

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**CORPORATE LEADERSHIP TEAM'S
REPORT TO**

Cabinet
19 September 2023

Report Title: Local Planning Enforcement Plan

Submitted by: Deputy Chief Executive

Portfolios: Strategic Planning

Ward(s) affected: All

Purpose of the Report

To seek approval for and adoption of a Planning Enforcement Plan.

Recommendation

That Cabinet approves and adopts a new Planning Enforcement Plan for the Borough as attached at Appendix 1 to this report.

Reasons

Planning enforcement is a discretionary power available to local planning authorities. As such national guidance advises that Council's approve and adopt a planning enforcement plan setting out their approach to enforcement matters for the benefit of residents, communities, business and the development industry.

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 minor 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 deemed 'permitted development' 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 and has been amended over the years.
- 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 the Borough that does not benefit from consent either through an application to the Council or through permitted development. This work is 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, in National Planning Policy Framework (NPPF) and the supplementary Planning Practice Guide, states that enforcement action is discretionary and LPAs should act proportionately in responding to suspected breaches of planning control.
- 1.5 The NPPF also recommends that Local Planning Authorities prepare and 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 investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

2. **Issues**

- 2.1 It is important that Enforcement Plans are reviewed and kept up to date. The existing Council Local Enforcement Plan has been reviewed and revised to ensure that it is in accordance with current national guidance and has been consulted on.
- 2.2 The updated Enforcement Plan is clear that at the heart of the consideration of an enforcement case is the amount of harm a 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 to protected trees, habitats or species, damage to the character and appearance of the surrounding area or conflict with established national and local planning policies.
- 2.3 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.
- 2.4 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. There are sometimes several actions that could be taken, and each case will look at the best method for the situation. In some cases, other statutory bodies may be able to deal with the matter where they have relevant powers.
- 2.5 The updated Plan sets out to manage the expectations of complainants with regards to the scope of the Council planning enforcement powers as well as advising perpetrators that the Council will follow through complaints and deal with any deviation from approved planning consents.
- 2.6 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.
- 2.7 The proposed Enforcement Plan was presented to and considered by the Council's Planning Committee at its 18th July meeting. Overall members endorsed the plan. Issues were raised about the timescales involved in responding to enforcement matters being raised with the Authority, unauthorised development activity in Conservation Areas and changes between the proposed plan and previous plan. As regards a particular section of the proposed plan, members agreed that in the Appendix 1 of the Plan where under 'Low' priority currently the wording reads as 'Unauthorised development which is not the

source of significant public complaint' the word 'significant' is removed. This suggested change is deemed acceptable by your officers and is reflected in the draft Plan now presented to you.

3. **Proposal**

- 3.1 That the Cabinet approves and adopts a revised and up to date Planning Enforcement Plan to guide its enforcement activity within the Borough and help inform residents, communities, business and the development industry as to the Council's approach.

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 to effectively undertake planning enforcement action across the Borough in a timely and expedient manner. Having an efficient and effective planning enforcement regime and implementing this is a Council priority.
- 4.2 Failure to 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.
- 4.3 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.
- 4.4 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.

5. **Options Considered**

- 5.1 Not having an up-to-date Plan however this would leave the Council in a weaker position with regard to any future enforcement action

6. **Legal and Statutory Implications**

- 6.1 The principal legislation underpinning planning enforcement is enshrined in the Town and Country Planning Act 1990 and related amendments. A raft of other associated legislation does however also apply in certain areas/forms eg. The Localism Act 2011. The main policy guidance is set out in the National Planning Policy Framework and related National Planning Policy Guidance.

7. **Equality Impact Assessment**

7.1 The Enforcement Plan and its subsequent implementation through the activities of the Council are intended to address issues around unauthorised development. The approach advocated does not consider nor should it the perpetrators (alleged or otherwise) of such development nor the residents or local communities that are impacted.

8. Financial and Resource Implications

8.1 The costs of implementing a new and revised Enforcement Plan are intended to be met within existing Planning Service budgets and reflect mainly staffing costs.

9. Major Risks

9.1 There are no major risks in progressing with a new Enforcement Plan. It will help clarify the Council's approach to enforcement activity for all parties and explain what powers are available to the Authority. There is some risk that expectations will be raised on the part of local residents and communities and these will have to be suitably managed. A greater risk is not having an up to date plan and relying on older policy and guidance which could potentially cause issues for the Authority.

10. UN Sustainable Development Goals (UNSDG)

10.1 The planning system acts to provide for suitable and sustainable development that meets justified needs. Planning Enforcement powers allow local planning authorities to investigate breaches of planning control including developments which may not be sustainable in themselves or adversely affect the environment of a locality and living conditions.



11. Key Decision Information

11.1 Not Applicable – this is not a key decision.

12. Earlier Cabinet/Committee Resolutions

12.1 Not Applicable

13. **List of Appendices**

13.1 Appendix 1 – Proposed Local Planning Enforcement Plan.

14. **Background Papers**

14.1 National Planning Policy Framework (NPPF) and Planning Practice Guidance