

Brighton & Hove City Council

Tourism, Equalities, Communities, and Culture Committee

Agenda Item 32

Subject: Planning Local Enforcement Plan and Proactive Enforcement Projects

Date of meeting: 15th September 2022

Report of: Executive Director Economy, Environment and Culture

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Ward(s) affected: All

For general release

1. Purpose of the report and policy context

- 1.1 Enforcement action under the Town and Country Planning Act 1990 and Planning (Listed Buildings and Conservation Areas) Act 1990 is discretionary, but the investigation of complaints and the consideration of action is not. The National Planning Policy Framework identifies that Local Planning Authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area.
- 1.2 In 2018, the Council approved its Planning Enforcement Policy for the City. This report proposes an updated and revised policy for publication, which takes into account the outcomes of the last 4 years and forms the basis of the modernisation programme for planning enforcement. It also explores the options for proactive enforcement in the future and how updates will be provided to Planning Committee.

2. Recommendations

- 2.1 That Committee approves the Planning Local Enforcement Plan, included at Appendix 1 of this report, subject to any minor grammatical, non-material text and formatting agreed by the Head of Planning in consultation with the Chair of the Committee prior to publication.
- 2.2 That Committee notes that proactive projects are to be introduced as and when resource capacity is created.

3. Context and background information

- 3.1 In September 2018, the Council agreed the Planning Enforcement Policy for the City. This document set out the priorities for investigating complaints, service standards and when enforcement action should be taken for a

breach of planning control. This document was a step change in planning enforcement policy and focused upon customer service and in particular managing communications with complainants.

- 3.2 Whilst legislation has not changed since the implementation of the 2018 policy, it is common practice to review policy periodically to check that it is meeting requirements. In addition, in 2021 the service area embarked on a planning enforcement modernisation programme. Essential to this process is the review of the 2018 policy, in order to build in the necessary processes to facilitate modernisation. Further background information and context relevant to the proposed changes to the Planning Local Enforcement Plan is provided at Appendix 2.
- 3.3 The aim of the review is to provide good customer service for both complainants and alleged contraveners whilst creating capacity within current staff resources. By creating capacity, the service area has an opportunity to work on proactive projects. The new document seeks to manage expectations, focus on cases that are expedient to take action and reduce resource requirements on cases where action cannot be taken. A review of communication standards is also included.
- 3.4 The new Planning Local Enforcement Plan, at Appendix 1, is intended to be published in a web-based format and introduces:
- A greater level of detail as to what is a breach of planning control and the factors that will be taken into account when considering whether it is expedient to take enforcement action;
 - A detailed explanation as to how an investigation will be conducted, including when a site visit will be undertaken, when informal negotiations will take place to resolve a breach of planning control and the circumstances when formal enforcement action will be taken;
 - What constitutes a criminal offence in relation to planning breaches, how investigations will take place and how the public interest test will be considered;
 - New service targets and updated targets for communications to facilitate early engagement;
 - How complaints to multiple departments will be dealt with: and
 - Fees for certain service requests such as withdrawing an enforcement notice or verifying compliance.
- 3.5 It is proposed that information concerning the performance of the Enforcement Service will be reported to the Planning Committee through the Development Management Performance & Development Quarterly Report. In addition, there will be periodic reviews of the Plan.

Conditions monitoring and other proactive projects

- 3.6 The National Planning Policy Framework identifies that a local enforcement plan should identify how the Local Planning Authority will monitor the implementation of planning permissions. When capacity is created, monitoring of major permissions or permissions with Construction

Environment Management Plans and permissions which incorporate development involving equality of opportunity for a protected characteristic under the Equalities Act 2010 will be the priority.

3.7 It is proposed that if further capacity is created, the following projects will be subject to further consideration. This prioritisation has been informed by engagement with councillors:

- Short term holiday let regularisation.
- Buildings/ areas requiring maintenance and improvement.
- Conservation area improvement
- Compliance with historic notices

4. Analysis and consideration of alternative options

4.1 Whilst the current enforcement policy goes some way to help meet stated objectives, identified in Appendix 1, the new Planning Local Enforcement Plan is tailored to better meet these objectives. The Plan meets current legislation and national policy and whilst there is an option to undertake less negotiation, when we exercise our discretion to take enforcement action, this overall may cause delays through resulting appeals. Therefore, it is considered that the Plan creates a balance between informal resolution and taking formal action where it is expedient to do so.

4.2 The Plan also clarifies what is meant by expediency. There is an option to identify more circumstances where we would exercise our discretion not to take action, or where it would not be expedient to do so, because enforcement action is discretionary. However, the factors to be taken into account when considering expediency relate to the development plan, material considerations, national planning policy and guidance as well as matters that have been subject of case law. It also addresses issues of public interest and therefore the reasons for expediency seek to achieve a balanced reasonable outcome.

5. Community engagement and consultation

5.1 The Council receives customer feedback on planning enforcement cases on a regular basis. Customer feedback is obtained through formal complaints and complements as well as informal enquiries.

5.2 Since March 2021, the service area has dealt with some 13 formal complaints. Most complaints are concerned with the decision that either there was no breach of planning control or not to take enforcement action. In addition to this, complaints have been made about communication style, lack of response, the time taken for the investigation and the interaction between departments. In most cases, formal complaints are made by the persons requesting an investigation. This does not mean that contraveners do not voice concerns. However, this tends to be either made informally, through the appeal process or other channels. The appeal process can deal with issues such as the thoroughness of the investigation, whether the decision to take action was correct, whether the type of action was

appropriate and other relevant matters. Since March 2021, most enforcement appeals have been dismissed, although some amendments have been made to notices as is allowed through that process.

5.3 These insights, as well as a review of current practices, formed part of Members' Workshops in February and April 2022. These workshops gave an opportunity for all Members from all groups to contribute to the principles of the proposed Planning Local Enforcement Plan. In total 12 Members attended the workshops and a summary of the feedback as well as how issues have been addressed in the Plan is attached at Appendix 3. The key issues arising from the workshops include:

- A need to reduce the time taken to update complainants after receipt of complaint;
- Communications need to be improved, particularly creating accessible content;
- Priority should be given to cases which have the greatest harm and in particular impact on health and the environment;
- More information and clarity are required as to when action can and will be taken.

5.4 This feedback has had a direct impact upon the Plan, with a review of priorities and an emphasis on impact upon communities; as well as a change in when complainants are contacted. The expediency considerations were refined during the consultation process in order to better ensure that a balanced decision could be made. In addition to this more information has been provided about how an investigation is conducted and when negotiations will take place.

5.5 In terms of priorities for proactive projects some topic areas included, short term holiday lets, empowering communities to help deal with untidy land; and previous suggestions from Members relating to ensuring extant enforcement notices had been complied with.

6. Conclusion

6.1 The Planning Local Enforcement Plan will help guide investigations as well as decision making for planning enforcement cases. It will help manage customers' expectations and provide a framework to achieve better customer service. Ultimately the Plan will support modernisation of the service and assist in managing resources and caseloads to move from a complaint orientated service to encompass some proactive projects.

7. Financial implications

7.1 There are no direct financial implications arising from this report. The work programme is contained within the current resource and it is only if additional capacity is created that additional projects can be implemented. Any significant variations to budget will be reported as part of the council's monthly budget monitoring process.

Name of finance officer consulted: John Lack Date consulted (19/06/22):

8. Legal implications

- 8.1 There are no direct legal implications arising from the report as enforcement action is regulated by relevant legislation but legal resources may be required in respect of individual cases.

Name of lawyer consulted: Alison Gatherer Date consulted (17/05/22):

9. Equalities implications

- 9.1 The Planning Enforcement Service is complaint led and therefore customers, to an extent, are self-selecting. The Planning Local Enforcement Plan has been subject to an Equalities Impact Assessment and incorporates measures to create equality of opportunity for protected characteristics under the Equalities Act 2010. Further equalities monitoring will also take place to inform future reviews of the Planning Local Enforcement Plan.

10. Sustainability implications

- 10.1 In accordance with national policy enforcement decisions, in terms of whether it is expedient to take action, are made in accordance with the development plan unless material considerations indicate otherwise. This is captured within the Planning Local Enforcement Plan. Development plan policy is subject to a sustainability appraisal. In addition to this sustainability is a material consideration and decisions will be made in this regard.

11. Other Implications

Social Value and procurement implications

- 11.1 None identified.

Crime & disorder implications:

- 11.2 None identified.

Public health implications:

- 11.3 None identified.

Supporting Documentation

1. Appendices

1. Draft Planning Local Enforcement Plan
2. Planning Enforcement Context
3. Members Workshops Feedback

2. Background documents

1. Equalities Impact Assessment of the Local Enforcement Plan September 2022
2. National Planning Policy Framework