

CABINET - THURSDAY, 12 OCTOBER 2023

Report of the Head of Planning and Growth Lead Member: Executive Member for Planning

Part A

REVIEW OF THE PLANNING ENFORCEMENT PLAN

Purpose of Report

To seek approval of a revised Planning Enforcement Plan to guide officers in investigating alleged breaches of planning control.

Recommendations

1. That the Planning Enforcement Plan, attached at Appendix 1, be approved.
2. That delegated authority be given to the Head of Planning and Growth, in consultation with the Cabinet Lead Member for Planning, to make minor amendments to the Planning Enforcement Plan.

Reasons

1. To ensure there is an up to date plan to guide planning enforcement investigations that dovetails with Corporate Policy and complies with the National Planning Policy Framework and encompass the recommendations made by the Planning Officers Society (POSe) during the recent independent review of the service.
2. To ensure if there are any minor amendments required to align The Plan with changes to Government policy these can be undertaken promptly.

Policy Justification and Previous Decisions

The NPPF says in para 59 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. They should consider publishing an enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

The production of an Enforcement Plan cuts across all three of the Corporate values and meets with the Council's priorities for creating a strong and lasting economy and delivering excellent services.

Previous plans were approved in 2010, 2014 with the last one having been approved by Cabinet in May 2018 (minute 130 2018/19 refers).

Implementation Timetable including Future Decisions

It is expected the Planning Enforcement Plan will come into effect subject to Cabinet's consideration of this report.

Report Implications

Financial Implications

There are no financial implications involved in the adoption of the policy beyond the provisions of the enforcement service.

Risk Management

No specific risks are identified with the recommendations of this report.

Human Rights Act

The issue of **human rights** is also a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 1998 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are "qualified" and it is necessary to consider whether refusing planning permission and/or issuing an enforcement notice would interfere with the developer's human rights. If it would, the council must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of any developer must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area.

Equality and Diversity

An Equalities Impact Assessment has been completed and is appended to Part B of the report

Climate Change and Carbon Impact

None identified

Crime and Disorder

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of any enforcement proceedings.

Wards Affected

All Wards

Publicity Arrangements

Not applicable

Consultations

Ward Councillors were made aware of the issues and options in determining enforcement case work and the POSe independent review recommendations in a briefing on 26 July 2023. A 14 day consultation was undertaken on the proposed plan with Ward Councillors, Parish Councils and various stakeholders and consultees between 8 and 22 August. A further all member briefing was held on 7 September to feedback on consultation responses.

Links to the Corporate Strategy

Caring for the Environment	Yes
Healthy Communities	Yes
A Thriving Economy	Yes
Your Council	No

Key Decision: Yes

Date included on Forward Plan 13/09/2023

Appendices

1. Amended Enforcement Plan with changes tracked
2. Consultation responses
3. Equalities Impact Assessment

Background Papers: Independent Review of Democratic Interface (POSe report 2023)

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Part B

Background

- 1.0 Planning is a high profile and often contentious service and whilst the planning system affords control over most forms of development, the integrity of that system depends on the proper enforcement of breaches of planning control.
- 1.1 The Enforcement Plan outlines the responsibilities of the Planning Enforcement Team and sets the aims of the service in identifying and resolving breaches of planning control. The renewal of the current policy and the setting out of the enforcement procedures and reasoning is in line with the Council's aims to deliver excellent customer service.
- 1.2 The Planning Officers Society (POSe) recently undertook an independent review of the Planning Service and their recommendations in relation to planning enforcement were:
 - a. The procedure of referring both recommendations for enforcement notices and decisions not to pursue formal enforcement action to ward members is discontinued; and
 - b. Officers circulate a quarterly report on enforcement matters to the Plans Committee
- 1.3 The current Scheme of Delegation set out in the constitution delegates decisions to (i) take enforcement action, and (ii) to determine cases where such action is not expedient, to the Head of Planning and Growth, except where a ward councillor wishes such decisions to be considered by Plans Committee.
- 1.4 The Planning Enforcement team receive an average of 550 allegations claiming breaches of control each year. Many of these allegations are not founded, or are neighbour disputes out with planning control, are resolved before further investigation takes place, do not cause harm or are considered not expedient to take further action. Around half of all cases a year are taken forward for further investigation and only a very small number of cases a year are subject to formal enforcement action.
- 1.5 The POSe review identified that the current scheme of delegation creates an overly bureaucratic process in cases where it is not considered expedient to take further action due to the lengthy reports that are required to be written for matters that are very minor. This takes officers time away from dealing with the more important planning breaches that are causing serious harm. The review team found there were 17 cases over the three years 2020, 2021 and 2022 where serving an enforcement notice was recommended. In only one circumstance, following a ward referral, was a case reported to Committee which then agreed the officer recommendation. In the other 16 cases the ward members accepted the officer recommendation and action

proceeded through delegated powers. Over the same period there were 71 cases referred to ward councillors where the officers recommended that it would not be expedient to take action. Again, only 1 case was subsequently referred to Plans Committee for decision and the committee voted not to take action as recommended. The review team concluded there were significant problems with the referral process:

- The additional workload for staff under existing workload pressures
- The timescales involved in preparing reports, getting them signed off, seeking ward councillor views and where necessary reporting to committee are length when considered against the timescale for enforcement action that is limited
- It can result in non expedient cases not being closed in a timely manner
- It involves members with no training or experience in planning matters and no planning responsibilities making decisions about technical and legal planning issues
- No other English local authority has a similar process of ward referral.

1.6 The findings and recommendations of the POSe Review Team were presented to Councillors in an all member briefing session on 29 June.

2. Consultation

2.1 There has been a continuous dialogue with members about the enforcement plan starting with the work of the POSe review team in February this year. The major consultation milestones have been:

February	POSe Review commences
11-13 April	Staff and Councillor interviews and member/staff focus groups
29 June	POSe present their findings and recommendations to members
26 July	All member briefing on the Enforcement Plan
8 August	Commencement of consultation on a revised enforcement plan
7 September	All member briefing on consultation findings and proposed approach to enforcement

2.2 The issues and concerns of members were used to shape a revised Enforcement Plan and this in turn was subject to consultation with members in between 8 and 22 August and the responses discussed in a further all member briefing on 7 September. The final version of the Enforcement Plan that Cabinet is invited to consider is contained in Appendix 1

2.2 The Enforcement Plan is intrinsically linked to wider reforms recommended by POSe relating to the constitution, which are reported elsewhere on this agenda. This is because they have recommended that enforcement matters be delegated to officers and that will required changes to the constitution. These constitutional changes have been discussed with members alongside proposals to amend the Enforcement Plan.

- 2.3 The draft enforcement plan was circulated to all ward councillors, Parish Councils, Statutory Consultees, such as the Environment Agency, the Police, Natural England, CPRE in advance of the August consultation period. Only 5 responses were received all of which were favourable. One response from Natural England stated they had no comments to make. The comments received are set out in appendix 2 and can be summarised as:
- The plan is well set out and clearly explained;
 - It appears very sensible; and
 - Officers should have less discretion over when to enforce and there should be fewer grey areas. Residents' concerns should take precedence over developers concerns
- 2.5 An Equalities Impact Assessment has also been carried out in relation to the document and this is attached as a background paper to this report.

The Enforcement Plan

- 3.1 The Planning Service Enforcement Plan has been prepared in the broader context of the Corporate Policy for Enforcement adopted in 2018, which seeks to ensure a consistent, fair proportionate and effective approach to regulatory inspection and enforcement across the range of council services (minute 129 18/19 refers).
- 3.2 The plan (appendix 1) explains the council's approach to planning enforcement, the procedure for investigating alleged breaches of planning control, when the council will take action, what enforcement powers are available and how the council will monitor the implementation of planning permissions.
- 3.3 A key difference from current enforcement approach is the proposal to set out the priorities for enforcement action and to introduce a harm assessment for each case. This will inform decisions about when to take enforcement action and provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers. It also ensures the most effective allocation of resources. The approach therefore provides greater certainty and clarity to officers, the public and elected representatives.
- 3.4 Service standards and indicators set out in the plan have been developed in tandem with the Planning and Growth Service Plan and will enable the performance of the enforcement service to be measured and monitored. The priorities of the enforcement service are also identified so that customers are clear in respect of how their complaints will be progressed in terms of their priority and harm.