to conditions requiring that a register of occupants should be kept; that the unit should not be used as a permanent residence; and that the length of stay by any one person(s) should be limited to a maximum of 28 days.

20/00003/REF – Appeal against variation of Condition 3 of previous permission 16/01927/F (allowed on appeal) to allow 8 residents to occupy an HMO at 12A Old Palace Road – Dismissed

22. Permission for the HMO was granted on appeal with a condition limiting occupancy to 7 residents. The appellant argued that the building met the HMO licensing standards for 8 residents. The inspector concluded that the planning and licensing regimes were separate, and that the council was entitled to take a different view as the local planning authority.

20/00009/REF & 20/00010/REF – Appeals against refusal of permission for telecommunications equipment at two different sites on Newmarket Road – Dismissed

23. The Inspector concluded that the harm caused by the masts (one of which was in the conservation area) was not outweighed by the benefits of improved mobile phone coverage. Part of the reason for this was that the masts only provided coverage for the users of one network.

Enforcement action

24. At the beginning of April 2020, the number of enforcement cases being dealt with by the department stood at 171. At the end of Q3, that number had increased by 76 to 247. During the period, 114 new cases were opened and 41 cases were closed.

25. The reasons for closing the 41 cases are as follows:-

- Notice complied with - 3 (7%)

- Not expedient to pursue action - 12 (29%)
- No breach has occurred - 21 (51%)
- Informal action taken to resolve - 2 (5%)
- Not a planning issue - 1 (2%)
- Planning application approved - 2 (5%)

26. Notices issued (enforcement, breach of condition and planning contravention) are shown in the table at Appendix 3 for the first 3 quarters of 2020/21.

Appendix 1 – Pending Planning Appeals

Pending Planning Appeals and Recent Appeal Decisions								
Application Ref.	PINS Ref.	Address	Proposal	Type of Appeal	Start Date	Decision	Decision Level	Officer
19/00016/ENFPLA Application No. n/a	APP/G2625/C/ 19/3233542	8 Marston Lane	Appel against enforcement notice 18/00149/ENF No.1 for the erection of a fence of more than 1m in height	Written Reps	27.05.2020	Pending site visit	Delegated	Stephen Little
20/00007/TA1 Application No. 20/00240/TPO	APP/TPO/G262 5/7874	The Plantation, Christchurch Road	Corsica Pine (G1): fell and replant replacement tree(s).	Fast Track Appeal	28.09.2020	Pending decision	Delegated	Mark Dunthorne
20/00011/REF App No 19/01735/FT	APP/G2625/W/ 20/3254990	Epic, 110-116 Magdalen St	The installation of 6 No. antenna apertures and 4 No. 600mm dishes on new support poles, and 7 No. equipment cabinets and ancillary development.	Written Reps	09.09.2020	Pending decision	Delegated	Jacob Revell
20/00012/REF App No 20/00241/T	APP/G2625/W/ 20/3256408	Daniels Road	Installation of 1no. 20m streetworks pole, 1no. equipment cabinet, 1no. meter cabinet and associated ancillary development.	Written Reps	09.09.2020	Pending decision	Delegated	Maria Hammond
20/00015/REF App No 20/00557/F	APP/G2625/W/ 20/3260691	Land to rear of 196 Earlham Road	Construction of double garage.	Written Reps	13.01.2021	Pending decision	Delegated	Stephen Polley

Appendix 2 – Determined Planning Appeals

Appeal Decisions

Application Ref.	PINS Ref.	Address	Proposal	Type of Appeal	Start Date	Decision	Decision Level	Officer
19/00007/CALLIN Application No. 18/00330/F	APP/G2625/V/ 19/3225505	Anglia Square	Part Full/Outline application for the comprehensive redevelopment of Anglia Square and adjacent land on Edward Street for: up to 1250 dwellings, hotel, ground floor retail and commercial floorspace, cinema, multi-storey car parks, place of worship and associated works to the highway and public realm areas	Public inquiry	21.03.2019	Approved	Committee	Tracy Armitage
19/0013/TA1 Application No. 19/00268/TPO	APP/TPO/G262 5/7430	31 Roe Drive	2no. Lime (G7): Reduce height from 70ft to 50ft or reduce by 3m.	Fast Track Appeal	21.02.2019	Dismissed	Delegated	Mark Dunthorne
19/00015/REF App No 19/00307/L	APP/G2625/W/ 20/3254990	APP/G2625/Y/1 9/3232169	Internal alterations to living space and kitchen including removal of separating wall.	Written Reps	12.08.2019	Part allowed, part dismissed	Delegated	Chris Brownhill
19/00021/TA1 App No 19/00853/TPO	APP/TPO/G262 5/7568	380C Unthank Road	Deodar Cedar (G1): Remove.	Fast Track Appeal	27.08.2019	Dismissed	Delegated	Mark Dunthorne
19/00025/TA1 App No 19/01140/TPO	APP/TPO/G262 5/7638	67 Mill Hill Road	2no. Lime (T1 & T2): Fell and remove additional 1m stump, replace with 1no. tree of smaller species.	Fast Track Appeal	09.10.2019	Dismissed	Delegated	Mark Dunthorne
19/00028/REF App No. 19/01318/VC	APP/G2625/W/ 19/3241227	The Bungalow, Eaton Chase	Variation of Condition 10 of previous permission 18/01190/O to remove the restriction on the use of construction access via Ryrie Court.	Written Reps	13.01.2020	Dismissed	Delegated	Lee Cook
20/00001/REF App No. 19/00043/L	APP/G2625/Y/1 9/3243738	79 Newmarket Road	Internal alterations to ground floor to facilitate conversion to two bedroom flat.	Written Reps	02.03.2020	Dismissed	Delegated	Jacob Revell

20/00002/REF App. No. 19/01254/F	APP/G2625/W/ 20/3244919	9A Poplar Avenue	Sub-division of plot and new dwelling.	Written Reps	06.02.2020	Dismissed	Delegated	Maria Hammond
20/00003/REF App. No. 19/01455/VC	APP/G2625/W/ 20/3246507	12A Old Palace Road	Variation of Condition 3 of previous permission 16/01927/F (allowed on appeal) to allow 8 residents.	Written Reps	06.03.2020	Dismissed	Delegated	Jacob Revell
20/00005/REF App. No. 19/01633/U	APP/G2625/W/ 20/3248391	Suite 2, First Floor, 2 Lower Goat Lane	Change of use of Tattoo Studio (Sui- Generis) to Temporary/Serviced Accommodation Flat (Class C1) (Retrospective).	Written Reps	11.06.2020	Allowed	Delegated	Lara Emerson
20/00006/REF App. No. 20/00072/F	APP/G2625/D/ 20/3249948	44 Nasmith Road	Two storey side extension	Written reps	11.06.2020	Dismissed	Delegated	Stephen Little
20/00008/REF App. No. 20/00318/U	APP/G2625/W/ 20/3252026	36 Primula Drive	Change of use from 6 bed HMO to 7 bed HMO.	Written Reps	06.07.2020	Allowed	Delegated	Maria Hammond
20/00009/REF App. No. 20/00347/T	APP/G2625/W/ 20/3254501	47-49 Newmarket Road	Installation of 1no. 20m streetworks pole, 1no. equipment cabinet, 1no. meter cabinet and associated ancillary development.	Written Reps	10.07.2020	Dismissed	Delegated	Maria Hammond
20/00010/REF App. No. 20/00243/T	APP/G2625/W/ 20/3254712	221-223 Newmarket Road	Installation of 1no. 20m streetworks pole, 1no. equipment cabinet, 1no. meter cabinet and associated ancillary equipment.	Written Reps	16.07.2020	Dismissed	Delegated	Maria Hammond

Appendix 3 – Enforcement Action Update

Enforcement Update				
Case Ref.	Location	Development	Current Status	Lead Officer
18/00140/ENF	118 Cambridge Street	Conversion of garage to residential. Potential increase in HMO occupancy.	Enforcement Notice (EN) served 01.05.20 requiring the use to cease back to it's lawful use as a house or C4 HMO occupied by a maximum of 6 persons. Notice effective on 1 st June. Notice complied with – awaiting final cross checking with other departments (e.g. Council Tax) before final closure.	Stephen Little
18/00167/ENF	547 Earlam Road	Change of use to bed and breakfast and restaurant and display of illuminated sign	<p>Planning Contravention Notice (PCN) served 23rd December 2020. Response to PCN insufficient to determine a breach in relation to the change of use to restaurant. Additional PCN drafted and served February 2021 to cross check evidence against complaints of activity from 3rd parties.</p> <p>Re: sign – change of use to B&B having been implemented, the sign benefits from deemed consent. Action under way to secure removal.</p>	Maria Hammond
18/00156/ENF	11 Baltic Wharf	Property being used as short-term/holiday let for up to 12 people.	PCN served 04.09.20. Subsequent EN served 25.09.20. Following the service of the notice, the level of use reduced to such a degree that the breach has been remedied. Notice complied with.	Stephen Little
19/00105/ENF	6 St James' Meadow	Use of residential property for commercial food preparation.	PCN served 27.11.20. On the basis of the information received following the PCN, it has been determined that the property has been sold and the current resident is using it lawfully as a residence. Case closed.	Stephen Little
19/00104/ENF	39A Newmarket Rd	Breach of Condition 3 of planning permission 18/01528/F re: employee travel plan & cycle parking	Breach of Condition Notice (BCN) served 27.11.20 requiring submission of travel plan within 2 months (i.e. by 27.01.20).	Stephen Little

19/00110/ENF	101 Hotblack Rd	Unauthorised HMO.	PCN served 09.09.20. Information from the PCN, cross checked against other records, indicates that the use is lawful due to the passage of time. Case closed as not expedient to take action.	Stephen Little
20/00088/ENF	48 & 50 St Philips Rd	Unauthorised use as short term lets.	PCN served 07.10.20. Response received 07.01.21. On the basis of the information received, it has been determined that the alleged breach has occurred and the operator has been requested to cease the use by 28.02.21. Compliance with this request will be checked shortly.	Stephen Little
20/00126/ENF	3A Unthank Rd	Breach of Conditions 5, 6, 7 and 8 of 18/01874/F for change of use from Class D1 to dwellinghouse (Class C3) and external alterations	BCN served 08.10.20. Various timescales given for compliance with the conditions ranging from one month to 5 months. A discharge of conditions application has been received in response to the notice securing the detail it required. Implementation of the details still required in accordance with the notice. Compliance is being monitored.	Maria Hammond
20/00127/ENF	3A Unthank Rd	Breach of Conditions 3 and 5 of 19/00402/MA for amendment to previous permission 18/00252/F	BCN served 08.10.20. See above. Compliance is being monitored.	Maria Hammond