

REVIEW OF PLANNING ENFORCEMENT

Planning Policy Committee – 19 January 2023

Report of: Chief Planning Officer - Cliff Thurlow

Purpose: For decision

Publication status: Open

Wards affected: All

Executive summary:

The report reviews the performance and delivery of the Council's planning enforcement service for the financial year 2021-2022 and considers some of the issues identified by Members and the public with respect to delivery of that service.

This report supports the Council's priority of:

Creating the homes, infrastructure and environment we need but prudently managing financial resources.

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Recommendation to Committee:

That the Planning Policy Working Group, together with Officers, be authorised to review the Council's adopted Local Enforcement Plan 2019 with a view to improving the effectiveness, timeliness and resilience of the Council's planning enforcement function and with a report back to this Committee.

Introduction and background

- 1 Under the planning legislation Local Planning Authorities (hereafter LPA's) have the primary responsibility for taking whatever planning enforcement action they consider necessary in the public interest in their area. Planning Practice Guidance prepared by central government advises that effective enforcement is important to:
 - tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
 - maintain the integrity of the decision-making process;
 - help ensure that public acceptance of the decision-making process is maintained.
- 2 Whilst it is the duty of LPA's to investigate allegations of a breach of planning, formal planning enforcement action (i.e. issue of notices) is discretionary. Enforcement action is remedial rather than punitive and must always be commensurate with the breach of control to which it relates. The following formal planning enforcement action powers are available: enforcement notices, breach of condition notices, temporary stop notices, stop notices, injunctions, discontinuance notices (advertisements), untidy land/ s215 notices, and prosecution; how these powers are used is prescribed by the planning legislation. Prosecution can only be sought in the following: non-compliance with the requirements of a notice that has taken effect; unauthorised works to a listed building; unauthorised works to a protected tree; unauthorised advertisement display.
- 3 Co-operation and sharing of information occurs with other agencies about alleged breaches of planning control. Surrey County Council has planning enforcement powers as the minerals and waste planning authority. However, the county enforcement team is small and overloaded in terms of numbers of cases. Liaison with the Environment Agency also occurs from time to time, but the Agency has quite separate powers of enforcement relating to breaches of environmental legislation.
- 4 The Council's planning enforcement team currently comprises four officers, reporting to the Chief Planner. There has been a high turnover of planning enforcement officers from 2018, which along with the challenges arising from the pandemic, turnover of staff in Development Management and other Council services, and delays experienced by external agencies has impacted on the delivery of the planning enforcement service.

- 5 Where a breach of planning is identified as causing planning harm and may be satisfactorily addressed within a reasonable time period through negotiation, this approach is taken. The planning legislation allows the submission of retrospective planning applications, which may be allowed with appropriate conditions and amendments to the development underway. Planning Enforcement Officers do not invite planning applications, where a breach of planning control is identified but they advise developers and landowners of the requirement for planning permission.
- 6 If negotiation proves unsuccessful within the identified timescales, the Council will then consider whether formal action should be taken. Every recipient of a planning enforcement notice has the right of appeal to the Planning Inspectorate; costs may be awarded against the Council at appeal if it is unable to substantiate the reasons for issuing a planning enforcement notice. If an appeal has been submitted compliance with the planning enforcement notice is held in abeyance and will only take effect from the date an appeal is dismissed. Failure to comply with the requirements of a notice that has taken effect is an offence and can result in prosecution and/ or remedial action by the Council.
- 7 The Council's Local Enforcement Plan was agreed at the Council's Planning Policy Committee on 24 September 2019 and sets out the time targets for initial site visits and that the investigating officer will contact the complainant within 21 days of receipt. A copy of the 2019 Local Enforcement Plan has been included as Appendix A to this report.
- 8 The performance of planning enforcement is measured by two of the Council's Key Performance Indicators. PL6 concerns the percentage of enforcement cases inspected with the timescale set out in the Council's Local Enforcement Plan 2019 and PL7 the percentage of enforcement cases determined within 8 weeks of receipt.
- 9 The following table shows the total number of enforcement investigation files opened over the last 5 calendar years:

Year	Number
2022	338
2021	405
2020	429
2019	347
2018	259
TOTAL	1778

Financial Year April 2021 – March 2022

- 10 A total of 364 investigation files were opened during the financial year 2021-22. A total 385 cases were closed over the same period with the assistance of the then two Principal Planning Officers who were authorised to agree the recommendations put forward by the Planning Enforcement Officers. Of the 364 cases received a total of 261 first site visits were carried out within the agreed time frame. This represents a total of 71.7%; the KPI target is 85%. It should be noted the financial year April 2021 to March 2022 fell within the time period of the pandemic and associated lockdowns. Site visits were adversely affected by lockdowns and social distance requirements, and the turnover of planning enforcement officers.
- 11 Of the 364 cases received during the financial year 2021-22 a total of 319 cases have now been closed. 197 of these files were closed within the timeframe target of 8 weeks (61%). Delays because of the pandemic and waiting for planning application decisions will have had some impact on the time period taken to close files. Whilst the KPI is 80% of the cases are closed within the 8 weeks, achievement of this target in practice encourages closure of cases prior to determination of related planning applications and condition applications and earlier decisions of not expedient to pursue action where negotiation appears to have stalled and material harm has not been identified to support formal enforcement action.
- 12 During the financial year April 2021 to March 2022 a total of 16 Planning Enforcement Notices and 1 Breach of Condition Notices were issued (7 of these Notices relate to development on two sites). Two Notices remain the subject of extant appeals, five Notices are held pending the determination of a related planning application (relate to the same land area), one remains within the compliance period, the requirements of six Notices have been met and the corresponding files are now closed. Two Notices have been referred to the Council's in-house legal team to progress in respect of the offence of failure to comply with the requirements of a planning enforcement notice that has taken effect.
- 13 A total of five appeal start dates were received during the financial year April 2021 to March 2022 of which one remains not determined. One appeal was withdrawn following the grant of planning permission, two appeals were dismissed, and one appeal was allowed with planning permission being granted for the development.
- 14 There is often a considerable time lag in the hearing and determination of enforcement appeals by the Planning Inspectorate and it is not unusual for the whole appeal procedure to take 18 months.

- 15 Prosecution was sought in respect of two addresses during the financial year: one related to a planning enforcement notice, the other a s215 untidy land notice. In both cases the owners of the properties concerned were found guilty of the offence of failure to comply with the requirements of the Notices. Further action in respect of the enforcement notice is currently held pending determination of a related planning application.
- 16 A total of 31 files where enforcement notices have been served remain open from 1 January 2015 (includes Breach of Condition and s215 Notices). There are multiple notices on 5 of the files. Nine of these files are awaiting appeal decision, nine are held pending the determination of related planning applications, six have been referred to the Council's in-house Legal team in respect of non-compliance with the requirements of the notice and seven are with the Planning Enforcement Officers to pursue compliance with the notices. Management of each enforcement notice file is the responsibility of the assigned planning enforcement officer in the first instance, with the oversight of the Principal Planning Enforcement Officer and/ or Chief Planning Officer.
- 17 A total of 47 enforcement files remain open following allegations of breaches of planning control pending the determination of either a retrospective planning application, appeals on planning applications or other application related to the unauthorised development.

Review of the Council's Planning Enforcement Policy 2019

- 18 The National Planning Policy Framework provides that local planning authorities should consider publishing a local 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 Council's local enforcement plan was last reviewed in September 2019.
- 19 Prior to September 2021, management of the Council's enforcement function within the Planning Department was fragmented. This was addressed as part of the wider Development Management transformation process. Now that wider process is well-advanced, it is timely to consider again the delivery of the Council's planning enforcement function in the context of a review of its local enforcement plan.

- 20 Furthermore, in central government's proposals for changes to the National Planning Policy Framework published on 22nd December, 2022, there are potential implications for the Council's enforcement function. Government is considering whether past "irresponsible planning behaviour" by applicants could in future be taken into account when applications are being determined. Examples given of such behaviour are persistently breaching planning controls or failing to deliver legal commitments to the community. The details of how this would operate in practice are not yet available but must include a requirement for local planning authorities to keep records of irresponsible planning behaviour to be taken into account when determining future applications. This would appear to be a future planning enforcement function and relevant to a review of the Council's local enforcement policy.
- 21 Based on discussion with elected Members and the public, there are aspects of the planning enforcement function that should be addressed, including:
- i. Resilience – reference is made in the report above to the adverse impact high enforcement staff turnover was having on the timescale for handling cases and consideration needs to be given how this might be addressed;
 - ii. Out of hours response to breaches of planning control – there have been high profile and deliberate breaches of planning control at weekends or public holidays in the last 12 months for which the Council had (and continues to have) no established procedures and Officers on call to respond; such breaches can be more difficult to remedy, if not checked immediately and can cause the Council reputational damage;
 - iii. Follow-up – some breaches of planning control currently take years to remedy fully both in terms of prosecutions and ensuring the requirements of notices are being met;
 - iv. Retrospective planning applications – the Council's enforcement policy needs to set out a clear protocol as to the circumstances in which planning enforcement action is pursued or held in abeyance when retrospective planning applications are made to remedy breaches of planning control to avoid this being used a delaying tactic and greatly prolonging the timescale for effective enforcement action; part of this review should consider drawing Development Management Officers in to the process to give a view on the likelihood of planning permission being granted
 - v. Effective use of enforcement powers – powers such as temporary stop notices, stop notices and injunctions have been little used by this Council in the past (in some cases not used at all) but now need to be part of a robust response to breaches of planning control;
 - vi. Co-operation with other agencies – making this more formalised, efficient and effective;

- vii. Monitoring irresponsible planning behaviour – if such a provision is introduced by central government; and
 - viii. Key Performance Indicators – the indicators for planning enforcement performance need review to make them fit for purpose.
22. Tackling key issues of performance management, public relations and working practices will build a proactive enforcement service that is considered a key component in an effective planning function. Input from Members of the Committee would be welcome on whether there are other aspects of the Council's enforcement function that need addressing.

Key implications

Comments of the Chief Finance Officer

There are no immediate financial matters arising from the report. However, Officers and Members will need to be mindful of the potential financial implications of addressing the aspects of enforcement set out in sections 21 and 22. Financial implications, if any, would be set out in the report back to this Committee and would need to be considered in light of the continued constraints on the Council's finances. The budget for enforcement is set out in the 2023/24 Draft General Fund Budget and Medium-Term Financial Strategy report to this Committee.

Comments of the Head of Legal Services

There are no legal implications arising directly from this report, however the report includes reference to work carried out by the in-house legal team on behalf of the planning department in the process of formal enforcement action and prosecution.

If Members are mindful to agree to the recommendation, consideration from legal services will be required through the development of the new enforcement plan.

Equality

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are to:

- (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act
- (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it
- (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

In the opinion of the author of this report the Public Sector equality duty is not engaged or affected by this report.

Climate change

There are no significant environmental / sustainability implications associated with this report.

Appendices

Appendix A - Tandridge District Council Local Enforcement Plan September 2019.

Background papers

None