

PLANNING COMMITTEE

28 SEPTEMBER 2023

REPORT OF THE DIRECTOR OF PLANNING

A.4. REVISED PLANNING ENFORCEMENT POLICY AND HARM RISK ASSESSMENT PRIORITISATION SCHEME

(Report prepared by Gary Guiver)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT
To seek Planning Committee approval for a revised version of the Council's Planning Enforcement Policy document and associated Harm Risk Assessment Prioritisation Scheme.
EXECUTIVE SUMMARY
<p>The National Planning Policy Framework (NPPF) requires local planning authorities to consider publishing a local planning enforcement policy or plan which describes how the Council will manage planning enforcement in a way which is appropriate to their specific area. The NPPF also makes clear that planning enforcement is discretionary and local authorities should act proportionately in responding to breaches of planning control.</p> <p>The purpose of the Enforcement Policy is to provide elected Members and the wider public with a clear understanding of how planning enforcement will be delivered and the criteria used in making assessment of potential breaches of planning law.</p> <p>The Council's current Planning Enforcement Policy was adopted, by decision of the Planning Committee following its meeting on 1 September 2022. The revised version incorporates specific changes recommended by the Resource and Services Overview and Scrutiny Committee following the report of the Task & Finish Working Group looking at the Council's Planning Enforcement Function, subsequently endorsed by the Cabinet.</p>
RECOMMENDATIONS
That the Planning Committee agrees to the adoption of the revised version of the Planning Enforcement Policy 2003 (attached at Appendix 1) and the associated Harm Risk Assessment Prioritisation Scheme (attached at Appendix 2).

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

A corporate priority of the Council is ensuring that as part of delivering high quality services the Council has a proactive planning service. This document contributes to that aim.

RESOURCES AND RISK

Resources: There are no direct resource implications in producing and adopting these documents although implementation relies on having a full complement of planning enforcement staff in place.

Risks: Adoption of the revised document sets down the standards the public can expect from the planning enforcement function of the Council. Delivery of the proposed standards of service is therefore essential to manage expectations and utilise resources in an appropriate manner.

LEGAL

As noted above the NPPF expects Councils to publish a planning enforcement policy or plan demonstrating how local authorities will manage planning enforcement in a way which is appropriate to their specific area. The policy should be implemented in accordance with national legislation contained under the Town and County Planning Act 1990 along with policy contained in the NPPF and the adopted Local Plan.

OTHER IMPLICATIONS

Crime and Disorder: In some cases breaches of planning legislation can significantly impact on the local population and where appropriate such cases will be referred to court seeking full mitigation of the impacts of unauthorised development. Having an up to date enforcement policy document in place assists in supporting legal action.

Equality and Diversity: There are no equalities implications. All alleged breaches of planning enforcement will be investigated with complete impartiality and investigated in accordance with the standards and timescales set down with the adopted policy document.

Health Inequalities: Ensuring that breaches of planning control which adversely affect the local population are fully mitigated or removed clearly contributes to addressing issues of health inequality not least in improving the quality of the local environment.

Area or Ward affected: All.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The purpose of the Planning Enforcement Policy document is the establishment of a set of standards and procedures on how the Council will respond to suspected breaches of planning control, deciding on what action should be taken as well as monitoring the implementation of new development through conditions monitoring.

It perhaps should be noted that it is not a criminal offence to undertake unauthorised works but it remains open to the Council to take legal action against such works and refer matters to the Courts if necessary. As noted within the NPPF such action is discretionary and should be proportionate taking into account the impacts of the particular unauthorised development. Where at all possible negotiation should be used to remedy a particular case with formal enforcement action or legal action being a last resort. The majority of cases are resolved through negotiation.

It may be the case therefore that in minor cases where the impacts of development are negligible or have little adverse impact on the wider public realm that any further action following investigation is unnecessary. Often the Council will seek a retrospective planning application where the development is generally in compliance with planning policy but can then be subject to control by planning condition. On occasion however breaches of planning can be considered as having such a serious impact on amenity and the environment and cessation or removal of such development is the only option. Such cases may require determination by the courts.

It is important that cases are prioritised and that serious breaches of planning law or policy are dealt with quickly (i.e. unauthorised demolition of a listed building). How we prioritise such investigation is set down within the proposed policy along with a Harm Risk Priority Assessment Scheme (see Appendix B) which establishes a set of criteria for how officers prioritise case work.

The Planning Enforcement Policy document is an important guide to how the Council undertake enforcement action and how we prioritise such action. It provides transparency to the public as to how decisions on enforcement are reached and provides clarity to those involved in the enforcement process.

PLANNING ENFORCEMENT POLICY

Planning enforcement is a key function of the Development Management process and assists the Council in delivering a proactive planning service in line with Corporate priorities. It is a high profile element of the service and how the Council deal with enforcement issues should be clear and transparent.

The policy sets down how alleged breaches of planning control should be reported to the Council and how these will be dealt with in priority order. Where breaches do occur the Council will work with developers, businesses and individuals to ensure they seek compliance with planning policy or remedy the impacts of the development in question. In the majority of cases compliance is achieved through negotiation with formal enforcement action (i.e. serving of an enforcement notice or an injunction) as a last resort.

The types of development subject to planning control include building works, changes of use, works to listed buildings, trees and hedges, control of advertisements. Normally enforcement action should only be carried out in the public interest and where the impacts are 'material' such as loss of light/amenity, highway safety, adverse impact on the character of the area. The policy also lists the various options open to the Council in terms of the type of enforcement action to take – this can include the serving of Planning Contravention Notices, Stop Notices, Breach of Condition Notices and in rare cases the serving of injunctions.

The Enforcement Policy sets down how the Council will follow the 'principles of good enforcement' including establishing and following a set of service standards, being open and transparent, being helpful, consistent in decision making, making proportional decisions and being accountable.

In terms of service standards the Council have established a priority system for dealing with enforcement matters which reflects the level of seriousness of the complaint/breach reported. Priorities are listed 1 to 4 with 1 being the highest priority case and 4 the lowest (see paragraph 7.2 of the document).

A priority 1 case for instance requires officers to investigate the case within 2 days and preferably within 1 day particularly where the potential harm is irreversible such as demolition of a listed building or protected tree. Priority 2 cases which must be assessed within 5 working days include unauthorised development in a conservation area or non-compliance with a planning condition. Examples where the time frame for action can be extended (i.e. Priority 3 cases) might include display of unauthorised adverts, untidy land or minor infringements of policy or legislation.

The Council is committed to responding to complaints within 3 working days and ensuring that complainants are kept updated with progress on their specific case.

In addition to dealing with complaints made direct to the Planning Service enforcement officers also work with other teams across the Council in proactively seeking to improve specific locations or buildings particularly in cases where the development in question is in breach of different areas of legislation (environmental health or housing standards for instance) as well as planning law. This can include the serving of section 215 notices to remove adverts, untidy land and buildings in severe disrepair.

Attached at Appendix B is a revised Harm Risk Priority Assessment Scheme which sets down the criteria for how officers prioritise the investigation of alleged breaches of planning control. As noted

the scheme provides a grade for the level of harm being caused – in the majority of cases enforcement action will be taken if the total harm score is 6 or more. The criteria used covers a wide range of development impacts including urgency (i.e. works to a listed building), highway safety impacts, policy compliance, extent of harm etc. This is a similar method also used by other Essex local planning authorities.

There will be occasion where a score might fall below 6 but officers may consider it still expedient to undertake enforcement action. However the Harm Assessment Form provides a useful guide to officers in making their initial assessment of a particular case and ensures that each case dealt with can be undertaken in an open and transparent manner, provides speed and flexibility of assessment and ensures equality of decision is made.

In conclusion the Planning Enforcement Policy establishes the framework of how the Council will deliver its planning enforcement function and will contribute to providing a proactive planning service. It establishes how cases will be prioritised and sets down standards of service that the public can expect when making an enforcement complaint. It is recommended that the Committee adopt the revised Planning Enforcement Policy document.

PROPOSED CHANGES

In October 2022, shortly after the adoption of the current Planning Enforcement Policy and Harm Risk Assessment Prioritisation Scheme, a Task & Finish Working Group was set up by the Council's Resources and Services Overview and Scrutiny Committee to look at the Council's Planning Enforcement Function. One of the areas for inquiry was around policy to:

- To review the Council's Planning Enforcement Policy which sets out the available powers and the approach that the Council will take when receiving, investigating and, where appropriate, taking action against alleged breaches of planning control.
- To review the associated 'harm risk assessment' which is used by Officers to prioritise the investigation of cases and to inform decisions about appropriate levels of action going forward.
- To recommend improvements to the Planning Enforcement Policy and harm risk assessment as deemed necessary to improve the effectiveness of approach.

In its final report dated 14 February 2023, the Task & Finish Working Group recommended a selected number of changes to the Planning Enforcement Policy and the Harm Risk Assessment Scheme which were considered and endorsed by the Resources and Services Overview Scrutiny Committee at its meeting on 13 March 2023. These were subsequently reported to the Cabinet on 23 June 2023.

The proposed changes are set out as follows:

Planning Enforcement Policy

The first paragraph on Page 19, to be updated with the addition of the following underlined wording:

The result of the harm assessment by the twentieth day will allow the decision on “harm” to be incorporated in the 21 day update letter sent to complainants to inform them of the investigation findings and proposed action. Where the Council decides that action is required, it will thereafter aim to update the complainants at least once every 21 days on any progress, or as otherwise necessary.

Harm Risk Assessment Prioritisation Scheme

Under section 3 ‘Operational Aspects’, to include the following additional wording to the second paragraph:

The result of the harm assessment by the twentieth day will allow the decision on “harm” to be incorporated in the Service’s normal 21 day update letter to complainants informing them of the Service’s findings and intended action or, where applicable, that no additional is to be taken. Where the Council determines that action is required, it will thereafter aim to update the complainants at least once every 21 days on any progress, or as otherwise necessary.

In the harm assessment form, to make the following changes (deletions shown as ~~struck through~~ and additions shown as underlined):

Points Allocation		Score
1	Urgency: Is the breach <u>enforcement matter</u> :	Ongoing (1) Getting worse (2) <u>Stable/Paused</u> (0)
2	Highway safety issues:	Yes (2) No (0)
3	Danger to public or animal safety:	Yes (2) No (0)
4	Does the alleged breach cause a statutory or serious environmental issue such as noise pollution, odour, flood risk?	<u>Causes Flood Risk (2)</u> <u>Noise/disturbance concerns (2)</u> <u>Pollution/odour (2)</u> <u>Light pollution (2)</u> <u>Other (1)</u> Yes (2) No (0)
5	Complainant: <u>(Note that all complainant details will be kept confidential, however providing a named contact will enable the Council to update the complainant and seek potentially useful additional information from them)</u>	TDC Member (2) Named member of public (2) Statutory agency (2) Member of staff (2) Parish Council (2) Named (2) Anonymous / malicious (0)

6	Timescale i.e. time remaining before enforcement action can no longer be taken & lawful use rights exist (i.e. 4 years & 10 year enforcement period) <u>Affects listed buildings, protected trees, Conservation Areas or other protected assets:</u>	Less than 3 months (1) More than 3 months (2) More than 4 years if exempt (0) More than 10 years (0) <u>Yes (2)</u> <u>No (0)</u>	
7	Contrary to Local <u>the Development Plan or including Neighbourhood Plan</u> policy?	Yes (2) No (0)	
8	Extent of harm	Widespread (2) Local (e.g. within the street area) (1) None (0)	
9	Is harm irreversible (e.g. has it, or could it, result in the loss of irreplaceable assets?)	Yes (2) No (0)	
10	Intensity of activity	High (2) Low (1) Negligible (0)	
11	Breach of planning condition <u>(including divergence from approved plans)?</u>	Yes (1) No (0)	
12	Impact on <u>residential</u> amenity	Long term (2) Short term (1) <u>N/a (0)</u>	
13	Previous enforcement action/ <u>relevant</u> planning history <u>at the site/premises</u>	Yes (1) No (0)	
14	Safety hazards (specify)	Yes (1) No (0)	
15	Undesirable precedent?	Yes (1) No (0)	

APPENDICES

Appendix 1: Revised Planning Enforcement Policy 2023

Appendix 2: Revised Harm Risk Assessment Priority Scheme 2023