

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**EXECUTIVE MANAGEMENT TEAM'S
REPORT TO**

Cabinet
09 June 2021

Report Title: Local Planning Enforcement Plan – One Year Update

Submitted by: Executive Director - Commercial Development & Economic Growth

Portfolios: Strategic Planning

Ward(s) affected: All

Purpose of the Report

To update Cabinet on progress to date with the updated Local Planning Enforcement Plan adopted in 2020.

Recommendation

That Cabinet approve

- 1. To continue use of the Local Planning Enforcement Plan in the Borough and undertake a second review of the Plan in June 2022**

Reasons

The Local Planning Enforcement Plan was put into effect during the first part of the Covid 19 pandemic. During this time the authority saw a series of unusual patterns of behaviour relating to both domestic and commercial development due to lockdown and the limitations placed on peoples normal activities.

Whilst the Plan has been an effective tool in delivering the enforcement service, lockdown restrictions limited normal engagement on enforcement matters.

1. Background

- 1.1** As noted in the report to Cabinet last year leading to the adoption of the new Plan, the Councils 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 Since the last report, further amendments have taken place to the permitted development legislation allowing greater flexibilities particularly around residential development. Planning officers continue to keep abreast of these changes as the amended permitted development rights can result in schemes that may have been potentially subject to enforcement activity last year are now deemed to be acceptable and hence outside the scope of enforcement activity.
- 1.4 Despite these opportunities existing for developers to secure approval through the appropriate legislation, there remains 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.
- 1.5 In line with the NPPF recommendations that Local Planning Authorities publish a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area, the Council adopted a new enforcement plan last year.
- 1.6 The policy through has met with some initial difficulties as it was released in the midst of the Covid 19 Pandemic.

2. **Issues**

- 2.1 To a large extent, the new plan has proved effective to the team to support the prioritisation the cases and filter minor breaches of planning control where there has been no substantial harm.
- 2.2 In the initial stages of the pandemic in March 2020, officers noted a decline in a range of development activity. This was to be expected given the strict criteria around movement and activities that could be undertaken. Quite soon after though, it was noted that there was a wave of cases arising though householder developments and commercial activities occurring at residential premises.
- 2.3 The reasoning behind this was understandably due to two factors. Firstly, DIY stores were one of the few retail premises open to the public and outdoor activities such as building work were seen as having a lower risk to public health than indoor activities. The second reason leading to the commercial activity was that small business could not open and owners and employees sought to keep their businesses active through working from home.
- 2.4 As the lockdown restrictions have eased, there has been a steady return to pre-2020 patters of working. Whilst this has resulted in a decline in some areas of household enforcement moving into 2021, activity remains high as firms seek to catch up with lost output from the pandemic.
- 2.5 Aside from these issues which have resulted in an unusual 12 months of enforcement activity being noted, the Enforcement service itself has been affected by Covid 19.
- 2.6 Notably, the Council moved quickly to adopt enhanced safety measures around undertaking site visits. In the initial stages of lock down, only cases where the reported breach could be seen from the public highway were inspected as these allowed officers to remain a safe distance from strangers and the risks of infection.

- 2.7 As awareness of how the virus spread and improved health and safety measures took effect, officers were able to expand the number of visits undertaken.
- 2.8 It is recognised that there has been at times a mismatch between the ability of the Council to investigate possible breaches of planning control and the pace at which they have been occurring during the pandemic. This is possibly due to differing perceptions of risk and whilst the Council has sought to maintain a position where it could effectively comeback from the pandemic and recommence enforcement activity at a time when safe to do so, others may have taken a more liberal approach to their safety and that of the people close to them. This is a personal choice and one, managers felt to be inappropriate to ensure the long-term operation of the service.
- 2.9 Whilst it has been possible to catch up on a series of visits as the lock down regulations have eased, there remains a number of cases still to process. Details of the volume of work and the priority cases is reported to planning committee on a quarterly basis.

3. **Proposal**

- 3.1 Over 2020 and into 2021, the LPEP has supported the enforcement work of the department providing clarity around why certain cases are not being pursued.
- 3.2 It is therefore considered that the plan is of positive benefit to the delivery of an efficient planning service.
- 3.3 Due to the impact of Covid 19 however, it has not been possible to observe the operation of the plan during a 'normal' year as was envisaged when the plan was agreed in 2020.
- 3.4 It is therefore recommended that the plan be rolled forward for a further 12 months and a second review undertaken in the spring of 2022.

4. **Reasons for Proposed Solution**

- 4.1 The manner in which the LPEP is enforced is an important one as it can help to establish a uniformity of approach to delivering the service across the borough. As Covid 19 resulted in an at times fragmented approach to delivering the service as the level of harm arising from some breaches of planning control and the ability of officers to safely investigate was not always matched.
- 4.2 It is considered allowing a further 12 months to review the effectiveness of the plan will allow a greater number of ward members to engage with the plan, the beaches of control occurring and the resourcing of the enforcement service to meet the publics expectations in a timely manner.

5. **Options Considered**

- 5.1 Consideration has been given to adopting the LPEP with no further review at this time.
- 5.2 Whilst it is felt there are no substantive areas of weakness in the plan which could be resolved without impinging on other areas of enforcement activity or wider resourcing of the planning service, the addition of an additional 12 months review does not preclude the ongoing use of the plan to manage work,

6. **Legal and Statutory Implications**

6.1 The ongoing use of the Plan should assist in ensuring action taken by the Local Planning Authority is in accordance with legislation and therefore minimise opportunities for complaints to be sustained 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. **UN Sustainable Development Goals (UNSDG)**

10.1 The Local Planning Enforcement Plan supports UNSG and Climate Change objectives in a number of ways. Principally, through the protection of the environment and delivering sustainable development. The following UNSGs are supported.



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 A report was presented to Cabinet on 10th June 2020 at which the LPEP was approved subject to a 12 month review.

12.2 The original report can be read here:
<http://svmma/ieListDocuments.aspx?CId=118&MId=3689>

13. **List of Appendices**

13.1 Appendix 1 – Proposed Local Planning Enforcement Plan.

14. **Background Papers**

National Planning Policy Framework

National Planning Policy Guidance

Newcastle Under Lyme Planning Enforcement Website