

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Economy Environment and Place Scrutiny Committee
17 December 2020

Report Title: Planning Enforcement Update

Submitted by: Head of Planning & Development

Portfolios: Planning & Development

Ward(s) affected: All

Purpose of the Report

To inform members of the current situation regarding the enforcement caseload.

Recommendation

That

1. That the report be received

Reasons

To ensure members are aware of the Councils current approach to planning enforcement

1. **Background**

1.1

Enforcement work is central to the operation of an efficient planning service. Without the risk of enforcement action being taken against unauthorised works, land owners and developers may feel at liberty to undertake whatever development they feel suits their needs the best without risk of recrimination wither in the form of notice to remove the unauthorised works or ultimately a prison sentence.

Whilst it is recognised that for some cases, the expenditure undertaken by the Council to pursue an enforcement case may exceed the value of the work undertaken and hence seem disproportionate in nature, it is considered that such cases represent the ability of the planning system to balance the needs of different parties and ensure the interests of the wider community including immediate neighbours can be taken into account and respected whilst allowing sustainable forms of development to proceed.

The enforcement service is though discretionary and there is no duty on the Council to undertake action against all breaches of planning control. Whilst the most egregious breaches often become subject to action, the Council may decide not to pursue action against more modest cases especially where the breach is technical in nature and no harm to policies, the environment and importantly neighbours has occurred. The archetypal example of such an incident is a garden fence remote from any dwelling that is constructed slightly in excess of permitted development rights.

As with planning applications, enforcement cases are treated on their own merits. Whilst some analogies can be drawn with similar development, the circumstances of one case may not dictate that all similar cases should be determined in the same manner and matters like the orientation of the sun path or the

slope of the land may mean a slight breach of one fence may be minor whilst in another instance, the same exceedance results in a degree of harm sufficient to warrant enforcement action being taken.

The Steps to Enforcement Action

Where a breach of planning control has been identified which normally occurs through non-compliance with a planning approval or where no planning permission has been granted at all, officers will in the first instance seek to undertake an expediency test to ascertain whether the development is of such a nature that it is causing harm. If harm which could be proven at a planning enforcement appeal exists, officers may offer the landowner the chance to regularise the development where possible.

This may require amendments to the scheme to ensure it matches approved drawings or meets the parameters of the permitted development legislation.

Where this cannot be achieved or the developer does not wish to comply then officers may invite an application for the development to be regularised in the form that it is constructed. Such an offer though is not a formality and officers will be mindful of the potential for the development to actually be approved taking into account national and local planning policies, the views of neighbours and other material considerations.

Should an application be submitted in a timely manner then any enforcement action is put into abeyance until the application is determined unless either the four or ten year exemption dates are likely to be reached after which the development would become immune from enforcement action.

It is important to note that the purpose of planning enforcement is not to punish someone for a breach of planning control but to ensure the interests of neighbours, the environment and planning policies are protected. To this end, officers will only seek to move to the issuing of notices if the development cannot be regularised and is causing an identifiable harm.

The principal tool is the enforcement notice which can require a landowner or a developer to remove unlawful work or cease operations for which no approval has been granted. They may also be used to direct someone to undertake remedial works as well for example returning land to its former use.

Other powers include Section 215 notices which can be used to instigate the tidying up of unsightly land, listed building notices, injunctions and stop notices. These powers though need to be used with care as their inappropriate application may expose the Council to counter claims for losses incurred by land owners.

Should the recipient of a notice from the Council not comply with the terms, then the Council can go to the Courts to pursue an order to secure compliance and if that in turn is not complied with then the penalties escalate as the matter becomes a formal offence due to failure to comply with an enforcement order. At this level, people still seeking to withstand the planning enforcement process are at ever increasing risk of conviction.

Only last month, a land owner at Llandrindod Wells was sentenced to 15 days in prison for undertaking authorised works on his land and failing to comply with the enforcement notice issued by Powys County Council.

Timeliness of Enforcement

Sadly, planning enforcement can be a very protracted process. Even in the most blatant of cases where someone has failed to comply with the appropriate legislation it may be some years before the case comes to a conclusion. In the case of the breach mentioned above in Powys, the Council served its first enforcement notice in December 2013.

It is not uncommon for people who have breached planning control to try and eek out every last hour they can of their development before they need to make changes or demolish the structure if required.

Although the Council may invite some people to submit an application to retain a development that would normally gain planning permission if they had applied first before building, anyone can apply for planning permission even if the advice is unfavourable and there is little to merit in the scheme.

Whilst there is a live application under consideration, the Council cannot pursue enforcement action as fully as it may like and whilst notices may be issued the day after an application is refused, land owners have the right to appeal a refusal notice for up to six months from the date of the decision.

Once an appeal is lodged, it then falls to the Planning Inspectorate to consider the merits of the case. At present depending on the type of appeal, cases are on average taking around eight months to determine (October 2020: MHCLG).

	Mean (weeks)	(Median (weeks))	Decisions (cases)
Written Reps	37	34	212
Hearings*	34*	34*	1*
Inquiries*	N/A*	N/A*	0*

* Data may be affected by low sample numbers.

The Planning Inspectorate have indicated though that some decisions made in the latest month were on cases submitted a years or more before and as such, while the data above is the most recent snapshot available, they should not be relied on to give a reliable indication of what will happen to a case submitted recently or in the future.

In some cases, people still seek not to comply with the appeal decision if it goes against them. In these cases the Council will need to go to Court to secure an order to seek compliance with the original notice. If the notice and court orders remain outstanding, the Council can ultimately seek authorisation for direct action. To resolve a persistent breach.

Direct action, is the process where by the Council can attend site with the appropriate machinery to enforce demolition of an unauthorised structure. Police may also be in attendance to ensure a breach of the peace offence doesn't escalate if the owner seeks to resist the works proceeding.

The works are funded by the Council in the first instance but a charge may then be placed on the land so that if it is sold, the Council can seek a return on the money expended on clearing the site.

I Issues

- 2.1 Whilst the enforcement service can ultimately secure compliance with adopted planning policies and protect residential amenity, the process is not instantaneous, nor for that matter is it particularly rapid in the eyes of the public to come to conclusion.
- 2.2 There are two key time lines that affect the final decision on many enforcement cases. The time the Council spends on the matter and the time taken by the Planning Inspectorate. Furthermore, the Councils time is broken down into two main sections, the initial processing and assessment and secondly, the assessment of the case and whether it is appropriate to take action.
- 2.3 Historically, cases have been dealt with on an individual basis and dealt with as time has allowed. More recently, officers have sought to focus on keeping neighbours engaged by prioritising response times to initial enquiries.

- 2.4 As the service though can be dependent on the appeals process and possibly court action, it is not possible for the authority to provide set targets for complete resolution of cases. The Council though has sought to introduce a target for responding to complainants and this indicator is the percentage of complainants informed within the required timescales of any action to be taken about alleged breaches of planning control.
- 2.5 The local performance indicator for this is 75% but at present, the cumulative performance lies at just under 62%.
- 2.6 Whilst there are reasons behind this which are explained in the next paragraph, this performance is below target and needs to be redressed. Steps to meeting this target are set out in the Proposals section later.
- 2.7 It is understood one of the key reasons there is slippage is that during the recent Covid lock downs two events have combined to generate more interest in enforcement work. Firstly, home owners have been limited in their ability to leave the house and have instead sought to undertake home improvements and work in their gardens. Some of this activity has resulted in more minor breaches of control partly through over ambitious DIY projects. The second effect is that with more people at home for longer, people have become sensitised to protecting their personal space and the environment around them. As a result, when development occurs close to them, more questions are being raised to the council to see if work near their property is lawful or not.
- 2.8 Whereas normally we may have seen one or two neighbours enquire about a fence or a shed, now the volume of enquiries has risen. This is understood to be a national picture but hopefully one unique to the effects of the recent lockdown.

3. **Proposal**

- 3.1 Currently, the enforcement system makes some use of the Planning Services Uniform computer system which is used to case manage the planning applications being dealt with by the Council.
- 3.2 Looking forward, there is a significant amount of information that can be reported on and whilst there is a risk that the process becomes bogged down by the need to process statistics more than just doing the day job, there is a role for some finer monitoring of how cases are being processed to understand where any delays may be occurring.
- 3.3 One area which has been identified where work a change can be made is in the initial assessment of a case. Currently a narrative based report is prepared explaining the merits of the case and then a recommendation reached by the case officer. Whilst this is helpful, some parts of the planning legislation is prescriptive in nature and no matter what the surrounding issues may be, a garden fence only 2.0m high will often be found to be allowable development due to the criteria set out in Part 2 of Schedule 2 of the General Permitted Development Order 2015.
- 3.4 Therefore, rather than officers spend time on the wider detail, a more check boxed based approach will allow a more rapid appraisal to be undertaken of each case allowing a response to be provided to enquirers more rapidly. This approach also allows elements of the process to be shared by the Technical Support team who should be able to undertake some of the administrative processes e.g. sending out the response letters and completing the response dates thereby allowing greater capacity within the enforcement service to focus on the assessment of harm and any potential conflicts with policy that may arise.
- 2.9 In addition to the processing of live cases, officers have commenced work on setting new indicators and establishing comparative data to assess how well the Council is performing. At present, the following data is available.

Year	Cases on hand at 1 st January	New cases received	Planning applications received in response to enforcement action	Planning applications approved in response to enforcement action	Cases Closed*	Cases on hand at 31 st December	No. of cases still open	Unresolved where formal action has been taken	Notices (type and number) served in year
2017	278	270	33	31	271 (200)	279	21	1	1 Enforcement Notice <i>Land off Keele Road</i>
2018	279	261	33	30	260 (196)	280	29	8	4 Enforcement Notices Land at <i>Doddlespool</i> x3 <i>Boggs Cottages</i> x1 1 PCN <i>Boggs Cottages</i> 3 Stop Notices <i>Land at Doddlespool</i> x3
2019	280	255	39	28	267 (194)	265	37	0	Nil
2020	265	225	20	13	177 (146)		79	1	1 Enforcement Notice <i>Imperial Works</i> x1

(figure in brackets indicates the number of cases closed for that calendar year)

3.5 Unlike the national indicators on the determination timescales of planning applications against 8 and 13 week targets, there are no national indicators on the speed of processing enforcement items. There is data on the level of enforcement action taken by each authority in terms of the types of notice served and for the country as a whole (tables P127, P129 and P130 on MHCLG Live Table data).

3.6 Comparable Councils have been investigated to identify opportunities for contrasting data including Nuneaton and Bedworth, North East Derbyshire, Wyre Forest, Braintree, Carlisle, Erewash, Ashfield, Chorley, Amber Valley and Broxtowe Councils. Any records on planning enforcement performance though is very limited in nature and no reliable benchmarks have been identified.

3.7 To address this, officers will be seeking to find benchmarking authorities through the Councils Business Improvement Service and through the National Association of Planning Enforcement (NAPE).

3.8 Once comparative performance figures can be established, officers will seek to publish speed of enforcement data as part of the bi-annual performance data for the whole planning service.

4. **Reasons for Proposed Solution**

4.1 It is considered that the twin approach of improved benchmarking and process changes within the administration of the enforcement service will allow both positive change to occur and for that change to be monitored.

4.2 In turn, these changes will enable members of the public to gain an insight into the operation of the service and importantly help manage expectations around when cases may be registered, investigated and resolved.

4.3 The changes will also allow managers within the team to identify where any challenges may be occurring to allow targeted interventions to occur to ensure performance is kept at a high level.

5. **Options Considered**

5.1 It is considered that improvements in both benchmarking and process efficiency represent two key steps that can be readily implemented. Further intervention will be reviewed following an assessment of the efficiency of these changes.

6. **Legal and Statutory Implications**

6.1 Planning enforcement is regulated through a series of planning acts most notably the Town and Country Planning Act 1990. Although planning enforcement is discretionary, failure to use our powers effectively may open the Council to criticism from the Local Government Ombudsman with the associated reputational harm that would accompany a critical finding against the Council.

7. **Equality Impact Assessment**

7.1 No significant impact identified.

8. **Financial and Resource Implications**

8.1 Whilst there are some small costs associated with an increased focus on performance management, it is considered that these can be accommodated within the service. These costs though should help enhance the operation of the service and minimise the risk for any errors to occur and hence minimise the risk of costs awards against the Council.

8.2 Time spent on implementing performance improvements should also recoup benefits from enhanced efficiency.

9. **Major Risks**

9.1 None

10. **Sustainability and Climate Change Implications**

10.1 No significant impact identified.

11. **Key Decision Information**

11.1 No key decision is required.

12. **Earlier Cabinet/Committee Resolutions**

12.1 None

13. **List of Appendices**

13.1 None

14. **Background Papers**

14.1 None