

SCOTTISH BORDERS COUNCIL **SCRUTINY COMMITTEE**

MINUTE of MEETING of the SCRUTINY
COMMITTEE held in the Council Chamber,
Council Headquarters, Newtown St. Boswells
on 11 June 2015 at 10.00 a.m.

Present: - Councillors G Logan (Chairman), W Archibald, A Cranston, K Cockburn, S
Mountford, A Nicol, J Torrance.
Apology: - Councillors I Gillespie, R Stewart.
In Attendance:- Clerk to the Council, Democratic Services Officer (J Turnbull).

Members of the Public – One.

MINUTE

1. There had been circulated copies of the Minute of Meeting of 28 May 2015.

DECISION

APPROVED for signature by the Chairman.

FUNDING AVAILABLE TO COMMUNITY COUNCILS

2. With reference to paragraph 2 of the Minute of 26 March 2015, there had been circulated copies of a Briefing Note for consideration on 'Support available to Community Councils from Scottish Borders Council'. The paper was presented to the Committee by Ms Malster, Strategic Community Engagement Officer, and gave details of the internal funding available to Community Councils from Scottish Borders Council. There were 69 community council areas in the Scottish Borders, all of which had operational Community Councils. All received some level of financial support from the Council, with many receiving support to access funding through the Council's internal grant schemes. Direct funding sources from Scottish Borders Council detailed in the report included annual core grant, hall hire reimbursement and local community path maintenance grant. Indirect support provided by the Council was provision of insurance and Data Protection registration. Funding accessible to Community Councils included the Scottish Landfill Communities Fund (SCLF), Community Grant Scheme, Small Schemes, Quality of Life and Common Good. The Committee welcomed the paper, however, requested an additional paragraph be added, advising that there were other external funds available and that the Council's Funding and Projects Officer, Mrs Jean Robertson, would be pleased to advise on these. The Briefing Note should then be circulated to Community Councils via email. Democratic Services Officers would also distribute to Community Council representatives in attendance at Area Forums.

DECISION

AGREED:-

- (a) to add a paragraph to the Briefing Note stating that advice on other funding sources was available from the Council's Funding and Project Officer;
- (b) to circulate the Briefing Note to all Community Councils via email; and
- (c) that Democratic Services Officers distribute copies of the Briefing Note to Community Councils' representatives at Area Forum meetings.

PRESENTATIONS ON PLANNING ENFORCEMENT AND THE BUILDING INSPECTION REGIME

3. With reference to paragraph 6(a)(iii), (v) and (viii) of the Minute of 26 March 2015, the Chairman welcomed the Lead Officer Enforcement, Mr Alan Gueldner and Lead Building Standards Surveyor, Mr James Whiteford, who were in attendance to give presentations on planning enforcement and the building inspection regime respectively. Mr Gueldner began by referring to the legislation the Enforcement Team was governed by: Town and Country Planning (Scotland) Act 1997; Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; Town and Country Planning (Control of Advertisements) (Scotland) Regulations and Building (Scotland) Act 2003. The Enforcement Team's duties covered: unauthorised development, non-compliance with approved plans or conditions, Tree Preservation Orders (TROs), Listed Buildings, Compulsory Purchaser Orders, advertisement control and the proper maintenance of land. The majority of their time (57%) was spent dealing with unauthorised development. Mr Gueldner explained that the guidance encouraged resolution by negotiation and this had resulted in only 14 Notices being issued out of 156 cases referred in 2014. Complaints were received from various sources - online, from Councillors or planning officers. Mr Gueldner explained the procedure when dealing with a dangerous building was to initially request Building Services to assess. If Building Services deemed the building was in a dangerous condition the Enforcement Team would then take immediate action. However, if the building was not immediately dangerous they were required to go through the Notice procedure. Contracts were appointed to undertake the necessary works and a Clerk of Works was appointed on site to oversee the works. Mr Gueldner referred to a listed building located on Jedburgh High Street, which had been structurally unsound. The Council had to compulsorily purchase the building and demolish entirely. It was now owned by the Council and on the market as a development site. Mr Gueldner went on to give an example of a planning enforcement case of an unauthorised development at Craik Forest. The development had progressed to the Notice stage but the owner of the building had carried out the demolition work. Another example was a tenement building in Hawick with water ingress, where the Council had to repair the roof of the building as the owner had not been able to afford the costs. The bank had repossessed the building and sold it on. The bank had recouped their costs as they had first charge on the property. The Council were now pursuing the new owner to recover their costs. The Team also dealt with emergency call outs, for example, recently they had been called out to a fire at Kingsmeadow in Peebles. They had liaised with the Fire Service and erected fencing around the building for public safety. In answer to Members' questions Mr Gueldner clarified that dangerous walls near a public road or footpath would be passed to the Roads section and was not the responsibility of the Enforcement Team. The Council was able to recoup contractors' costs from owners of buildings, but chasing payment often proved difficult.
4. Mr Whiteford, Lead Building Standards Surveyor, reported on inspections for buildings under construction. Two pieces of legislation regulated the building inspection regime: The Building (Scotland) Act 2003 and The Building (Procedures) (Scotland) Regulations 2004. The Construction Compliance and Notification Plan (CCNP) indicated what inspections were required and placed responsibility on the applicant and verifier. Mr Whiteford highlighted that obligation and compliance lay with the applicant/builders. Enforcement Officers were only able to ensure the works had been carried out in accordance with the Building Warrant and complied with building standards. Building Warrant inspections were to protect the public interest and could only cover compliance of works in terms of the building regulations, and did not provide the applicants with a monitoring service in terms of quality of the work they might be expecting from their builder. Mr Whiteford went on to explain that calculating the number of inspections required was risk based, whereby a minor alteration to a building might only receive two inspections, a new house could receive seven to eight inspections. New commercial properties could receive inspections two to three times a week. In 2015/15, 1,489 Completion Certificates had been accepted; once the Completion Certificate had been issued a property was not revisited, any future problems were dealt with by the guarantor e.g. NHBC. It was acknowledged that anyone could become a builder and the lack of an accreditation scheme was a problem. The Federation of Master Builders covered smaller firms. There was also government certified schemes for electricians and plumbers. The Team did get to know

builders but would ask for destructive work to be undertaken if something had already been covered prior to inspection. Mr Whiteford confirmed that once a Building Completion Certificate had been issued, the only powers available to the Team to use were Section 27 (Dangerous Buildings) and to pursue the current owner of the property. The NHBC had an obligation to uphold a warranty but that only applied to those who had taken this out. In response to a question, Mr Gueldner also advised that the Council itself was not above the law and, if required, notices would also be served on SBC, although this would be very unusual.

5. There followed a discussion on private water supplies and treatment plants. It was explained that private treatment plants were now covered by Controlled Activity Regulations (CAR), but older properties may have a septic tank below current standards or it may be undersized. When alterations or an extension was made to the property the septic tank had to be inspected to gauge suitability and it could mean that a new tank was required. The Team had a good relationship with SEPA and it was SEPA who dealt with older properties without a septic tank under control of pollution regulations. If there was not a pollution problem then SEPA would not get involved.
6. The Committee then asked for clarification on overgrown hedges and trees. Overgrown hedges impinging on the highway were referred to the Roads section. High hedges were dealt with by the team and there was an application process with a fee of £400.00. If a tree covered by a Tree Preservation Order (TPO) was felled without the Council's permission, this was a criminal offence and would be prosecuted through court. The removal of overhanging branches also required permission. Trees in a conservation area had the same protection as trees covered by TPOs. Trees not covered by a TPO or located out-with a conservation area did not require permission for felling or pruning, although under common law any branches overhanging a neighbour's property could only be trimmed back to the boundary and then the pruned branches given back to the owner of the tree. As any problems had to be resolved by the owner of a tree, the Council only had responsibilities for trees in its ownership, and could not intervene elsewhere.
7. In terms of building standards, Mr Whiteford explained that they were part of the 2012 Performance Framework and had a response target of 21 working days. There was a direct link between the resource requirements and inspection requirements so if the targets were not met this was sometimes due to a resource issue. They were funded through the building warrant process, and if the economy improved and building works increased then resources would also need to increase. There were plans to recruit a trainee in the summer. Mr Gueldner explained that in terms of planning enforcement, they were a small team of four. They would prefer to be proactive rather than complaint led but this was a resource issue and current resources were at capacity. They held a difficult balance between upholding the law and complying with legislation. Customer service was a priority and they were there to provide assistance and guidance wherever possible. The Committee thanked Mr Gueldner and Mr Whiteford for their informative presentations.

**DECISION
NOTED**

- (a) **in respect of building standards the requirement for additional staff resources if the economy was to improve; and**
- (b) **in respect of planning enforcement that the current resources were at capacity, and that if the service was to become proactive rather than reactive, more resources would be required.**

DATE OF NEXT MEETING

8. The next meeting of the Scrutiny Committee was scheduled to be held on 20 August 2015.

**DECISION
NOTED.**

PRIVATE BUSINESS

9. **DECISION**

AGREED under Section 50A(4) of the Local Government (Scotland) Act 1973 to exclude the public from the meeting during consideration of the business detailed in the Appendix to this Minute on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 8 of Part 1 of Schedule 7A to the Act.

SUMMARY OF PRIVATE BUSINESS

MINUTE

1. Members approved the private section of the Minute of 28 May 2015.

The meeting concluded at 11.35 am.