

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

**CORPORATE LEADERSHIP TEAM'S
REPORT TO**

ECONOMY AND PLACE SCRUTINY COMMITTEE

07 December 2023

Report Title: Planning Enforcement and Performance

Submitted by: Service Director Planning

Portfolios: Strategic Planning

Ward(s) affected: All

<u>Purpose of the Report</u>	<u>Key Decision</u>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
To report on the Council's planning enforcement regime and related performance in the past 12 months.			
<u>Recommendation</u>			
That Committee:			
1. Notes the contents of this report			
<u>Reasons</u>			
To note the organisational arrangements for undertaking planning enforcement at the Council and to receive information on planning enforcement activity that has taken place over the period September 2022 to October 2023. To also note the service and customer improvements that have been undertaken or are due to take place as part of current and planned service delivery.			

1. Background

- 1.1 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.

- 1.2 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.
- 1.3 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 the 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.
- 1.4 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 being submitted and approved or through being permitted development. This work is unauthorised and therefore the LPA can consider whether enforcement action is necessary to remedy any breach that has occurred.
- 1.5 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.

2 Issues

- 2.1 Planning guidance states that all enforcement activity carried out by local planning authorities should be informed by an agreed Enforcement Policy/Plan. This plan should set out clearly how an Authority will respond to claimed breaches of planning control and what factors will be taken into account in determining whether or not to take any action after investigations have been carried out.
- 2.2 The Council has reviewed its existing Enforcement Policy to ensure that it is up to date – reflecting national guidance on good practice – and can be delivered to the satisfaction of members and the local community.
- 2.3 A new Enforcement Plan was agreed by Cabinet on 19th September 2023 and endorsed by Council on 22nd November 2023. This plan will guide enforcement activity going forward.

Planning Enforcement and Performance

Resources

- 2.4 At the present time the Council has one dedicated Planning Enforcement Officer who sits within the Planning Services Development Management and Enforcement Team. That officer principally carries out investigations into claimed breaches of planning control and liaises with the Development Management Manager on actions to be taken following investigations.
- 2.5 In addition to the Enforcement Officer, Development Management Officers also carry an enforcement workload alongside dealing with planning applications and matters relating to the same.

Caseload

- 2.6 Currently, the planning service has c200 cases it is actively dealing with. A recent review has resulted in a number of additional cases being closed down as these were of an historical nature. Just over half of the c200 cases are allocated to the Enforcement Officer with the remainder being picked up by Development Management Officers.
- 2.7 In the period September 2022 to October 2023 a total of 256 cases were recorded by the service. In the calendar years 2021 and 2022 the respective notifications were 279 and 213. In 2023 to date the figure is 213.

Performance

- 2.8 Performance of the Council's enforcement function is monitored and reported on. There are no statutory performance measures however the Council does record and reports on the time taken to investigate a possible breach and then to respond back to the complainant set against specified timescales in the approved Enforcement Plan. As part of the Council's Performance Reporting Framework the aforementioned performance is reported on a quarterly basis with the current target being 75% within the stated timescales. The breakdown of performance per quarter for the 4 quarters between October 2022 and September 2023 is shown in **Appendix 1**, with a high of 74.6% and a low of 59.8%. The overall level of performance for the period October 2022 – September 2023 was 67.2% (172 out of 256 cases).
- 2.9 Not all claimed breaches of planning control are - following investigation - found to be breaches or are judged to be of a scale/nature that it is considered justifies action being taken. Only in certain circumstances are breaches therefore deemed to be 'actionable'. Many recorded cases as such can and are closed once they have been investigated.
- 2.10 In terms of formal action, where the Council deems it appropriate to progress from an investigation to enforcement this can take various forms. In many cases formal action is not required or instigated if a negotiated position can be reached or it is deemed that a proven breach is not sufficient to cause any material harm to local residents or environment. In the reporting period the

subject of this report the Council has served one planning contravention notice pending further issuing of notices, 2 Enforcement notices and 1 Listed Building Enforcement Notice.

- 2.11 It should be noted that investigating, assessing and then acting upon claimed breaches of control is not an easy process and also can be very time consuming, requiring officers to review what often can be lengthy and complicated planning histories and needing to verify in many cases what the actual breach is. Often a single site can generate a number of different breaches which all need to be considered. Having established whether or not a breach has occurred a judgement has to be made and this may involve a number of considerations. In undertaking enforcement work and carrying out all aspects, this is a demanding area of planning. It is important therefore that resources are used in the most efficient way and that as a Council we explain our approach toward enforcement clearly and suitably manage customer expectations.

Service Improvements

- 2.12 In addition to a new Enforcement Plan, the planning service has also been reviewing its practices and looking at where it can make best use of resources to meet enforcement demands and improve the customer experience. Work streams to help identify new capacity to support the enforcement function and make the service easier to access and engage with have been developed as part of the Council's One Council Programme.
- 2.13 As a result of the One Council work improvements have been made to allow customers an easier and simpler way to notify the Council of potential breaches of planning control using online forms. Similarly, processes have been changed so that letters and other forms of notification can be sent out using IT systems – this lessens administrative demands in this area. To help customers understand better the powers and responsibilities of the Council when it comes to planning enforcement more information is going to be placed on the relevant Council webpages. It is hoped that this will reduce the number of enquiries that the planning service receives and has to respond to.
- 2.14 Another planned area of improvement is that of the use of mobile tablets which will allow officers to undertake site visits and access information and input data direct whilst out on site visits, saving time and hence improving productivity. Freeing up resources to enable claimed breaches to be investigated is also part of the revisions to the Enforcement Plan.
- 2.15 A further area where it is intended to bring forward improvements is in the recording of information in respect of breaches and related enforcement actions, this would allow the service to respond better to member enquiries but also those that come via external customers including through Freedom of Information requests. This work is in hand.

Concluding comments

- 2.16 Planning enforcement is a topic which generates a lot of interest and debate within Council's and their respective local communities. The position is the

same in Newcastle Borough. There is a general feeling that where we have a planning system which seeks to regulate and control the development and use of land in the public interest all bodies – whether private individuals, organisations or businesses – should abide by the rules in the spirit of fairness and equity, respecting the interests of the wider public and the local environment. That said only in prescribed circumstances is it actually illegal to be in breach of planning controls and as stated at the beginning of this report planning enforcement is not in itself a mandatory requirement, local planning authorities have the ability to review and determine whether a breach has or hasn't taken place and even then have a degree of flexibility as regards whether or not to take action.

- 2.17 As Council members have made it clear that they expect residents and businesses to comply with the provisions of the planning system and not breach planning controls in the Borough. Where this does not happen and clear and obvious harm is seen to take place then actions will be taken to remedy matters.

3 Recommendation

- 3.1 That the Committee notes the contents of this report.

4 Reasons

- 4.1 That the Committee receives information on planning enforcement activity and reviews performance.

5 Options Considered

- 5.1 Not Applicable

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 Council's approved Enforcement Policy and its subsequent implementation through the activities of the Authority are intended to address issues around unauthorised development. The approach advocated does not consider nor should it the individual perpetrators (alleged or otherwise) of such development nor seek to show bias toward or against any particular residents or local communities that are impacted.

8 Financial and Resource Implications

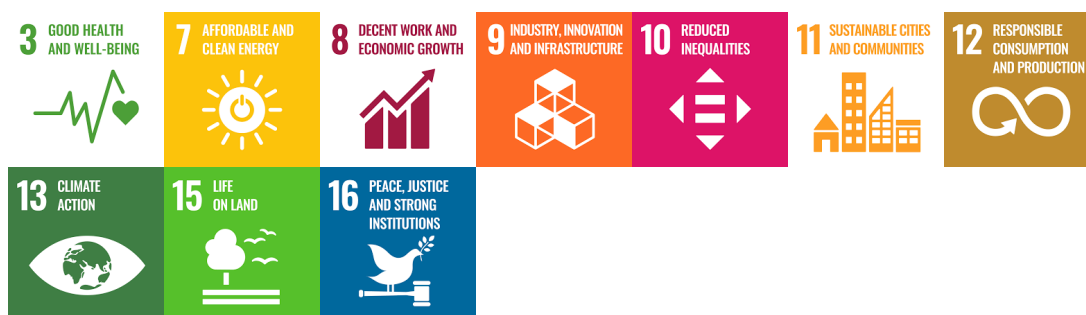
- 8.1 The costs of undertaking investigations and any related enforcement action(s) are intended to be met within existing Planning Service budgets.

9 Major Risks & Mitigation

- 9.1 The risk of being challenged on the Council's approach towards planning enforcement is mitigated by having an up to date and relevant Enforcement Plan. A new plan has recently been approved and adopted. The expectations of local residents and communities as to if, when and how enforcement activity will take place is a matter to be managed and informed by the aforementioned plan. Being clear and consistent in assessing cases and reaching decisions will be the key here.

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

12 Earlier Cabinet/Committee Resolutions

- 12.1 Cabinet agreed a new Enforcement Policy at its meeting held on 19th September 2023. [Decisions 19th-Sep-2023 16.00 Cabinet.pdf \(newcastle-staffs.gov.uk\)](#)
- 12.2 Council endorsed the new Policy and formally adopted it at its meeting on 22nd November 2023.

13 List of Appendices

13.1 Appendix 1 Enforcement Performance October 2022 – September 2023

14 Background Papers

14.1 None