

**Manchester City Council
Report for Information**

Report to: Neighbourhoods and Environment Scrutiny Committee - 5
February 2020

Subject: Planning Conditions and Enforcement

Report of: The Strategic Director Development

Summary

Members have asked for a report which provides information relating to a number of planning related matters principally around the use and enforcement of planning conditions. This includes reference to conditions involving trees and open space.

Information has also been requested on how the Planning Service works with the Highway Authority and Social Providers. This includes with regards to the Highway Authority issues relating to construction management and our social providers through their development activity.

To assist Members, the report includes a summary of the legal framework within which the planning system must operate.

Recommendations

To note the report.

Wards Affected: All

Environmental Impact Assessment - the impact of the issues addressed in this report on achieving the zero-carbon target for the city

The Planning System assists in mitigating impacts of climate change through the statutory framework. Planning conditions are important in ensuring development is carried out in accordance with planning policy which includes addressing climate change to deliver sustainable economic growth.

Manchester Strategy outcomes	Summary of how this report aligns to the OMS
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Planning supports economic growth in its wider context through enabling new development, creating jobs across all sectors. On specific proposals local labour benefit agreements are sought which also includes opportunities for training.

A highly skilled city: world class and home grown talent sustaining the city's economic success	See above
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	See above
A liveable and low carbon city: a destination of choice to live, visit, work	A major planning consideration is how a development contribute to the quality agenda, to a sense of place and the neighbourhoods, this includes how it addresses sustainability and climate change.
A connected city: world class infrastructure and connectivity to drive growth	See above

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Background documents (available for public inspection): None

1.0 Introduction

- 1.1 Members have requested a report principally around how agreed planning conditions are monitored and where necessary enforcement action taken. Questions have also been raised about these in the context of developers not adhering to their condition to plant/replace trees and develop green spaces.
- 1.2 Further, information has been requested on how the Planning Service works with the Highways Authority, with particular reference to construction management and with our Social Providers on their development proposals.
- 1.3 To assist the Committees consideration of the above, the report provides a summary of the legislative context within which planning compliance matters have to be lawfully evaluated and assessed. This is important as planning does not operate in a vacuum but must have its decision making, including how we enforce conditions, based on relevant legislation, policy, guidance and case-law.

2.0 Planning Conditions

- 2.1 Planning conditions are used to enhance the quality of development, by mitigating harm and to enable a development to take place that would otherwise have been refused. In essence, they must be fair, reasonable and practicable and tailored to deal with specific issues.
- 2.2 As context to how conditions are enforced, the following sets out a brief summary on the legal framework which govern their use.
- 2.3 Legislation provides a very wide power to LPAs to impose conditions on a grant of planning permission. However, the power is restricted to the need to have regard to Government advice in the National Planning Policy Framework (NPPF) and the relevant guidance given in the National Planning Practice Guidance.
- 2.4 These policy and guidance documents set out that, for conditions to be lawful they must only be used to satisfy specific tests. These tests are that conditions must be necessary (to make the development acceptable in planning terms), relevant to planning, relevant to the particular development, enforceable, precise; and reasonable in all other respects.
- 2.5 Amongst other things, this means that conditions must be consistent with national planning policies and accord with the provisions of the LPAs development plan (the Core Strategy).
- 2.6 There is nothing in law or guidance that condones a wilful breach of planning law but the key tenet is that enforcement action should be proportionate to the breach of planning control to which it relates and should only be taken when it is expedient to do so. This includes only taking action where it is in the public interest to pursue formal action. Whether or not it will be in the public interest to take enforcement action will vary from case to case.

- 2.7 Similarly the most appropriate way to tackle an alleged breach of planning control will ultimately depend on the circumstances. For the purposes of the Planning Act
- (a) carrying out development without the required planning permission; or
- (b) failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
- 2.8 The importance of taking into account all circumstances is demonstrated, for example, by para 58 of the National Planning Policy Framework which notes that:
- “Enforcement action is discretionary and should only be undertaken when the breach of planning control creates significant harm. Where possible the Local Planning Authority (LPA) should negotiate to resolve the breach of planning control....
Enforcement action is not appropriate against trivial/technical breaches that cause no harm”
- 2.9 It is also important to note that in general, conditions which duplicate the effect of other legislation should not be imposed. For example, conditions that require compliance with other regulatory requirements (for example Building Regulations, the Highways Act and the Environmental Protection Act) will not meet the necessity test. Planning conditions cannot therefore duplicate other non-planning law either directly or indirectly.
- 2.10 Changes to the regulations in October 2018 requires a LPA where pre-commencement conditions are to imposed, to agree these in writing with the applicant prior to permission being granted.
- 2.11 Once a planning permission is granted an applicant has a right to:
- Seek to have a condition removed or changed by making an application to the local planning authority or;
 - to seek to appeal against the imposition of individual conditions to the Secretary of State.
- 2.12 This does not lessen the importance of planning conditions and indeed they are a valuable and necessary tool; it does mean, however, that care has to be taken over their use for them to be effective.
- 2.13 Experience in Manchester is that in the majority of cases, planning consent is sought before development, new build or change of use, has commenced. This also applies to compliance with planning conditions; whilst breaches of planning condition do occur this is not common practice (see 4.10).
- 2.14 Where there is evidence of a breach the Planning Service is committed to reviewing, investigating and resolving issues where possible in a timely

fashion. The LPA has statutory powers to investigate breaches, this includes taking formal action where a satisfactory outcome cannot be achieved by negotiation.

- 2.15 Planning Enforcement is a complex part of the planning system and bringing matters to resolution is not always straight forward. Its purpose is to resolve problems, not punish mistakes or criminalise those who are found to have caused a breach. This means that, even where there is a breach of planning control, the Council has to consider if it is in the public interest to take enforcement action. The Council is not required to take any particular action on a specific breach of planning control and, indeed, can decide that no action is necessary.
- 2.16 It is therefore important to note that enforcement action does not necessarily follow a breach of planning control. There is a need to strike a balance between protecting the environment, protecting the amenities of neighbours and conserving historic building and areas, whilst at the same time enabling the freedom of the owners to use or alter their property. The focus in Government guidance is on both the impact of any breach on the complainant but also on the rights of the owner or occupier where the alleged breach is occurring. We are also required to have regard to the provisions of the European Convention on Human Rights where relevant; this includes the potential impact on the health, housing needs and welfare of those affected by the proposed action, together with those who are affected by a breach of planning control.
- 2.17 In most instances addressing breaches of planning control without formal enforcement action can be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore, in some instances formal enforcement action may not be appropriate.
- 2.18 Notwithstanding this, the integrity of the planning process depends upon our commitment to take effective action against unauthorised development which causes significant harm. Undertaking enforcement action when required is vital to this.

3.0 Formal Action

- 3.1 Where it is considered a breach of a condition has been identified and the only effective route to resolve the matter is through formal enforcement action, the options for the LPA are to serve an Enforcement Notice and a Stop Notice in the most serious of breaches or a Breach of Condition Notice. These will set out the steps required to remedy the breach of planning control including, where a breach of condition is alleged, the steps required to comply with the condition, as well as specifying the period within which such steps must be taken (the compliance period).

- 3.2 A breach of these notices will occur, if, after the compliance period, there has been no compliance and/or the steps specified have not been taken or the activities specified have not ceased. The responsible person will at this stage be guilty of an offence and a summary prosecution could be brought in the Magistrates' Court for the offence of contravening the Notice.
- 3.3 Unlike an Enforcement Notice, there is no right of appeal to the Secretary of State against a Breach of Condition Notice. This is because this is viewed as a more minor breach than for example a development that does not have planning permission. The validity of a Breach of Condition Notice, and the propriety of the local planning authority's decision to serve such a Notice, could, however, be challenged by application to the High Court for judicial review.
- 3.4 The effectiveness and enforceability of a condition could be raised in a defence to a prosecution relying on the tests set out above. This can give rise to any number of grounds for potentially challenging the validity or effect of the notice which relies upon that condition.
- 3.5 The number of Breach of Condition Notices issued is provided in the table in section 4. Other allegations of breaches of conditions have been made, but have been resolved without the need for formal action.

Case Studies

Grade II* Listed Building, Jersey Street – as part of both the listed building consent and planning permission there was a requirement for a replacement boundary treatment prior to occupation; this would remove an unattractive palisade fencing that had negative impact on the setting of this important listed asset. This was escalated to the Planning Compliance Team when the failure to comply with the condition was raised by the case officer. The team have been successful in delivering a scheme for the replacement of the fencing and this is now proceeding to a formal discharge of the condition. Officers will continue to work together to ensure that the agreed scheme is now fully implemented.

Care Provider, Rochdale Road - the permission involves a number of conditions ranging from landscaping, boundary treatment to the provision of a travel plan. Through discussion, negotiation and regular visits from the Compliance Team, the development is now nearing compliance without the need for any formal action. The landscaping has been delivered, the boundary treatment has been achieved and the revised travel plan following commencement of the use is being compiled with.

Supermarket in Openshaw – Following a complaint about early deliveries and lighting, a breach of several conditions was established. Officers found that vehicles were being allowed in to the site but that the gates had been opened early to prevent them waiting on the street close to homes. The matter was resolved quickly through immediate contact with the store and its manager (including meetings on site) and this included a commitment to instruct those delivering to the store to not arrive until the permitted time.

The site is now subject to ad hoc monitoring.

4.0 Monitoring of Development

- 4.1 This is an area that has raised questions, particularly as the planning service may not always be aware of a breach of planning control.
- 4.2 Developers are not required to inform a LPA that work is starting on most developments once planning permission has been granted; it is unlawful to make this a condition of a planning consent. The ethos of the planning system is that it is the responsibility of the applicant or any subsequent developer to ensure that the terms of all conditions are met in full. Significantly for an applicant, failure to both discharge and comply with conditions at the correct time runs the risk of impacting on a planning permission and questions whether this remains in force due to a breach.
- 4.3 We do adopt a more proactive and targeted approach to monitoring where able and circumstances are such that this is believed necessary. Compliance officers monitor sites in conjunction with other officers where resources permit. Such cases may well include for example where there have been similar breaches in the recent past such as an establishment opening beyond the permitted hours or bin storage areas not being provided or on particularly sensitive and/or complex sites. Another example is that of tree protection measures being put in place prior to any construction work starting or, as set out below, where work is proposed to a listed building.
- 4.4 It is important to recognise that we are not able to monitor each and every site. The compliance team itself is responsible for tackling all planning related complaints and undertake proactive investigations on other potential breaches of control, for example the recent work on shisha bars. Complaints are received from across the city and are wide ranging. A large number of complaints are from residents concerned about works to a neighbour's property but allegations of a breach covers far more including signage, adverts, changes of use and so on. Such complaints will, by their nature, not only relate to developments that have been through the planning system: they may be about developments which require planning permission but haven't obtained it, or they may be about developments that have deemed planning permission (known as "permitted development") but which have breached relevant conditions or limitations.
- 4.5 On a practical level, once a consent has been granted development may not commence for several years. This means that tracking starts on site is a significant issue. In Manchester we receive around 4000 applications per year, a large number of which will be approved subject to conditions, even the smaller minor applications can have several associated conditions. These applications are spread across the city with a high number relating to householder and modest proposals which are no less important than the larger major schemes. Further, as touched on in 4.4 above, there are also innumerable developments which take place without necessarily requiring any LPA involvement. The resource implications for monitoring would be so significant to make this impossible without a substantial increase in staffing numbers.

4.6 This is a similar position for other local planning authorities who must deliver core business activity within limited budgets. Income is received from planning application fees whereas enforcement/compliance activity generally involves expenditure which has little potential to be recovered. Enforcement work together with that on heritage and trees has to be supported from income from planning application fees.

4.7 Case Studies

Welsh Baptist Chapel – the decline of the listed 2* Chapel had been high profile for many years. Applications for its repair and alterations were eventually submitted and approved

Officers worked very closely with the applicant's architects in order to ensure full appropriate compliance with the conditions of the planning permission and listed building consent. This involved visiting the site to assess materials, particularly the replacement stone work and to check the approved internal finishes.

As part of our collaborative approach officers from the different services also monitored the site, for example, the exhumation works involved in the development. The close working between officers and the applicant enabled revisions to be made to the scheme as issues arose to ensure these did not compromise the integrity of the proposal.

The result is a building being brought back into sustainable re- use with the restoration of the remaining elements of this highly significant heritage asset.

New Cross – This is an area being transformed as part of the delivery of the New Cross Development Framework (NDF) and New Cross Public Realm Strategy. The vision is to deliver a residential led redevelopment and regeneration of the area in order to provide new homes, in a sustainable location. The public realm strategy seeks to make environmental improvements in the area through a series of interventions which include upgrading of the footways, creation of new public realm and tree planting.

Several developments have been completed or are near completion such as the Marriott Hotel, Stay City apart hotel and a residential scheme along Oldham Road). Other schemes have been granted planning permission or have recently commenced such as a residential development on Addington Street.

The delivery of the high quality development is a fundamental part of realising the potential of this new neighbourhood. Officers have been closely monitoring construction in order to ensure that the quality of the architecture and workmanship corresponds to the approved plans. Full size material panels are examined as part of discharging the materials condition and, amongst other things, considers the brickwork and decorative elements, pointing and joints, specification of window frames including material, colour and size, ventilation methods, soffits and reveals. Once approved, officers have continually monitored the build process to ensure that the materials panel is being implemented to agreed standards. Where issues have arisen officers engage with the architect and contractor to rectify issues immediately. In terms of public realm improvements, the planning permissions have a condition which requires the upgrading of the footways around the development site as part of improving the quality of the public realm in the area in line with the strategy. Where possible, street trees are being planted (for example along Addington Street as part of the Stay City scheme) or contributions towards street trees and wider public realm works are secured via a legal agreement.

4.8 More often we are made aware that there are potential issues usually from a complaint. Where concerns are raised, these will be investigated and can lead to a more targeted approach. Where a development is being overseen by our Building Control team, any potential irregularities with the physical works to a building will be brought to the attention of the planning team and a coordinated approach taken to resolving the matter.

4.9 In terms of context, complaints are received from a variety of sources but most often from a neighbouring occupier/interested party or direct from a Ward Councillor. As much information is gathered from the complainant as possible in relation to the concern raised and an initial office based information gathering process is then carried out. An officer from the planning service will then usually visit the site or contact the applicant/agent to further establish the factual position. The visit to the site is sometimes accompanied by a colleague from another part of the Council such as environmental health, highways or Arborist. This will depend on the nature of the complaint and the expertise required.

4.10 Number of complaints

The total number of complaints investigated by the compliance team in the last 5 years is as follows:

Year	Number of Complaints	Possible Breach of Condition	Number of BCNs*	Tree related Complaints
2015	468	33	4	12
2016	327	18	2	1
2017	298	19	8	2
2018	467	36	2	3
2019	405	44	1	7

*BCN – Breach of Condition Notice

4.11 The above are cases identified as requiring further investigation following triage of the initial complaint/enquiry. These numbers do not include all enquiries as some matters have been dealt with immediately, may not relate to planning or are not actual complaints.

4.12 The BCNs relate to a wide range of issues from non-compliance with refuse conditions, storage of materials, hours of operation, dust suppression, noise outbreak and boundary treatments.

4.13 To emphasis the comment in para 4.4 on the spread of complaints, of those relating to a potential breach of planning condition most are from development taking place outside of the city centre on the more modest or smaller proposals. In the period 2015 to 2019 of the 150 complaints alleging a breach of condition, only 13 were connected with city centre developments.

5.0 Trees and green spaces

- 5.1 A requirement for developments to provide trees and new spaces is one consideration, amongst many for the LPA; this wider focus includes delivering key outcomes - new homes, jobs, place making, an inclusive environment and measures to assist resilience to climate change.
- 5.2 Specifically, in relation to trees and green and open spaces this is considered in the context of a developments setting with the overall aim of a landscape scheme to provide an appropriate, environmentally friendly and aesthetically pleasing external environment that enhances its distinctiveness and biodiversity where appropriate.
- 5.3 Trees are a notable part of existing and potential landscapes and the benefits of trees, woodlands and hedges have long been acknowledged, not least of which is to help tackle climate change.
- 5.4 This is reflected in the policy framework and, for example, Manchester's Residential Quality Guidance which expects new residential developments to consider how they can work with nature to create attractive, sustainable environments, connecting into the wider network of green spaces to provide clear natural breathing spaces across the city.
- 5.5 Extract from Manchester's Residential Quality Guidance

...new landscape and associated biodiversity can take a number of forms; from green public spaces and waterways; gardens, green walls and roofs; allotments and communal gardens.

Trees are the most visible components of green infrastructure; in particular street trees which fulfil a number of important benefits. Aside from the obvious aesthetic value, they add to the character of a place; they have significant capacity to adapt urban areas to climate change by improving air quality, promoting urban cooling and providing shade and shelter.

Where space is limited or there are known constraints, either within a site or surrounding street, alternative greening would be sought. This includes the use of green walls and roofs particularly where little existing green space or few opportunities can be provided.

Where street trees are introduced by private developers, an understanding of the local environment and future maintenance should inform the correct specification of trees both above and below the ground. Where the loss of a tree has been deemed appropriate or unavoidable as part of new development by the Council, replacement provision of at least 2-to-1 equivalent will be provided on site or if this is not possible a commuted sum would be provided to deliver trees off site.

- 5.6 By way of background an applicant is required to provide a number of assessments and studies to explain how a scheme design has evolved and which addresses a whole range of issues. With regards to trees and associated green/open spaces this includes:

- An assessment of any identified ecological features or wildlife habitats on the site,
- A Blue and Green Infrastructure Statement which explores opportunities for such improvements as part of a proposal
- Information on opportunities for street tree planting in or around the development;
- On trees more general an applicant needs to show existing trees and shrubs around the site that will be lost or retained as part of the development, and how retained trees will be protected during construction; and
- Give a comprehensive quality landscaping scheme for the development including trees and shrubs to be planted, with details of species, size, numbers of plants and locations of planting.
- Details of hard landscaping, public realm and lighting where appropriate details of a replacement planting scheme for trees lost will be required.

5.7 Such assessments are reviewed by a number of specialist advisors, the Greater Manchester Ecological Unit, the City's Arborist and where appropriate the Drainage team. On some applications the comments from Natural England may be required.

5.8 What will be deemed appropriate and deliverable has to be considered in the context of all other required outcomes and on a case by case basis. Once consent is granted for a development new public realm, green spaces and trees would be delivered through a planning condition or a s106 legal agreement.

5.9 Examples

Circle Square off Oxford Road is being delivered over three phases. It includes new commercial office space, new homes and ground floor retail and leisure space for shops, studios, bars and restaurants. Together with a multi-storey car park and two hotels it will provide when complete 250,000 sq ft of green public realm. NOMA has delivered two major squares and tree lined streets as part of the comprehensive redevelopment of their estates. At First Street two major squares have also been created with tree lined streets as part of a new neighbourhood in the southern part of the city centre. Owen Street – A riverside space has been created along with tree lined street as part of a city centre residential scheme. These examples relate to major development proposals but the principle of seeking an environmental uplift applies throughout the city and across a range of applications.

5.10 As already noted para 4.10 provides information on the number of complaints received specifically in relation to trees. There are no recorded complaints relating to green/open space. Of the tree complaints from 2019:

- 2 warning letters were sent – it was not considered in the public interest to instigate formal proceedings, following discussions and advice from the City Arborists.

- 2 cases were closed as there was not enough evidence to pursue any further.
- 1 case related to non-protected trees.
- There is one investigation on going where it now appears a resolution will be achieved without formal action.
- In the remaining case, an agreement has been reached for replanting; if required this will proceed to a Tree Replacement Notice. This case involved the topping of a Lime tree and the felling of a Cherry tree in a Conservation Area. A CAVAT (capital asset value for amenity trees) report valued the lime at £19,994 and the cherry at £3,363. The case was proceeding to a prosecution, however, on-going monitoring found that the lime tree had recovered, which the Council's Arborist had suggested may happen.

5.11 In this last case it was considered prosecution for the loss of the cherry tree (this species are not native and unlikely to be considered for a Tree Preservation Order) would not be in the public interest. The owners have agreed to replant two semi-mature cherry trees on the site frontage to mitigate for the loss of the cherry and harm to the lime tree. The trees should be replanted by the end of this month but, if not a Tree Replacement Notice (TRN) may be served. A disadvantage with a TRN is that it could only secure one replacement tree as only one tree was felled originally.

5.12 Matters relating to trees and tree protection is one area that is sometimes monitored, when resources allow, due to the potential consequences if the agreed details are not adhered to. Priority though has to be given to which matters are considered for targeted monitoring and as noted in 4.7 this includes work to listed buildings and areas of new place making.

5.13 The planning service has an officer who provides a dedicated support on tree related matters and who works closely with the Arborist in Neighbourhoods. Although the focus of this report is on non-compliance with planning conditions we also deal with complaints about alleged works to trees in general. The following are a mix of such cases.

5.14 Case Studies

Old Lansdowne Rd, - complaints were received about unauthorised works being carried out to 5 trees in the rear garden. An emergency site visit with the City Arborist was carried out and work stopped on site. A site meeting was held which included a neighbour who had raised the initial complaint. The City Arborist confirmed that the trees removed were poor quality and there would have been no objections to the removal of trees if this had been sought; further the 2 remaining trees were of poor quality/low amenity value.

Following a formal notification for the works it was agreed that 5 replacement trees have to be replanted during the growing season (October 2019 - March 2020).

Clyde Road – a notification was submitted for the removal of a Hawthorn tree in the front garden. Works commenced and the tree was partially removed before a

decision was made. Although work stopped the planning team contacted the owner informing that unauthorised works had been carried out to a protected tree which carries the risk of possible criminal prosecution. A tree replacement scheme was subsequently agreed.

Site of Former St Johns House, Egerton Road - Following the removal of a number of trees pre application, a Tree Preservation Order was made on those remaining on site as these are considered to have high visual amenity value. The City Arborists and the planning team have monitored the health of these trees during construction and post construction phase.

Burton Road – This is on-going and relates to a site which has permission for new homes. An initial site visit was carried out as tree protection measures were required to a number of protected trees before development takes place and this is being monitored.

Leaf Street - Monitoring of the tree replacement and landscaping scheme raised some issues and this is subject to on-going discussion with the developer.

Princess Road (Telecoms) - Initial contact with contractor regarding tree replacement scheme prior to engaging and escalating to enforcement (on going)

Former Manchester Metropolitan University Didsbury Campus, Didsbury – there have been a number of questions raised by neighbours about trees on the site. This has led to officers monitoring the site for adequate tree replacements from those lost during construction works; this has been assisted through engagement with the enforcement team to escalate with the developer when required.

Miles Platting – following a consent in early 2018, the service was notified of a number of trees being removed off the development site.

There was immediate contact with the developer who confirmed that the trees had been removed in error by the contractor.

The developer was informed of the gravity of the situation which had potential serious consequences. A series of meetings were instigated through the case officer which involved the Council's Arborist to ensure that replacement planting was carried out and that the age, species, size and location of the trees were the best possible for the context and to compensate for the loss.

Follow up meetings have continued to ensure that the ongoing strategy involving quality, landscaping and tree planting is being carried out in accordance with the conditions of that permission and other schemes being carried out as part of the wider regeneration of the area.

Involvement in the above cases is both proactive when a site is revisited during construction works or based upon complaints received; many of the examples are ongoing as construction works continue or are only recently completed. The Leaf St example is post construction but as a result of being within the 5 year defects period set out within the relevant landscaping and tree replacements conditions.

6.0 Changes to approved conditions

6.1 Where a change to a condition is proposed it would be usual for an applicant/developer to seek a variation or for its removal. These are not planning applications as such and are not subject to consultation other than if necessary one of the specialist advisors (on trees for example this would be the City's Arborist).

6.2 Notwithstanding this, requests to discharge a condition, vary or remove are placed on the planning 'weekly' list. Dependant on the nature of the proposed change and if there had been prior engagement or interest at the application stage, it is expected the case officer will also inform the ward members. This message has recently been reinforced within the service.

7.0 Relationship with the Highway Authority

7.1 The Planning Service has an integral relationship with many teams across the Council; this is in the context of specialist advice being provided on planning applications but also reciprocally planning helping to facilitate major projects and schemes for the city.

7.2 The working relationship between planning and highways is a longstanding one which has helped to enable developments that meet the council's objectives for sustainable growth to come forward.

7.3 As a statutory consultee and advisor on planning applications and on the discharge of planning conditions, the highway authority considers the potential impact of development on public and highway safety and where and what mitigation measures may be required. This includes amongst others the need for off-site highway works and travel plans.

7.4 It is usual practice for the mitigation works to be required through the discharge of a condition. Such works often include the provision of traffic regulation orders, disabled parking bays, junction improvements, new pedestrian crossings etc.

7.5 It is also not uncommon for works agreed through a planning condition or s106 legal agreement for the highway authority to implement or manage the carrying out of the work itself. It is important that the two teams work closely together to ensure that the details are agreed and implemented within the terms of the planning consent.

7.6 Another important example of collaborative working is through a requirement for an applicant to submit a Construction Management Plan (CMP) through the planning process.

7.7 The planning system has difficulty in managing the construction phase of development. As already noted, planning conditions can only be imposed where they are necessary to make a development acceptable. It follows that conditions cannot be imposed to control matters that are not material considerations including, for example, impacts that are controlled by other legislation is not a material planning consideration. Broadly speaking, construction impacts are not material considerations, though there are some matters that can be controlled through planning. For instance, pollution or noise caused by the construction work is not a material consideration, because it is considered that there is adequate legislation in the form of the various laws on control of pollution to deal with this. Similarly, the stability of the building on which the works are being done is deemed to be dealt with

under building control regulations; and damage to neighbouring properties is deemed to be dealt with under party wall legislation (or other common law concepts which protect against damage or nuisance, in the case of premises which are too far away to be covered by party wall legislation); traffic problems are considered to be adequately controlled by highways legislation.

- 7.8 From a planning perspective there is a degree of control which can be covered on a CMP such as routing strategies, wheel washing, dust suppression and potentially the parking of construction vehicles.
- 7.9 Other elements, which may be included on a CMP would have to be controlled and enforced by other parties and legislation.
- 7.10 In relation to highways this would include:
- erecting any scaffolding, hoardings, temporary crossings or fences on the highway;
 - operating a mobile crane, aerial platform, concrete pump lorry or any such equipment;
 - lifting the footway and making any temporary excavation.
- 7.11 Many sections of the Highways Act (1980) allow the Highway Authority, working in conjunction with the Planning Authority, to manage and mitigate third parties impacting on either the structure, layout or safe operation of the highway. Whilst most permanent changes to the highway are dealt with under sections 38 (adoption of highway) and 278 (changes to highway layout) of the Highways Act, much of the impact on the highway by the developer is temporary whilst construction takes place. There are other controls within the Highway Act which can deal with these temporary impacts, but this can sometimes be challenging when many developments are in close proximity, highway space is limited and public transport, walking and cycling and access (for example deliveries to a business) all still need to take place without causing congestion. Some development sites need to be in place for up to two years whilst construction safely takes place behind secure hoarding with well managed access from the public highway.
- 7.12 During the planning application stage, the Highway Authority will seek as much information as possible on the construction phase and will offer advice on potential issues and how to either avoid or mitigate them. This will include for example, the extent of the hoarding, potential temporary road closures to facilitate safe construction, location of accesses, HGV routing, levels of construction traffic and parking. The Highway Authority will also request any early indication of the different phases of construction so that the impact of the construction on the highways is minimised for each phase.
- 7.13 The aim is to seek as far as possible at this stage, a commitment to maintaining pedestrian and cycle routes, access to homes and businesses and access to public transport. Potential temporary vehicle diversion routes

are also considered at this stage, as far as the developer is able to offer information on their construction phasing.

Example

On Ringway Road, as part of the development of the new multi storey car park at Manchester Airport, Manchester Airport Group (MAG) are constructing new road infrastructure to support access and relieve congestion around Terminal 3. Specifically, MAG are constructing a new road which will link Hotel roundabout with Ringway Road. At the junction of Woodhouse Lane it was identified that there are numerous statutory utilities which have, historically, not been installed to the correct depth or clash with the proposed new road construction. As a result of the number of statutory providers in the vicinity of the works MCC through the principal contractor, have coordinated a programme between all providers to minimise disruption to road users, airport users and the wider community. Through this coordinated approach, managed by the Highway Authority, the contractor has provided traffic management for all the works for a period of seven weeks and within this programme, statutory providers including United Utilities, Cadent Gas, Electricity NorthWest and BT have been scheduled to undertake diversions of their assets. This has removed the need for multiple traffic management permits and traffic management setups in the area, with continuity for road users.

- 7.14 For most developments we would not permit developers having a site compound away from the development site as this would result in increased construction traffic to and from the site. It is therefore more beneficial to allow more adjacent highway space to be used. Exceptions to this would be based on the scale of the development, e.g. Metrolink.
- 7.15 At the development commencement stage, the Highway Authority may need to consider Temporary Traffic Regulation Orders (TTROs). These are essentially temporary highway closures and can only be promoted for a small number of specific reasons, one of which is development management, 'in the interests of highway safety and amenity of the area'. The Highway Authority can refuse a TTRO on safety grounds or request different dates and durations on coordination grounds. The Highway Authority will also further discuss how works will take place on site, and arrange site meetings where necessary. Traffic Management plans are discussed and agreed, how and when deliveries can be made and spoil removed, and contacts are established for regular monitoring and reporting.
- 7.16 Monitoring of the highway surrounding development sites is undertaken through site inspections. Street Works inspectors report issues which the developer is then given an opportunity to resolve. Any unsafe practices can be made to cease with immediate effect. The Highway Authority can revoke any licence or TTRO, if licence or TTRO conditions are not being adhered to. However, dialogue with officers is usually enough to rectify potential issues. Inspectors also take photographs of the inside of the hoarding to check that the space is being used appropriately and that any opportunity to minimise the construction space is undertaken. However, in order to facilitate development efficiently the Highway Authority has to seek a balance between ensuring safe

practices, allowing development to continue and mitigating impact on the highway network.

Example

A developer renovating a Mill in Ancoats on the junction of Jersey Street and Radium Street, was given permission, by way of a TTRO, for Jersey Street to be made one way for the duration of the works. This would enable a safe and secure working site. This involved the developer using a full boarded hoarding system along a short length Jersey Street to the junction with Radium Street. It was agreed however, that at the junction, they would provide a couple sections of hoarding panels on Jersey St and Radium Street to be of a mesh type hoarding to allow a clear view of oncoming traffic in either direction. When the hoarding was erected they were all solid panels for the length of the hoarding. Our street works inspector noted this and immediately contacted the site manager and instructed that the panels at the junction were replaced with mesh/clear panels as a matter of urgency to enable a clear site line for approaching traffic. This was duly actioned by the contractor and the inspector did not require to take further action, for example revoking the hoarding license; and the development could continue.

- 7.17 The Highway Authority can receive concerns from members of the public from time to time which we will act on by sending an inspector out to the relevant site as soon as possible. We will then seek to rectify any issues directly with either the contractor onsite or the developer. Whilst we don't receive many requests of this nature, it is appreciated that the current capacity for site inspections is low for the number of developments taking place across the City and therefore public interest is always welcomed. Measures to increase numbers of inspectors have been taken as part of a wider restructuring programme within Highways. This would allow the service to monitor utility companies and all other third party activity on the highway, including planned events and emergencies and provide more capacity to for out of hours, weekday evenings or weekends to take place.
- 7.18 This is important as in the two City Centre wards alone, there are 177 hoarding licenses; 27 scaffold licences; 27 Temporary Traffic Regulation Orders (not including emergency orders); and occasionally crane licences (though most are erected either on private land or temporarily closed highway which we would like to be in a position to monitor.
- 7.19 In terms of best practice, information is shared and improved by regular meetings with other Greater Manchester Authorities and other Core Cities.
- 7.20 The purpose of requesting a CMP at the planning stage is therefore to seek early consideration of associated issues by relevant parties as it is recognised that associated activity can cause concern in areas particularly of significant growth.
- 7.21 Ultimately there are no powers to control when construction takes place, however, officers are continuing to explore how adverse impacts can be best managed and mitigated. Early sight of a CMP can help in this regard.

- 7.22 The Planning and Highways teams are currently exploring how the relationship can be improved. In addition, consideration is also being given to the creation of a virtual team, bringing together officers from the various services who each have some power to manage the construction phase of development. This would provide a more focused approach to issues as they arise and a contact for those who are impacted by construction works.

8.0 Working with Social Providers

- 8.1 At a strategic level, the service works with our registered providers together with other parts of the Council to deliver the residential growth strategy for the city. This includes working in partnership both on city wide and area specific initiatives. The aim is to work on delivering new homes with the necessary place making to make these attractive and sustainable.
- 8.2 As applicants in their own right or as part of a joint venture, the RPs regularly submit planning applications. Although the requirements for a planning submission are no different to other applicants (and this also applies to City Council proposals), the collaborative strategic working enables a more focused approach throughout the development process and allows for issues generally to be identified and addressed quickly.

9.0 Recommendations

- 9.1 Members are asked to note the report. It provides the Committee with information relating to planning conditions, the rules that govern their use and how they are enforced. Particular reference is made to conditions on trees/green open space and examples have been included of developments that have or will provide environmental enhancements.
- 9.2 Further some examples of where we have intervened as a result of complaints and/or alleged unauthorised works to trees and outcomes have been provided.
- 9.3 Section 7 highlights the working relationship between the planning and highway services using construction management as an example. It is recognised this is an area of significant concern as the City develops and both teams are committed to tackling the worst impacts, together with other parts of the Council.
- 9.4 Finally, as requested by Members there is a brief section on how the planning service works with our Registered Providers.