

Planning Enforcement Report

Planning Policy Committee Thursday, 22 June 2023

Report of: Cliff Thurlow

Purpose: For decision.

Publication status: Open

Wards affected: All

Executive summary: This report sets out a Planning Enforcement Policy for adoption by this Committee and implementation by the Planning Department in carrying out the Council's planning enforcement function.

This report supports the Council's priority of: Becoming a greener, more sustainable District.

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Recommendation to Committee:

The Planning Enforcement Policy, attached as Appendix A, be adopted to improve the effectiveness, timeliness, resilience and transparency of the Council's planning enforcement function.

Introduction and background:

1. 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.
2. Under 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.

3. 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.

4. Whilst it is the duty of LPA's to investigate allegations of a breach of planning control, formal planning enforcement action (i.e. issue of notices) is discretionary and only undertaken when it is considered expedient to do so. 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.

5. How these powers are used is prescribed by planning legislation. Prosecution can only be sought in the following circumstances:
 - 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.

6. The Council, in accordance with the provisions of the National Planning Policy Framework, prepared and adopted a Local Enforcement Policy in 2019. Based on more recent discussion with elected Members and the public, it became clear that there were aspects of the Council's planning enforcement function that needed to be addressed, including:
 - i. Resilience – the adverse impact of high 'enforcement staff' turnover was having on the timescale for handling cases and consideration to be given to 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.
6. At the Planning Policy Committee meeting in January this year, Members agreed 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.”*
7. The Planning Enforcement Policy at Appendix A to this report is the culmination of that review.

8. The Policy has four main objectives:
 - i) to make the Council's planning enforcement function effective, timely and results driven;
 - ii) to provide a clear statement on behalf of the Council of how it wishes to see planning enforcement action prioritised, with particular respect to those breaches of planning control that have the potential to cause the greatest levels of harm to the environment and/or amenity of local residents;
 - iii) to ensure that the full panoply of enforcement powers are considered and used in achieving the objectives of this Policy; and
 - iv) to provide greater feedback and so transparency of the Council's planning enforcement function.
9. The Policy document is deliberately succinct to make it easier to understand and interpret.
10. There are aspects of the Policy that require further work, namely:
 - planning enforcement staffing if the Committee resolve to adopt this Policy
 - resilience, including out of hours working and any sharing of planning enforcement functions with neighbouring LPA's
 - reporting and Key Performance Indicators.
11. These matters will need to be the subject of further report back to this Committee.

Key implications

Comments of the Chief Finance Officer

The working intention is for this policy to be implemented within existing budget, because the policy is aimed at more efficient ways of working within existing resources. Out of hours enforcement may require additional spend, driven by activity, which will be managed closely in year. Financial implications will be kept under review and any issues raised at a future Committee.

Comments of the Head of Legal Services

Effective enforcement is important to maintain public confidence in the planning system (NPPF). The proposed Planning Enforcement Policy sets out timescales and procedures for the team to be able to work in a more efficient and effective way. The Committee's recommendations will also improve the public's perception of the Council's enforcement function.

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:

- (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, and
- (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. No implications arise directly but the Council needs to retain a strong focus and understanding on issues of diversity amongst the local community and ensure service delivery matches these. It was important to be aware of the Council's responsibility under the Public Sector Equality Duty (PSED) and show evidence that due consideration has been given to the equalities impact that may be brought upon communities by the decisions made by Council.

Climate change

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

Appendices

Appendix 'A': Planning Enforcement Policy.

Background papers

None.

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