

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO CABINET**

10 June 2020

Report Title: Local Planning Enforcement Plan

Submitted by: Head of Planning & Development

Portfolios: Planning and Growth

Ward(s) affected: All

Purpose of the Report

To seek Cabinet approval for the adoption of an update to the Local Planning Enforcement Plan for the Borough Council in Newcastle-under-Lyme.

Recommendation

To approve the proposed Local Planning Enforcement Plan for introduction and implementation in the Borough.

Reasons

The Local Planning Enforcement Plan sets out the framework by which the Council will approach its enforcement duties by providing a method to prioritise the most serious breaches of planning control, the measures by which the Council might enforcement against a breach of planning control, and SMART targets for the progression of cases.

The review of the plan has been undertaken as the existing plan is now 11 years old having been adopted in February 2009. Over the intervening time national and local planning policies have changed and the update ensures that the plan is in accordance with current best practice.

1. Background

- 1.1 The Council's Planning service regulates development within the Borough. Development can constitute physical building works ranging from the construction of small extensions and other small works through to major schemes such as the construction of new factories and housing estates. In addition, development can comprise the change of use of land or buildings, for example the conversion of an office building to a block of flats.
- 1.2 A large proportion of development work in the Borough requires approval through the granting of planning permission, although some smaller works can be undertaken without need to apply for consent from the Local Planning Authority (LPA) if they fall within the parameters of that which is permitted pursuant to the Town and Country Planning (General Permitted Development) Order 2015. The legislation on permitted development is complex, in part because it addresses nearly all forms of development from household extensions through to infrastructure projects including highway and railway works.

- 1.3 Despite these opportunities existing for developers to secure approval through the appropriate legislation, there has historically been a low level of development in Borough that does not benefit from consent either through an application to the Council or through permitted development. This work is considered to be unauthorised and therefore the LPA can consider whether enforcement action is necessary to remedy any breach that has occurred.
- 1.4 Whilst the Council has a range of powers to enforce against unauthorised development, the Government, through paragraph 207 of the National Planning Policy Framework (NPPF), states that enforcement action is discretionary and LPA's should act proportionately in responding to suspected breaches of planning control.
- 1.5 The NPPF also recommends that Local Planning Authorities publish 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 it is appropriate to do so.
- 1.6 The Council has therefore drafted a Local Enforcement Plan in accordance with national guidance and sought consultation on this document.
- 1.7 The key sections of the Local Planning Enforcement Plan deal with the following matters:

Defining what constitutes breach of planning control and the different forms a breach may take including retrospective and intermittent breaches

 - Identifying harm and its impacts
 - A scoring matrix to assist in quantifying harm
 - Prioritisation of enforcement cases
 - Methods of communication with the Council including timescales
 - Different routes to taking enforcement action including prosecution.
- 1.8 The document is clear that at the heart of the consideration of an enforcement case is the amount of harm, the breach of planning control may cause and whether taking enforcement action would be expedient. This harm may manifest itself in detriment to the amenity or privacy of neighbours, environmental harm such as protected habitats or species, damage to the character and appearance of the surrounding area or conflict with established national and local planning policies.
- 1.9 In instances where it is considered the breach is minimal, the option exists for the LPA not to take action. Part of this assessment is consideration of whether planning permission would be likely to be granted should a retrospective planning application be submitted to regularise the unauthorised works
- 1.10 In instances where it is considered the breach is more significant and creates a planning harm, the Plan sets out the steps the Local Planning Authority will take to investigate a matter and seek to resolve the planning breach.
- 1.11 The consultation responses sought greater clarification on the score harming criteria, and the legal proceedings following the issue of a formal notice. The report has therefore been amended to address these issues. It also gave opportunity to amend some of the links to the website within the document.
- 1.12 The key changes to the draft LPEP are:
 - Some alterations to the score harming criteria titles for greater clarity,
 - Setting of a 5-day deadline to register and acknowledge new complaints
 - For medium priority cases change the visit time from 20 to 10 working days

- Insertion of a paragraph about the council not tolerating physical or verbal abuse of its planning enforcement staff.
- Updated the website links for registering of complaints
- Clarification using examples for the progression of cases and use of formal notices.
- Creation of a resident's guide.

1.13 The residents guide will be a useful tool to manage the expectations of complainants with regards to the scope of the Council planning enforcement powers and the timescales involved. It also includes a section for residents who receive a notice or complaint visit to increase their understanding of the process. This is to supplement the main document which contains a greater degree of technical information relating to planning enforcement.

1.14 The proposal to adopt the Local Planning Enforcement Plan would comply with national guidance and in doing so assist in ensuring any future action taken by the Local Planning Authority would be carried out in accordance with established best practice.

2. **Issues**

2.1 It is good practice to have a robust Local Enforcement Plan in place to support the Council's use of enforcement powers in the Borough and to ensure that development is undertaken in accordance with the adopted development plan.

3. **Proposal**

3.1 To approve the proposed Local Planning Enforcement Plan for introduction and implementation in the Borough.

4. **Reasons for Proposed Solution**

4.1 The proposed update to the Plan will help ensure that the Council has a robust set of measures in place in order to effectively undertake enforcement action across the Borough in a timely and expedient manner.

5. **Options Considered**

5.1 Consideration has been given to not updating the Local Enforcement Plan but this would leave the Council in a weaker position with regard to any future enforcement action as the measures set out in the 2009 plan were no longer appropriate given the emergence of new planning policy guidance notably the 2019 NPPF.

6. **Legal and Statutory Implications**

6.1 The adoption of the Plan should assist in ensuring action taken by the Local Planning Authority is in accordance with legislation and therefore minimise opportunities for action to be taken against the Council.

6.2 The proposals within the Plan do not raise any new legal risks for the Council.

7. **Equality Impact Assessment**

7.1 It is not considered that the enforcement process affects an individual or group disproportionately in respect of any protected characteristics. Where a party involved in the enforcement process either as a complainant or as the person suspected of causing the breach, will be offered assistance as appropriate for them to access relevant services.

8. **Financial and Resource Implications**

- 8.1 Whilst there are staffing costs associated with the resourcing of the enforcement service and the processing of any action taken including prosecution and if necessary direct action, the procedures set out in the Local Planning Enforcement Plan do not expose the Council to any additional costs.
- 8.2 Through setting out clear steps for undertaking enforcement action, the risks of abortive action should be minimised hence reducing the potential for unnecessary costs to be incurred by the Council.

9. **Major Risks**

- 9.1 Failure to take undertake appropriate investigation and assessment of potential breaches of planning control can result in complaints against the Council escalating to the Local Government and Social Care Ombudsman Notable or repeat failures to deliver an efficient enforcement service may result in criticism by the Ombudsman about the operation of the service and therefore subsequent reputational harm.

10. **Sustainability and Climate Change Implications**

- 10.1 There are no sustainability or climate change implications.

11. **Key Decision Information**

- 11.1 This report can be considered key in the following ways: -

- It results in the Borough Council committing existing resources for the function to which the decision relates and;
- To be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in the Borough.

12. **Earlier Cabinet/Committee Resolutions**

- 12.1 None.

13. **List of Appendices**

- 13.1 Appendix 1 – Proposed Local Planning Enforcement Plan.

14. **Background Papers**

- 14.1 National Planning Policy Framework
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf
- 14.2 National Planning Policy Guidance
<https://www.gov.uk/government/collections/planning-practice-guidance>
- 14.3 Newcastle Under Lyme Planning Enforcement Website
<https://www.newcastle-staffs.gov.uk/all-services/planning/planning-enforcement>
- 14.4 Existing Newcastle Under Lyme Planning Enforcement Policy
<https://www.newcastle-staffs.gov.uk/sites/default/files/IMCE/Planning/Planning%20Enforcement%20Policy.pdf>