



NOTICE OF MEETING

CABINET MEMBER FOR PLANNING, REGENERATION & ECONOMIC DEVELOPMENT

TUESDAY, 6 NOVEMBER 2018 AT 4.00 PM

THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL

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If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

CABINET MEMBER FOR PLANNING, REGENERATION & ECONOMIC DEVELOPMENT

Decision maker -

Councillor Ben Dowling (Liberal Democrat)

Group Spokespersons

Councillor Donna Jones, Conservative

Councillor Judith Smyth, Labour

(NB This Agenda should be retained for future reference with the minutes of this meeting.)

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AGENDA

- 1 Apologies for Absence**
- 2 Declarations of Members' Interests**
- 3 Green Infrastructure Delivery Plan (Pages 5 - 16)**

The purpose of this report is to set out a proposed approach to the delivery of

short term green infrastructure improvements and general greening in the city over the next year, and to seek the authority to progress with the approach outlined.

RECOMMENDED that the portfolio holder for PRED approves the approach for greening the city over the next year as set out in the 2018-19 green infrastructure delivery plan document (attached as an appendix).

4 Planning Enforcement Policy (Pages 17 - 32)

The purpose of the report is to agree a local enforcement policy. The National Planning Policy Framework identifies that effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. The NPPF encourages local planning authorities to publish a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. The Plan should set out how the local planning authority will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

RECOMMENDED that

- (1) The local enforcement plan (Attached as appendix A) is approved and**
- (2) The Assistant Director of City Development be authorised to make editorial amendments to the plan in consultation with the Cabinet member for Planning, Regeneration and Economic Development. These changes will not alter the meaning of the document and will be restricted to grammatical and typographical changes.**

5 Planning Practice Guidance Viability in Planning & CIL Reforms (Pages 33 - 40)

The purpose of the report is to

- (1) report the changes on Guidance on Viability in decision making as agreed at the PRED meeting of the 28 February 2018 in response to the Motion to Full Council 12b Economic Viability Assessments for developers 17th October 2017.
- (2) Consider the content contained in the Guidance on Viability published in July 2018 as Planning Practice Guidance (PPG) and implications for the way Viability in decision making on applications and in plan making is managed going forward
- (3) Consider the Guidance on Viability relating to the collection, monitoring and reporting of contributions through Section 106 and Community

Infrastructure Levy (CIL) and suggest how the local planning authority needs to respond to this Guidance.

RECOMMENDED that

- (1) The Viability Guidance in Planning Practice Guidance relating to Local Plan making should be fully embodied in the Local Plan Review work.**
- (2) The Assistant Director of City Development prepares a protocol for developers following the publication of the Standard Templates referenced in the PPG. The protocol will confirm that all viability assessments submitted relating to planning applications accord with the Planning Practice Guidance Viability including the guidance on viability assessments being publicly available.**
- (3) The Assistant Director of City Development is authorised to procure a framework of viability consultants to provide support, should it be required to the planning team, to ensure better and more consistent outcomes for the City.**
- (4) The Assistant Director of City Development is authorised, in line with the new National Planning Policy Framework (NPPF) guidance**
 - To include all planning obligations together with details of any modification or discharge of the planning obligation on its Planning Register.**
 - To review and amend process to ensure that all new Section 106 Agreement include an Executive Summary in accordance with the proposed template that will be published and that all live and future Section 106 are monitored in accordance with the template.**
 - In the interest of accountability and transparency, to produce and publish a report to be published on the Council website by 31 December each year setting out what all CIL contributions have been spent on. CIL spend will also continue to report in the authority monitoring report.**
 - To prepare an Infrastructure Funding Statement using the standard template that is to be published. This Statement will set out infrastructure requirements for both CIL and Section 106 planning obligations, anticipated funding from developer contributions and confirm choices the local planning authority has made with the S151 Officer about how these contributions will be used. In the interest of accountability that this statement is report to PRED before being published on line.**
 - To work with applicants to better promote and publicise the infrastructure that has been delivered through developer**

- contributions through initiatives such as the use of on-site signage, local authority websites or development specific sites.**
- **To review the current mechanism for promoting, allocating and spending Neighbourhood CIL to ensure that there is a robust process in place to ensure that contributions are being spent and sufficient guidance and support is being given to Ward Councillors and communities to identify a range of infrastructure projects suitable for CIL funding to support the development of an area.**
- (5) The Assistant Director of City Development working with the Cabinet Member for PRED will ensure that the planning committee and interested Councillors are supported with training to ensure a better understanding of the new viability proforma and CIL regulations.**

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Agenda Item 3



Portsmouth
CITY COUNCIL

Title of meeting:	Cabinet Member for Planning, Regeneration and Economic Development
Date of meeting:	6 th November 2018
Subject:	2018-19 Green Infrastructure Delivery Plan
Report by:	Assistant Director of City Development
Wards affected:	All
Key decision:	No
Full Council Decision:	No

1. Purpose of report

- 1.1 The purpose of this report is to set out a proposed approach to the delivery of short term green infrastructure improvements and general greening in the city over the next year, and to seek the authority to progress with the approach outlined.

2. Recommendation

- 2.1 **That the portfolio holder for PRED approves the approach for greening the city over the next year as set out in the 2018-19 green infrastructure delivery plan document (attached as an appendix).**

3. Background

- 3.1 Portsmouth's green infrastructure network has a role in providing the city with a range of valuable benefits beyond simply the aesthetic. Green infrastructure within the public realm, such as trees, shrubs and greenspaces like parks, can promote physical health and wellbeing through encouraging people to take up more active lifestyles, but has also been associated with better mental health including reductions in stress, anxiety and depression. Incorporating high quality green infrastructure within the public realm can also make a positive contribution to improving air quality through absorbing some of the harmful pollutants that contribute to poor quality air with subsequent health benefits for people as a result. Beyond health and wellbeing, greening urban areas can also bring about gains in biodiversity, build resilience to climate change and contribute to economic development by encouraging greater investment in an area.
- 3.2 The Council is committed to developing and enhancing Portsmouth's green infrastructure network. Doing so will not only contribute to creating better quality, healthier spaces for people within the city, but can also support other ongoing

objectives for the Council, such as improving air quality and encouraging greater physical and mental health of Portsmouth's residents. In the longer term, developing green infrastructure in the city will be guided by the policies set out in the emerging Local Plan, and supported by other documents such as the Parks and Open Spaces Strategy. The purpose of the 2018-19 Green Infrastructure Delivery Plan, is to begin to lay the foundations for this work, by setting out how the Council will actively aim to deliver greening more immediately in the city over the next year.

- 3.3 The plan sets out how the Council will work to develop Portsmouth's green infrastructure in the short term and promote greater greening of the city. The plan will be delivered through a number of measures that have been identified including additional tree planting around the city and enhancements to a selection of green spaces which will be identified and subject to a site-by-site analysis of existing quality and opportunities for improvements. The delivery of the measures set out in the document will be subject to the allocation of appropriate funding.
- 3.4 Longer term, a range of measures for addressing green infrastructure provision in the city are being investigated through the work in support of the emerging Local Plan.

4. Reasons for recommendations

- 4.1 The approval of the approach set out in the delivery plan will enable the Council to progress work on the delivery of these short term greening measures over the next year.
- 4.2 The investment in the delivery of green infrastructure in the city is intended to contribute not only to the development of Portsmouth's natural environment, but also to the delivery of a variety of benefits for the city's residents, visitors and businesses. Greening measures such as those highlighted in the plan should respond positively to various challenges facing the city at present including those relating to health and wellbeing of its residents; adapting to climate change; improving air quality; and promoting greater biodiversity.

5. Equality impact assessment (EIA)

- 5.1 An equality impact assessment is not required as the recommendations do not have a disproportionately negative impact on any of the protected characteristics as described in the Equality Act 2010. At this point, the delivery plan proposes a broad approach for delivering greening to the city only, however, once specific locations have been identified and any particular improvements selected for an area, the need for an EIA will be revisited, though the position is not expected to change as any measures proposed will be designed to avoid negative impacts.

6. Legal Implications

- 6.1 There are no legal implications arising directly from the recommendations in this report. Site-specific legal issues may need to be considered once details of specific

improvements are identified and further advice will be sought when this is necessary.

7. Director of Finance's Comments

- 7.1 There are no financial implications as a result of approving the recommendation within this report.
- 7.2 If the approach is approved a funding source will need to be identified in order to deliver any measures that contribute to this initiative.

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Signed by:

Assistant Director of City Development

Appendices: 2018-19 Green Infrastructure Delivery Plan

The recommendation(s) set out above were approved/ approved as amended/ deferred/
rejected by on

.....
Signed by:

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2018-19 Portsmouth green infrastructure delivery plan

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1. Introduction

- 1.1.** The Council has a responsibility for balancing the various development needs of the city, whilst also ensuring that it plans in a positive way for the creation, protection, enhancement and management of Portsmouth's green infrastructure. Green infrastructure isn't just aesthetically pleasing in the public realm, but can offer a range of positive functions for making the urban environment a healthier, more pleasant place for people to enjoy. In this way it is just as valuable to the city as other more traditional forms of grey infrastructure such as roads, pavements and sewers.
- 1.2.** There is no single, overarching definition for the term green infrastructure, however the government sets out that green infrastructure is:
- 1.3.** *A network of multifunctional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities.*
- 1.4.** *Green infrastructure is not simply an alternative description for conventional open space. As a network it includes parks, open spaces, playing fields, woodlands, but also street trees, allotments and private gardens. It can also include streams, canals and other water bodies and features such as green roofs and walls.¹*
- 1.5.** The Council is committed to developing and enhancing Portsmouth's green infrastructure network. In the longer term, this will be guided by the policies set out in the emerging Local Plan, a future Green Infrastructure Strategy and supported by other documents such as the Parks and Open Spaces Strategy. The purpose of this shorter term delivery plan is to begin to lay the foundations for this work by setting out how the Council will actively aim to deliver greening more immediately in the city over the next year.

2. Why do we need green infrastructure?

- 2.1.** Portsmouth's green infrastructure network doesn't just have an aesthetic value, but should provide Portsmouth with a host of other functions which have benefits to the city. The 'function' of a piece of green infrastructure is expressed through the natural features of the asset and the particular ecosystem services that asset can perform for an area, such as improving air quality or providing natural drainage.
- 2.2.** Some of the main functions of benefit that can be drawn from a well-developed green infrastructure network which have particular relevance to Portsmouth include:
- Promoting physical and mental health and wellbeing amongst Portsmouth citizens
 - Improving air quality in the city through absorbing harmful pollutants
 - Improving the biodiversity of the city
 - Naturally assisting with water and flood management
 - Building Portsmouth's resilience to climate change
 - Contributing to economic development and boosting investment

¹ National Planning Practice Guidance website

3. Portsmouth's green infrastructure network

3.1. Green infrastructure in the city can be broken down into a variety of typologies, each of which provide a particular set of the functions detailed above. A fundamental aspect of the GI network is that of publically accessible open spaces including parks and gardens, amenity greenspaces, areas of natural and semi-natural green spaces, allotments and cemeteries. A full breakdown of these can be found in the city's Parks and Open Spaces Strategy². Figure 1 below details the protected open space network around the city at present.

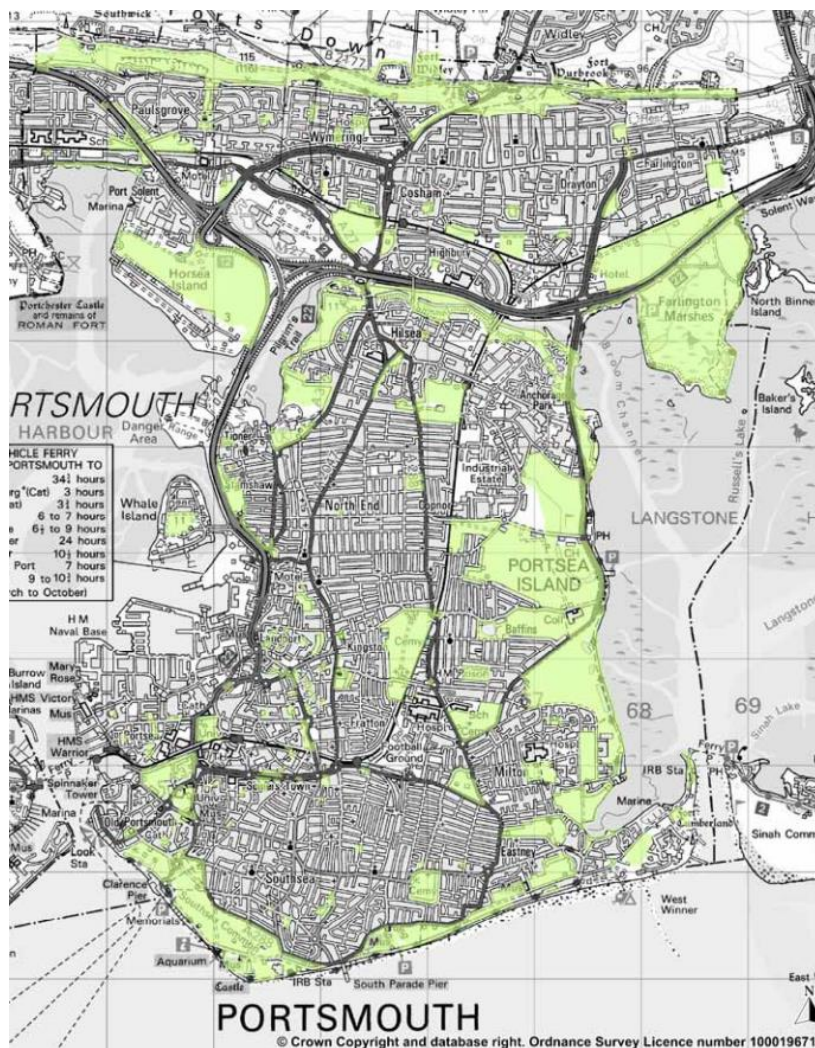


Figure 1: Local Plan policy PCS13 protected open spaces in the city

3.2. Generally due to the densely developed nature of Portsmouth, these spaces tend to be found in larger proportions around the outside of the city, although there are some important spaces found more centrally. Recent assessments of the quantity and accessibility of open space provision in Portsmouth have highlighted that there are deficiencies across most types of open space in relation to the needs of the current population and projected future population.

² <https://www.portsmouth.gov.uk/ext/leisure/parks/parks-and-open-spaces-strategy>

- 3.3.** Beyond the city's open spaces, the GI network includes other more individual assets including trees, hedgerows, shrubs and green roofs. The city has a known stock of more than 30,000 trees including 25,000 Council owned trees; 8,000 which are managed by the city's highways contractor and a further 3,000 protected through tree preservation orders (TPOs). A number of recent developments have included green roofs, with more planned. Hampshire Biodiversity Information Centre recently recorded 66km of hedgerow, these are a priority habitat for the whole Hampshire region³.
- 3.4.** At the street level, there can be immense variation over just a few streets in the provision of green infrastructure across Portsmouth. For example in Southsea, a highly urbanised part of the city, streets such as Frensham Road are planted with numerous large, mature trees and other forms of planting which help break up the urban fabric. Neighbouring roads can be completely devoid of greenery however and lacking in any form of natural features which has the effect of exacerbating the urban, artificial feel of the area. Space in many of Portsmouth's streets particularly in central areas such as Southsea, Fratton and North End is highly limited and is under pressure from a range of sources such as needs for pedestrian access as well as access for vehicles and parking. However, there are numerous examples where trees and other natural features were once present in such locations, but for various reasons have since been removed from the environment without a replacement. It is also evident that there are untapped spaces within many streets where new planting could take place which have yet to be fully identified and mapped.

4. The Council's planned green infrastructure measures

- 4.1.** Several immediate measures have been identified which the Council will work to progress to deliver new green infrastructure across the city over the coming months. These measures will be made up of two parts, additional tree planting across Portsmouth, as well as enhancements to existing green spaces to improve their quality and functionality. Each measure will be discussed in greater detail below along with some particular means by which their success (and therefore the overall success of this delivery plan) could be monitored and quantified going forwards.

Additional tree planting across the city

- 4.2.** Trees are valuable assets within the public realm not only for the visual amenity that they provide, but also because they help to intercept and slow down rainwater; shade and cool the surrounding area; aid in removal of pollutants from the air and provide space for nature. Portsmouth's tree canopy cover has been conservatively estimated at around 14% of the city, which is similar to London⁴, it is evident however that more can be done to help expand the city's tree network.
- 4.3.** As part of its day-to-day work, and in partnership with its highways contractor, the Council works to manage and maintain its stock of trees including new planting and

³ Hampshire Biodiversity Information Centre (HBIC) 2016-17 Annual Monitoring Report

⁴ <http://www.treeconomics.co.uk/london-itree>

replacement planting. In recognition of the value that trees can bring to the streetscape, however the Council will actively work to plant more specimens across Portsmouth. This additional planting could be targeted at existing vacant tree pits as well as identifying new sites for planting. A number of locations will be identified around the city for this additional tree planting and the Council will be targeting these areas over the coming year(s) in addition to its usual programme of tree works.

- 4.4. A further piece of analysis will be conducted at a street by street scale in areas of the city which have particularly low tree coverage (council owned) within the public realm. This would identify a number of roads which are completely absent of trees, as well as a number which have low coverage and could help with targeted improvements. In the longer term, this analysis could be extended across the wider city to inform future rounds of tree planting.
- 4.5. Success for this first measure of the delivery plan will be quantified by the numbers of additional trees planted across the city. Success could be further measured by attempting to quantify particular ecosystem services (benefits to people such as air quality regulation, reduced carbon emissions etc.) that the additional trees planted will contribute to the city.

Enhancements to existing greenspaces (e.g. additional planting of trees, shrubs, wildflowers; landscaping and improved access)

- 4.6. Alongside targeted tree planting across the city, the second measure the Council intends to pursue is that of making enhancements to existing greenspaces in the city. As touched upon earlier, Portsmouth has a variety of typologies of open space, ranging from cemeteries and allotments, to parks and gardens, amenity greenspace and formal/informal playing pitches. Whilst many of these typologies have a particular primary role to play in the city such as a place for burials (cemeteries) or a place for sport (playing pitches); parks and gardens and amenity greenspaces perform a broader set of functions and have value for the health and wellbeing of a wide proportion of the city's inhabitants who live around them for that reason.
- 4.7. Parks and gardens in the city tend to be characterised by a range of features including facilities for children and young people, outdoor sports and landscaping and horticultural features that help them to play a multi-functional role in the city. Several such spaces have been awarded nationally recognised Green Flag awards for their quality in recent years for that reason, they may not be the spaces where significant short term improvements can be easily obtained. In contrast, amenity greenspaces tend to be smaller (though not always) and far less equipped in terms of such features, usually given over to grass, shrubs and trees. Yet these spaces are often still used by people for a range of informal recreational activities.
- 4.8. When considering how to target green infrastructure enhancements in the city to improve quality and multi-functionality, the generally lower quality provision in terms of the functions that amenity greenspaces provide make them an obvious target for focus.

Within the constraints of available funding, it is considered that as an initial step, these greenspaces could more obviously benefit in the short term from targeted improvements than more well-equipped parks and gardens to help boost their multi-functionality as green infrastructure assets. Therefore amenity green spaces in the city will be the primary focus for an initial round of improvements in the first instance.

- 4.9.** The Council has recently undertaken an assessment of its open spaces which included an evaluation of the quality of amenity greenspaces to support the work of Culture and City Development. General issues noted with regard to quality of the city's amenity spaces included that many lacked significant tree or other informal planting which would assist in enhancing biodiversity value and interests, also that few had attractive and informative signage, even where there was an obvious presence of interesting heritage or history and that a number lacked seating or litter bins.
- 4.10.** The city is also faced with other challenges which enhancements to green infrastructure could help to address and that this piece of work would make a contribution toward. There are several important routes running north-south that bring people into the city centre, or out of the city centre back onto the mainland, including the M275, Northern Parade, London Road, Copnor Road and Eastern Road. These routes are traversed by thousands of people on a daily basis, many of whom will be visiting Portsmouth for the very first time, yet are characterised by varying qualities of public realm. As such, one means by which the benefits of targeted enhancements to greenspaces could be maximised would be by focussing them in these areas with a particular focus on amenity green areas.
- 4.11.** To fulfil the finite scope of this short term delivery plan, the Council considers it prudent to focus its resources on one particular area, further rounds of improvements in future years could then be targeted to additional parts of the city. The Council has determined that it will therefore initially look to target measures around the upper parts of the London Road and Copnor Road areas to the north of the island, as well as further southwards down these roads. Not only do aspects of these roads suffer from a poorer quality/heavily urbanised public realm, but they are well used routes for people traversing the city. Furthermore, green infrastructure enhancements on these routes could make a valuable contribution towards the Council's emerging work in promoting a green grid across the city, where significant parts of these roads have already been identified as potential green corridors (see section 5 for more details).
- 4.12.** To inform the enhancement works going forwards, a number of sites have been identified. It is suggested that going forwards, these sites are subjected to more detailed site-specific investigations to assist in prioritising resources; to help to inform the types of green infrastructure enhancements most suitable in which areas; and to ascertain which functions and qualities would be most desired for strengthening. This last point is important, as already touched upon, green infrastructure is capable of performing multiple functions, be that improving biodiversity, adapting areas to climate change, or contributing to the health and wellbeing of people - thus to make the most of available resources, a well-defined objective(s) for the outcome of the enhancements to be targeted in each area will be vital to the success of this plan.

4.13. Success for this measure of the delivery plan will be quantified by any improvements to the functionality of each area of greenspace identified for enhancements in the London Road area. For example, has biodiversity been improved (or has the potential for its improvement been increased) in the space; has the capacity of the space for adapting the wider area to climate change been improved; or will the area make a greater contribution to the health and wellbeing of local residents?

5. Looking longer term

5.1. Looking towards the medium and long term, the Council will be actively working to promote green infrastructure in the new Local Plan. Whilst the benefits of including green infrastructure in new development for achieving various objectives will be promoted throughout the plan, the matter will also be addressed in its own specific policy.

5.2. At the heart of the Local Plan will be the intention to resist any development which results in a net loss of green infrastructure, and encouragement of designs that seek a net gain in green infrastructure in recognition of the various benefits that this type of infrastructure has for the development of Portsmouth. Furthermore, in recognition of the often limited space available in the more densely built up areas of the city, the plan will seek to encourage innovative design of green infrastructure in the urban environment that might utilise traditionally more wasted spaces, such as roof tops and walls of buildings in order to help meet net gains in green infrastructure. It will also seek to bring about enhancements to existing green infrastructure that serves to boost its multi-functionality and overall quality, this will be important for improving the resilience of these assets to the potential of increased pressures from future development needs and rising population in the city going forwards.

5.3. The emerging work is investigating the introduction of an 'urban greening factor' tool which new development would need to comply with, as well as the identification and creation of a strategic green grid of 'green corridors' across the city (figure 2) to help deliver more greening in Portsmouth and support the wider South Hampshire Green Grid which is being promoted by PUSH.

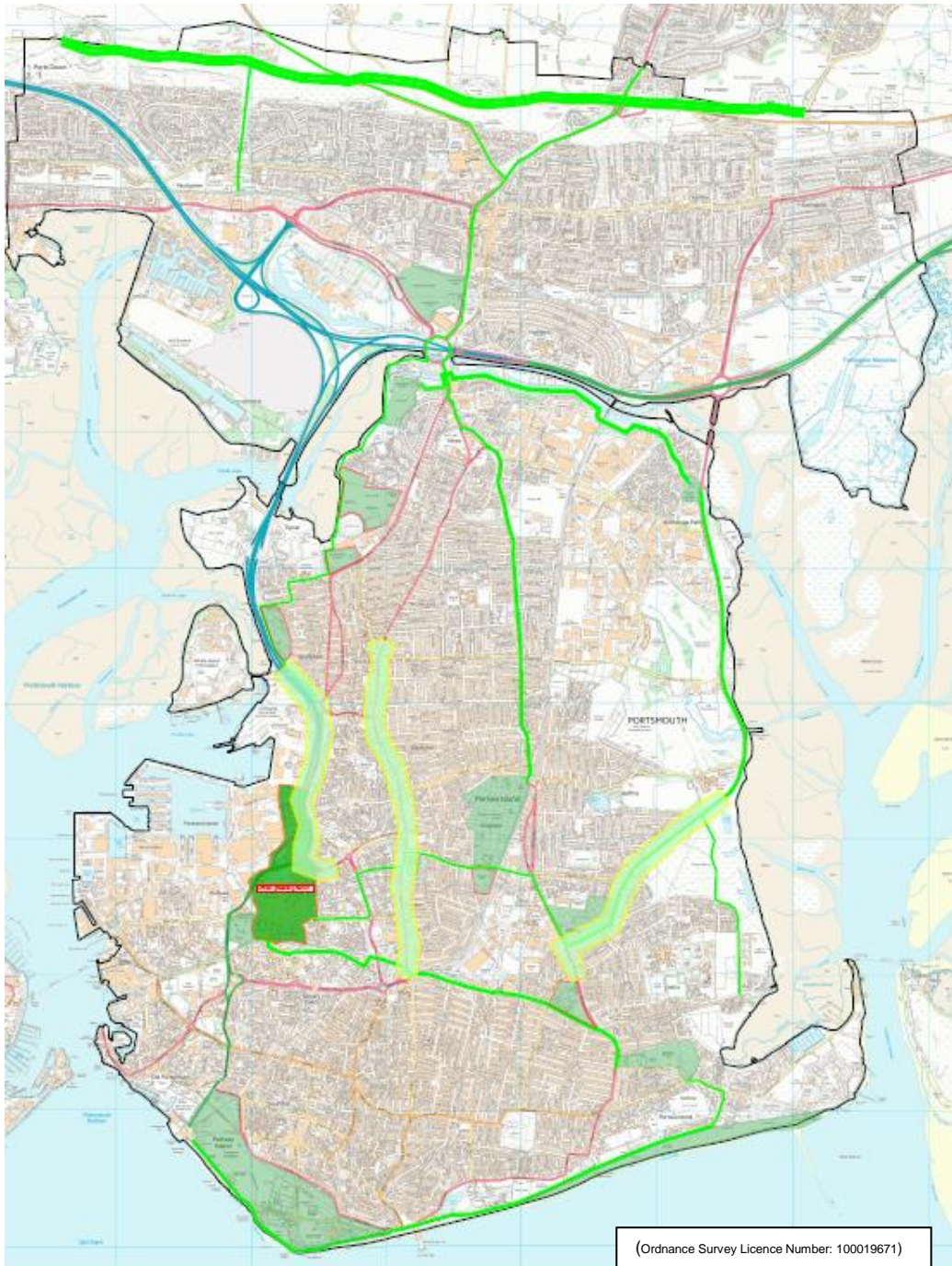


Figure 2: Emerging Portsmouth green grid

6. Conclusions

6.1. The Council is committed to protecting and strengthening the city's green infrastructure. Delivering on this commitment will take a variety of approaches targeting a variety of elements of the green infrastructure network.

6.2. This plan sets out a number of measures that the Council is planning to undertake in the short term to deliver improvements to green infrastructure across the city. Alongside these measures, it will continue to progress its work on more long term strategies for green infrastructure in Portsmouth through the development of the new Local Plan.



Title of meeting:	Cabinet Member for Planning, Regeneration and Economic Development
Date of meeting:	6 th November 2018
Subject:	Planning Enforcement Policy
Report by:	Claire Upton-Brown, Assistant Director of City Development
Wards affected:	All
Full Council decision:	No

1. Purpose of report

- 1.1. The purpose of the report is to agree a local enforcement policy. The National Planning Policy Framework identifies that effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. The NPPF encourages local planning authorities to publish a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. The Plan should set out how the local planning authority will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

2. Recommendations

2.1 It is recommended that :

The local enforcement plan (Attached as appendix A) is approved

The Assistant Director of City Development be authorised to make editorial amendments to the plan in consultation with the Cabinet member for Planning, Regeneration and Economic Development. These changes will not alter the meaning of the document and will be restricted to grammatical and typographical changes

3. Background

- 3.1 The National Planning Policy Framework encourages councils to publish a local enforcement policy to provide a local framework for investigating and enforcing breaches of planning control. In line with this the document attached as Appendix 1 has been produced to stand as the Council's Enforcement Policy.
- 3.2 The government advises that it is good practice to have an Enforcement Policy aimed at providing an open and transparent process to give clarity on procedure and to manage expectations of complainants as well as those who have carried out unlawful development. The appended Enforcement Policy sets out the following:
- 3.3 The plan provides the framework for a robust planning enforcement service within Portsmouth, and sets out the following:
1. The purpose of enforcement
 2. What we aim to do
 3. Planning enforcement principles
 4. Breaches of Planning Control
 5. Reporting a breach
 6. Prioritisation
 7. Possible outcomes
 8. Houses in multiple occupancy
 9. When you are being complained about
 10. Customer Care
 11. Development Monitoring
- 3.4 The approach set out in the document is considered to be a proportionate approach to the caseload that the local planning authority receives each year.

4. Reasons for recommendations

- 4.1 The proposed Enforcement Policy sets out the way the local planning authority will proactively manage enforcement matters within the city and ensure that development is carried out to the standards required to ensure that quality development is delivered within the city.

5. Equality impact assessment

- 5.1 An equality impact assessment is not required as the recommendations do not have a disproportionately negative impact on any of the specific protected characteristics as described in the Equality Act 2010.

6. Legal implications

6.1 Formal planning enforcement action must be conducted by liaising with legal services. Legal services are always pleased to provide the Planning Department with advice on any planning enforcement matter at any stage.

7. Director of Finance's comments

7.1 There are no financial implications arising from the plan.

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Signed by:

Appendices: Appendix A - Planning Enforcement Policy

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
NPPF	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

.....
Signed by:

Planning Enforcement Policy

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1. Introduction

Portsmouth City Council's planning department have an enforcement team dedicated to working with the public in order to provide an efficient, helpful and fair planning compliance service.

This document is designed to explain what we do, what guidelines we follow and how we operate to ensure that Portsmouth's heritage is protected and new developments follow both national guidelines and our own plans for the future.

Our goal is to work with the public to ensure that Portsmouth progresses in being an exciting city full of both architectural heritage and innovative new designs.

This policy statement on Portsmouth City Council's ("the Council") Planning Enforcement Service describes what the service does and how we deliver the service to the community. It is not a legal document and does not seek to provide legal advice or to comment on individual cases, which will be judged on their individual circumstances.

It is important to remember that planning consent may not be the only consent required from the City Council. For example, Building Regulations approval, and licensing etc. may be required in addition to planning consent. This policy only covers matters relating to planning control. Property owners should satisfy themselves that all other necessary consents needed are in place to carry out the work or activity they are contemplating. Securing such consents can be a time consuming process and persons are encouraged to engage with the relevant regulatory bodies at the earliest opportunity to avoid frustrating delays at a later date.

2. The purpose of enforcement

Planning Enforcement is designed to regulate the city's developments to ensure that they follow the [Town and Country Planning Act 1990](#), the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Portsmouth Plan.

Planning Enforcement is a discretionary power that can only be used in conjunction with the above legislation and cannot be used for private interests or disputes. Enforcement actions must be fair and impartial and adhere to the above mentioned acts.

3. What we aim to do

Portsmouth City Council, as a whole, is committed to maintaining the quality of the city. Planning enforcement aim to contribute to this using the following objectives:

- To prevent and remove harm to amenity caused by unauthorised use or development.
- To ensure that public amenity is protected as far as practicable and development is acceptable, even if the development may not have been authorised at first.

- To ensure that the Planning System is followed and not undermined.
- Work with others to monitor developments, so that we can ensure planning permissions and conditions imposed are followed.
- To reach outcomes that show regard to the views of interested parties, whilst adhering to planning legislation.

4. Planning Enforcement Principles

Fairness

We aim to be consistent with all cases, and the action we take will be proportionate to the breach of planning.

It should be noted that no two cases are the same and the evidence we gather will be considered on its own merit.

We act in accordance with planning laws, The Portsmouth Plan and Portsmouth City Council's policies in every case in order to remain fair and consistent.

Planning Enforcement is a discretionary power and it is ultimately the decision of The Local Planning Authority as to what action, if any, is taken.

Confidentiality, Professionalism and Integrity

We will keep all details of the complainant totally confidential. Details of enforcement cases are not uploaded to the Council's website and are treated as confidential where possible.

We aim to provide comprehensive details and information in the best way possible and always confirm that the recipient understands the situation as fully as possible.

We will try to keep everyone involved in the case updated as much as possible. If you require an update from us, please contact planningenforcement@portsmouthcc.gov.uk and we will be more than happy to assist.

We ask for communication in writing so that we can keep records of what is discussed and will always distinguish between formal enforcement action proceeding under legislation and informal advice.

Achieving compliance efficiently

We aim to resolve possible breaches of planning without taking formal enforcement action.

We aim to agree reasonable time periods in which a resolution can be reached.

Planning permission can be sought retrospectively. Planning enforcement, in the first instance, aims to remedy harm caused by unlawful development and not to punish. If works to a development have already begun or been completed, permission will be considered on the merit of the application by a planning officer.

Planning enforcement action will be suspended until such a time that the application is determined.

Where possible, the best method of regularising a breach of planning is to prevent it before works have begun. This is why Portsmouth City Council offers a comprehensive [Pre-Application service](#) - to advise on whether a proposed development requires permission and even offer advice on whether an application would be supported.

5. Breaches of planning control

A breach of planning control is the carrying out of development without or against planning permission, when planning permission is required.

In essence, anything that is in contravention of the Town and Country Planning Act 1990 or the General Permitted Development Order (as amended) can be considered a breach. Listed below are some examples of what could constitute a breach of planning control.

Breaches of Planning Control

- Unauthorised developments that do not fall within permitted development.
- Unauthorised material change of use of a building or land.
- Unauthorised works to Listed Buildings.
- Unauthorised works to trees protected by a TPO (tree preservation order) or a conservation area.
- Unauthorised demolition in a conservation area.
- Unauthorised works to a building protected by an Article 4(2) direction.
- Breaches of conditions attached to Planning Permission.
- Developments not built in accordance with the approved plans.
- Engineering works (substantial raising of ground levels etc.) without planning permission.
- Operation of a business where the business takes over the residential use of the property.

Adversely, there are many instances where there is not a breach of Planning Control. These instances can include (but are not exclusive to):

Not a breach of Planning Control

- Internal works to a non-listed building.
- Obstruction of Highway (contact our highways team on Highways.PFI.Team@portsmouthcc.gov.uk)
- The situation of caravans or mobile homes on private property, as long as it is incidental to the enjoyment of the property itself
- Running a business from home, as long as the business use is secondary to the residential use of the property.
- Land ownership or boundary disputes. These are a civil, private law matter.
- Works that fall under permitted development.

- Advertisements that are allowed under the [Advertisement Regulations](#).
- Dangerous structures. Please contact our building control team on bcpartnership@fareham.gov.uk
- Health and safety issues. Please contact our environmental health team on pubprot@portsmouthcc.gov.uk.
- Damage caused to neighbouring properties (this would be a civil, private law matter in most instances).

When a complaint reaches us that doesn't constitute a breach of planning control but we think it could be suited to another department's statutory functions, we will ask for permission to pass it on to a relevant department.

6. Reporting a breach

We ask for complaints in writing because it provides evidence to justify why we are investigating, and is also useful if we need to update you.

Email is generally preferable because it means we can respond more quickly and efficiently, but we accept written letters.

Telephone complaints will be accepted if the matter is urgent, for example; if works are being undertaken to a TPO tree, a conservation area tree or listed building.

We generally do not investigate anonymous complaints unless the allegation is serious (as above).

Our email: Planningenforcement@portsmouthcc.gov.uk

Our postal address:

Planning Enforcement,
Civic Offices,
Guildhall Square,
Portsmouth,
PO1 2AU

For urgent matters only: Please contact the City Help Desk on 023 9283 4092 and ask to be put through to planning enforcement.

The complaint should include:

- An accurate description of the site, including its address.
- A description of the alleged breach and what is currently happening at the property.
- Any details you may have of those responsible for the alleged breach.
- When the alleged breach occurred/began.
- Other information such as planning reference numbers, previous breaches, conservation areas etc. if possible.
- Further evidence such as photographs from your point of view, if possible.

The more information we receive, the more straightforward the investigation will be. By supplying comprehensive evidence, a resolution may be able to be reached more quickly.

We can only consider information regarding planning. When considering evidence, we cannot take into account matters including (but not limited to) non-planning issues such as loss of property value, trespassing, damage to property and competition to your business.

7. Prioritisation

Planning enforcement regularly deal with over 450 cases per calendar year, and some cases are more urgent than others. Works to Listed Buildings, TPO trees and conservation area trees are given the highest priority, and will receive officer attention immediately.

Any other cases are dealt with as soon as information is received. We aim to gather evidence in the first instance, contact the proprietor and send a response to the complainant as soon as possible. If you want an update on how the case is being undertaken, please do not hesitate to contact us.

Where significant harm to amenity can clearly be demonstrated, the Council will usually contact the person allegedly causing the breach to discuss the problem.. This will often result in a planning application being submitted or, where something is considered to be unacceptable, there will be a discussion about removing or adjusting it. Only if the person causing the breach refuses to contact the Council, or to resolve an unacceptable matter, will the Council take enforcement action.

Enforcement action is, however, discretionary. The Council has discretion as to whether to take enforcement action or not, and it is not a mandatory duty so to do. Because something is a breach of planning control this is not, in itself, reason to take enforcement action. Even when it is technically possible to take action, the Council is required to decide if such formal action would be “expedient” in the public interest. There needs to be harm arising that is of sufficient detriment to warrant action being taken.

A breach of planning control is not normally a criminal offence in the first instance. Even if the Council is aware that someone is going to carry out works that require planning permission, it does not follow that it will be stopped. There would have to be considerable harm for the Council to seek an injunction to stop an unauthorised development taking place. It is recognised that this can be very frustrating for complainants, but the Council must operate within the legislative framework as set by the government.

The Council reserves the right to take into account any benefits someone has created through carrying out unauthorised development. Any breach of the requirements of a formal Notice will constitute a criminal offence. Should this happen, the Council has the ability to seek to recover profits made either under the Town & Country Planning Act 1990 and/or under the Proceeds of Crime Act 2002 and will consider such an application to the courts for deliberate breaches.

The Council starts from a position of trying to resolve all breaches of the planning system through dialogue and normally formal action is a last resort. The Council is usually expected to give those responsible the chance to put matters right before serving a formal notice. However, when the breach of planning control is causing unacceptable serious harm or nuisance to public amenity, formal action will not be delayed by protracted negotiation or attempts to delay the process. Enforcement action will therefore always be commensurate with the seriousness of the breach of planning control.

It follows that any enquiry can result in many different outcomes, from the Council concluding that there is no breach of planning control, through to serving an injunction to stop a breach with immediate effect. Some possible options are summarised below, but if you make an enquiry, whatever the outcome, you will be fully advised about what the Council is doing and why.

- No breach established - after a site visit there is found to be no breach of planning control: for example the development is permitted development or is not within the control of planning legislation. No further action will be taken and all parties will be advised as such.
- There is a breach, but it is not considered to be expedient to pursue the matter. If a 'technical' breach has taken place, for example a new garden fence has been erected that is only marginally over permitted development limits, then it is not normally proportionate to take lengthy and expensive enforcement action over something that causes minimal public harm. The owner would normally be advised to submit a planning application to regularise the development but if they do not do so the case could be closed and the complainant advised. It is usually in the best interests of the property owner to regularise the problem, or they may encounter problems when the property is sold.
- There is a breach and part of it is considered to be harmful. The Council may "under enforce" by serving a notice to secure a remedy to the most harmful part of the development, whilst leaving the lesser parts of the development untouched. For example, most garden fences can be 2m in height and it may be erected to 2.1m for the length and then one panel perhaps goes to 3m next to a neighbour's window. The Council may seek the removal of the 3m panel, but not to reduce the rest of the fence by 0.1m.
- There is a breach but it is 'immune' from action. It is possible that there has been a breach of planning control for some time but the Council has not been aware of it. If the building was substantially completed more than 4 years before, or a use commenced 10 years before, then the development can be considered to be immune from enforcement action. There are many caveats to these rules (for example, the period for residential use of a building is 4 years) and so more information will be required. The landowner would normally be advised to apply for a Certificate of Lawful Development to prove its immunity.
- If negotiation does not secure compliance with what the Council considers to be an acceptable solution, then it has the power to take formal action against any breach. The nature of the breach will dictate which route the Council chooses to pursue. Depending upon what action is taken, the person responsible may receive a criminal record. The Council will make it clear in correspondence (to the property owner or the person in control

of the land) what options are open to them to remedy the breach of planning control, and the timescales within which to carry those out.

The Council is very keen to promote businesses in the city to ensure a healthy economy, which is seen as a central part of delivering sustainable communities. With this in mind, the Government has considerable concern that small businesses in particular should not be unduly jeopardised by hasty enforcement action. Therefore, the Council will always seek to ensure there is a good dialogue with a business that has carried out development without planning permission and, if a solution cannot be found, then consideration will be given to ensure that any action that is taken is carried out to minimise the impact on the business, if reasonable and possible. This may result in longer compliance periods being given to regularise development. However, this desire to work with businesses will not be at the expense of tolerating any unacceptable impact on neighbours. The Council will have to weigh up and balance the impact on the business and the harm caused to others.

8. Possible outcomes

In most cases, we are able to resolve cases without taking formal enforcement action. Such a resolution can be achieved by reaching the following conclusions:

- **No Breach.** It can sometimes be concluded that no breach of planning has occurred. In such cases, the file will be closed and the details will be added onto our database for future reference. The complainant is informed and details of how the conclusion was reached are explained.
- **Non-expedient to enforce.** When a breach is identified but it is judged as being an unnecessary use of time and resources, it can be described as being **non-expedient to enforce against**. This is often used for lesser breaches and has to be agreed and signed off by the head of department.
- **Development is lawful.** The proprietor can prove that the property has been in use for such a time period that it is exempt from enforcement action. They will be invited to submit an application for a certificate proving the lawful use and this will be added to our records.
- **Breach ceasing negotiations.** We have attempted to reach a resolution that satisfies all parties. For example, use ceases, a time scale for the removal of offending structures is agreed or a planning application to regularise the development is submitted in a requisite time frame.

In such a situation where a resolution cannot be reached, formal enforcement action may be undertaken, utilising the following tools and procedures:

- **Planning contravention notice (PCN).** A PCN can be issued by the LPA in order to establish more information around the situation and is used as a formal procedure to signal intent that enforcement action is imminent. This offers the offender an opportunity to explain the breach and may include arranging a site visit to establish the best way forward.

Failure to respond to a PCN is an offence under the Town and Country Planning Act and carries a maximum penalty of £1,000 (Level 3 on the standard scale at the time of writing). Providing false or misleading information in response to a PCN can be punished by an unlimited fine (Level 5 on the standard scale at the time of writing).

- **Enforcement Notice.** This is the primary method of regularising a breach of planning control and can be issued under the Town and Country Planning Act 1990. This notice creates a legal duty for any that have a stake in the land to remedy the contravention within a timeframe specified within the notice.

The recipient of a notice may appeal the notice to the Planning Inspectorate, at which time the notice will be held in abeyance until the appeal is determined. Enforcement Notices are entered onto the Land Charges Register and stays with the Land they are served upon rather than the person.

Non-compliance with an Enforcement Notice constitutes a criminal offence for which the recipients may be prosecuted and are liable to receive a criminal record and an unlimited fine, **plus for payment of the Council's costs in bringing the case to court, which often run into thousands of pounds.**

The time limits set out by the Town and Country Planning Act 1990 detailing when an Enforcement Notice can be served are as follows:

Four years for building, engineering, mining or other operations in, on, over or under land, without planning permission. This development becomes immune from enforcement action four years after the operations are substantially completed.

Four years for the change of use of a building, or part of a building, to use as a single dwelling house. Enforcement action can no longer be taken once the unauthorised use has continued for four years without any enforcement action being taken.

Ten years for all other development. The ten year period runs from the date the breach of planning control was committed, until the investigation commences.

If a person deliberately conceals a development with the intention of deceiving the LPA to a point when the requisite time frame will have expired, an enforcement order can be obtained which would alleviate the time limit and allow for formal enforcement action to be taken.

- **Listed building enforcement notice.** This is equivalent to an Enforcement Notice but can be served under the Listed Buildings legislation. This means that it doesn't have to comply with time frames and may be issued at any time. If found guilty, the offender can face an unlimited fine and up to 6 months' imprisonment, or, upon indictment, up to two years' imprisonment and a fine.

- **Breach of condition notice.** This may be served when conditions imposed upon a planning permission are not adhered to. You cannot appeal this type of notice to the Planning Inspectorate and it can carry a fine of up to £2500.
- **Section 215 Notice** – provides the power to secure the proper maintenance of land and buildings where there is an adverse effect on the amenity of the area.
- **Stop notice.** This is the most serious type of enforcement action. It first requires an enforcement notice to be issued. It requires everyone to cease unauthorised use and is not limited just to recipients of the enforcement notice.

Improper use could result in severe implications for the LPA including reimbursement of earnings lost while the notice was served.

The fine for breaching a stop notice is unlimited upon indictment.

A temporary stop notice is also an option, and can be served without an enforcement notice being in place, but can only be renewed after 28 days if an enforcement notice has been served. The fine is the same as above.

- **Advertisements.** Adverts that aren't exempt under the advert regulations require consent or permission.
Anyone that acts in contravention with regards to these regulations is liable for fines of up to £2500 upon conviction, and up to £250 for each day the offence continues after conviction.
A discontinuance notice may be served against an advert where express consent is applied if the advert is considered to be inappropriate or dangerous. This can be appealed against.
- **Prosecution.** Prosecution can be pursued in accordance with the above notices and where it is in the public interest to do so.
Pursuant to prosecution, the LPA may be awarded costs of the process and fines may be imposed, along with a resultant criminal record.
- **Powers of entry.** The LPA has powers of entry that allow any authorised officer to enter land at a reasonable hour to assess whether a breach of planning control has occurred and how the LPA's powers are best used under the Town and Country Planning Act 1990. If entry is refused an LPA can obtain a warrant from a court to make entry, pursuant to the Town and Country Planning Act 1990.

9. Houses in multiple occupancy

Houses in multiple-occupancy ("HMOs") are a significant part of Portsmouth's community infrastructure and are regulated as closely as possible by the LPA.

More information can be found on these types of properties in our [HMO Supplementary Planning Document](#).

If you believe that there is a HMO in the city operating unlawfully, please follow the complaints process detailed above in section 6.

10. What happens if someone complains about you?

If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, and so we will always seek to work with you to understand the facts of the case.

Initially a member within the Enforcement Team will visit the site. Due to time constraints, this is usually without any prior warning to the owner or any tenants/employees at the site. Officers are authorised to visit a site to investigate and will show identification when they arrive. Enforcement officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the Enforcement Officer. If the allegation refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved, the Planning Enforcement team will advise you of the details of the breach and how it can be rectified. You may be served with a Planning Contravention Notice, which requires information concerning the alleged development. This notice is used to establish the facts of what has occurred and the details of those with an interest in the land, so that the Council can determine whether a breach has taken place and who is responsible. It is a criminal offence to not complete and return such a notice within the specified timescale.

In the event of a breach being established, your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development, or by ceasing the unauthorised use or activity prohibited by a planning condition. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this. In some circumstances you may be invited to submit a retrospective planning application or, other appropriate application if it is considered that consent may be granted or an application for a Certificate of Lawfulness of Existing Use or Development, where it can be shown that the breach is immune from enforcement action and therefore lawful.

If compliance is not secured through negotiations or the relevant retrospective application / Certificate of Lawfulness is refused, formal action may be instigated (see types of formal action above).

11. Customer Care

The City Council is committed to offering a fair and transparent enforcement service to the community.

Planning enforcement is a complicated area of law and care must be taken to arrive at a correct and appropriate course of action related to alleged breaches of planning control. In exercising this policy, the City Council will offer all of its customers, whether they are complainants or those who may be in breach of relevant controls, adequate opportunities

to fully state their case, in order to ensure that the correct decisions are taken to safeguard the built and natural environment of Portsmouth.

If persons are aggrieved with the Planning Enforcement Service offered to them, there is a complaints procedure, where complaints can be investigated.

If both stages of the procedure have been exhausted and a customer is still not satisfied, the matter can be investigated by the Local Government Ombudsman. They will make an independent investigation of whether maladministration has occurred by the City Council and if it has, recommend what remedy ought to take place. This may include the payment of compensation.

12. Development Monitoring

Where possible, the Local Planning Authority aims to monitor developments to ensure that they are built in accordance with approved plans and conditions are discharged and complied with. As such, we generally rely on working in conjunction with other council departments, local residents, ward councillors, community groups and internal notifications to become aware of non-compliance.

On major developments the enforcement team will monitor on site from the commencement of development to ensure that the development is carried out to the highest standards.

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Title of meeting:	Cabinet Member for Planning, Regeneration and Economic Development
Date of meeting:	6 th November 2018
Subject:	Planning Practice Guidance Viability in Planning & CIL Reforms
Report by:	Claire Upton-Brown, Assistant Director of City Development
Wards affected:	All
Key decision:	No
Full Council decision:	No

1. Purpose of report

- 1.1 To report the changes on Guidance on Viability in decision making as agreed at the PRED meeting of the 28 February 2018 in response to the Motion to Full Council 12b Economic Viability Assessments for developers 17th October 2017.
- 1.2 To consider the content contained in the Guidance on Viability published in July 2018 as Planning Practice Guidance (PPG) and implications for the way Viability in decision making on applications and in plan making is managed going forward. Further to consider the Guidance on Viability relating to the collection, monitoring and reporting of contributions through Section 106 and Community Infrastructure Levy (CIL) and suggest how the local planning authority needs to respond to this Guidance.

2. Recommendations

It is recommended that:

- 2.1 **The Viability Guidance in Planning Practice Guidance relating to Local Plan making should be fully embodied in the Local Plan Review work.**
- 2.2 **The Assistant Director of City Development prepares a protocol for developers following the publication of the Standard Templates referenced in the PPG. The protocol will confirm that all viability assessments submitted relating to planning applications accord with the Planning Practice Guidance Viability including the guidance on viability assessments being publicly available.**
- 2.3 **The Assistant Director of City Development is authorised to procure a framework of viability consultants to provide support, should it be required to the planning team, to ensure better and more consistent outcomes for the City.**

2.4 The Assistant Director of City Development is authorised, in line with the new National Planning Policy Framework (NPPF) guidance:

- **To include all planning obligations together with details of any modification or discharge of the planning obligation on its Planning Register.**
- **To review and amend process to ensure that all new Section 106 Agreement include an Executive Summary in accordance with the proposed template that will be published and that all live and future Section 106 are monitored in accordance with the template.**
- **In the interest of accountability and transparency, to produce and publish a report to be published on the Council website by 31 December each year setting out what all CIL contributions have been spent on. CIL spend will also continue to report in the authority monitoring report.**
- **To prepare an Infrastructure Funding Statement using the standard template that is to be published. This Statement will set out infrastructure requirements for both CIL and Section 106 planning obligations, anticipated funding from developer contributions and confirm choices the local planning authority has made with the S151 Officer about how these contributions will be used. In the interest of accountability that this statement is report to PRED before being published on line.**
- **To work with applicants to better promote and publicise the infrastructure that has been delivered through developer contributions through initiatives such as the use of on-site signage, local authority websites or development specific sites.**
- **To review the current mechanism for promoting, allocating and spending Neighbourhood CIL to ensure that there is a robust process in place to ensure that contributions are being spent and sufficient guidance and support is being given to Ward Councillors and communities to identify a range of infrastructure projects suitable for CIL funding to support the development of an area.**

2.5 The Assistant Director of City Development working with the Cabinet Member for PRED will ensure that the planning committee and interested Councillors are supported with training to ensure a better understanding of the new viability proforma and CIL regulations.

3. Background

- 3.1 In response to a Motion to Full Council that requested that the Cabinet Member for Planning, Regeneration and Economic Development commissions the development of a Draft Development Viability Supplementary Planning Document it was agreed that whilst there is clear benefit in agreeing a protocol

on the way that the local planning authority will manage applications where viability assessments are submitted. In light of the consultation and imminent publishing of the revisions to the NPPF which was anticipated to deal with the matter of viability assessments it was proposed that a further paper should be bought back to PRED when the revised NPPF was published.

- 3.2 The revised NPPF was published on the 24 July 2018 on the same date the Planning Practice Guidance on Viability was published in line with the new NPPF. The NPPF itself no longer makes reference to the approach to viability with Paragraph 173, which was the central provision of the NPPF 2012 in respect to viability and talked about the cost of development and competitive return etc. being removed from the revised NPPF. Instead the Planning Practice Guidance (PPG) Viability Guidance sets out how viability should be dealt with in plan making and decision making and sets out accountability including how Section 106 and CIL contributions are monitored and publicised.

4.0 Key areas of Guidance

- 4.1 There are a number of key areas of Viability Guidance contained in the PPG these will be considered in the following paragraphs under the headings of Viability and Plan Making, Viability and Decision Taking, Standardised inputs to Viability Assessments and Accountability.

5.0 Viability and plan making

- 5.1 The guidance confirms that the role of viability assessments is primarily at the Plan Making stage. Viability assessment should not compromise sustainable development but should be used to ensure that policies are realistic, and that the total cumulative cost of all relevant policies will not undermine deliverability of the plan.
- 5.2 Policy requirements, particularly for affordable housing should be set at a level that takes account of affordable housing and infrastructure needs and allows for the planned types of sites and development to be deliverable, without the need for further viability assessment at the decision making stage. The price paid for land is not a relevant justification for failing to accord with relevant policies in the Plan.
- 5.3 Assessing the viability of plans does not require individual testing of every site or assurance that individual sites are viable. However in some circumstances more detailed assessment may be necessary for particular areas or key sites on which the delivery of the plan relies.
- 5.4 The guidance acknowledges the importance of considering specific circumstances of strategic sites that are critical to delivering strategic priorities of the plan. This is particularly important for the strategic allocations at Tipner and the City Centre; this Guidance will inform the Local Plan Review work.

5.5 Where up-to-date policies set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The Guidance sets out the following circumstances where viability should be assessed in decision making.

6.0 Viability and decision taking

6.1 Where up to date policies set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. These could include where development is wholly different from that used in the viability assessment to inform the plan, where particular types of development are proposed that vary from the standard for sale model or where recession or similar significant economic change have occurred.

6.2 Where a viability assessment is submitted to accompany a planning application this should be based on and refer back to the viability assessment that informed the Plan and the applicant should provide evidence of what has changed since then. The weight to be given to viability assessments is a matter for the decision maker, having regard to all the circumstances in the case including whether the Plan and viability assessment is up to date.

6.3 Plans should set out circumstances where review mechanisms maybe appropriate as well as clear circumstances where viability will be reassessed over the lifetime of the Plan to ensure policy compliance and optimal public benefit through economic cycles. This is a matter for consideration as the work on the Local Plan Review develops.

7.0 Standardised inputs to viability assessments

7.1 The Guidance confirms that any viability assessment at Plan level should be supported by appropriate available evidence informed by engagement with developers, landowners and infrastructure providers and affordable housing providers. Any viability assessment should follow the Government's recommended approach assessing viability as set out in the guidance and be proportionate, simple, transparent and publicly available.

7.2 In plan making and decision making viability helps strike a balance between the aspirations of developers and landowners in terms of return against risk and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission.

- 7.3 The Guidance clearly sets out how gross development value should be defined and how costs should be defined for the purpose of viability assessments. In terms of land values for the purpose of viability assessments the Guidance confirms that a benchmark land value should be established on the basis of existing use value (EUV) of the land, plus a premium for the land owner. The premium should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. This premium should provide a reasonable incentive in comparison with other options available.
- 7.4 Benchmarking land value should:
- Be based on existing use value
 - Allow for a premium to landowners
 - Reflect the implications of abnormal costs
 - Be informed by market evidence including current use, costs and values wherever possible.
- 7.5 Where viability assessment is used to inform decision making under no circumstances will be price paid for land be a relevant justification for failing to accord with relevant policies in the Plan. Local planning authorities can request data on the price paid for land (or the price expected to be paid through an options agreement).
- 7.6 For the purposes of Plan Making an assumption of 15-20% of gross development value (GDV) maybe considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development.
- 7.7 The economics of build to rent schemes differ from build for sale as they depend on a long term income stream. The guidance gives plan makers options to set out in plans where review mechanisms will be used for build to rent schemes.
- 8.0 Accountability**
- 8.1 This section of the Guidance deals with how viability assessments are presented and published to ensure accountability. It sets out that assessment must be prepared by a suitably qualified practitioner and presented in accordance with the Guidance. An Executive Summary should be used setting out key findings of the viability assessment in a clear way. These reports must clearly state what assumptions have been made about cost and values, if presented at the decision making stage they must set out any deviation from the figures used in the viability assessment of the plan.
- 8.2 Any viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances. Even in those circumstances an Executive Summary should be made publicly available.

Information used in viability assessment is not usually specific to that developer and thereby need not contain commercially sensitive data. Even then this information should be aggregated in published viability assessments and Executive Summaries and included as part of total costs figures. Where any exemption from publication is sought the local planning authority must be satisfied that this is the case.

- 8.3 An Executive Summary as a minimum must set out the gross development value, benchmark land value including landowner premium, costs, as set out in the guidance where applicable, and return to developer. The summary must refer back to the viability assessment that informed the Plan and summarise what has changed since then. The government will be publishing a template in the autumn.
- 8.4 Local planning authorities will now make reference to all planning obligations together with details of any modification or discharge of the planning obligation on its Planning Register. The government has recommended that each Section 106 Agreement includes an executive summary in accordance with the template that will be published. It is further recommended in the guidance that local planning authorities monitor Section 106 in accordance with the template.
- 8.5 The Guidance also sets out new requirements for the way local planning authorities that are charging Community Infrastructure Levy (CIL) must report on the levy. Neighbourhood spend must also be reported and there is now a requirement under the Guidance for charging authorities to publish reports on their website by 31 December each year, they can also continue to report in the authority monitoring report.
- 8.6 Using data on CIL and planning obligations, the Government recommends that local planning authorities prepare an Infrastructure Funding Statement using the standard template that is to be published. This Statement must set out infrastructure requirements (which would accord with or be a trigger for updating the 123 List), and for both CIL and Section 106 planning obligations, anticipated funding from developer contributions and the choices local authorities have made about how these contributions will be used. These Statements should be published on line.
- 8.7 Finally the Guidance recommends that local planning authorities and applicants should work together to better promote and publicise the infrastructure that has been delivered through developer contributions. It is suggested that this could be through the use of on-site signage, local authority websites or development specific sites.

9.0 Reason for recommendations

- 9.1 The issue around lack of transparency when viability becomes a consideration in planning decisions has been a point for considerable debate in Councils across the Country. The Guidance provides a clear guidance on how the matter of

viability should be dealt with in both Plan Making and decision making to ensure that policies are realistic, and that the total cumulative cost of all relevant policies does not undermine deliverability of the plan and at decision making local planning authorities can secure maximum benefits in the public interest through the granting of planning permission.

- 9.2 The Guidance focuses on ways Councils can be more transparent and accountable and suggests mechanisms by which Councils can demonstrate how contributions from Section 106 and CIL are being used to deliver the infrastructure to support the development of their areas. There is a need to review current processes to ensure that they now align with the PPG on Viability.

10.0 Equality impact assessment

- 10.1 An equality impact assessment is not required as the recommendations do not have a disproportionately negative impact on any of the specific protected characteristics as described in the Equality Act 2010.

11.0 Legal implications

- 11.1 Legal Services note the PPG's requirement for future s.106 planning obligations agreements to contain an executive summary. This will require a little extra drafting on each agreement with costs continuing to be borne by the developer.
- 11.2 Legal Services note the front-loading of viability work into the plan-making stage with the intention that viability appraisals should not be the norm at the point of decision-making as developers should work to meet the Local Planning Authority's expectations for development contributions when compiling an application. This process invites a 'then-and-now' comparison, and it is noted that although any excuse of having paid too much for land has been prohibited, loosely defined "economic change" is cited as a reason for exception.
- 11.3 Legal Services also note the expectation that where viability appraisals are produced this will be done in a fashion that is publicly transparent, allowing for aggregation of data to preserve commercial sensitivity. This should reduce the amount of exempt items liable to be considered by the Planning Committee in closed session. However, it is noted that applications for novel uses or build-to-rent models are likely to still require viability appraisals and these may still produce exempt items.

12.0 Director of Finance's comments

- 12.1 There are no direct additional financial implications of approving the recommendations within the report, all costs of developing the Viability protocol will be met from existing cash limits.

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Signed by:

Appendices:

None

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Guidance Viability	www.gov.uk/guidance/viability
National Planning Policy Framework (NPPF)	

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: