

Appendix 2

Planning Local Enforcement Plan, Planning Enforcement Context, September 2022

1.0 Introduction

1.1 This document provides background information and context relevant to the proposed changes to the Planning Local Enforcement Plan.

2.0 Resources and case load

2.1 The Planning Enforcement Team currently consists of an FTE Team Leader and 1.6 FTE Senior Planning Officers and 2 FTE Assistant Planning Officers. The majority of cases investigated by the team are complaint led, as opposed to self-generated. Whilst the number of cases received varies year on year, from January 2019 to December 2021 the team received 1965 new cases. This means on average the team receives 54 new cases per month.

2.2 These new cases, in workload terms, are considered in the context of the outstanding cases held by the officer. Of the cases received from 1st January 2019 to 31st December 2021 it took on average 143 days to close the case with 41% of cases closed within 8 weeks. Some 12% of cases received remain outstanding. This means that there are cases that can take months and sometimes more than one year to resolve. However, these lengthy timescales can be because of period of inactivity on a case. For example, if a retrospective planning application has been invited and is being considered, an appeal has been lodged or if compliance with timescales in a notice is awaited which for residential cases can be lengthy. This means that a full-time equivalent case officer generally can have around 100 cases at any one time.

2.3 Currently there are around 450 cases allocated to the team. This is a significant reduction compared to some 550 cases around a year ago. Whilst there has been a concerted effort to make a decision on cases, there remains outstanding historic cases still being worked on that require resolution.

3.0 Enforcement Investigations resulting in a conclusion of no breach

3.1 Planning enforcement cases vary in type and complexity. The majority of cases received are breaches of planning control. These can include for example fences, extensions, and dormer windows. However, they can also include changes of use such as houses in multiple occupation, short term holiday lets, and businesses being run from home. Breaches of planning control also include breaches of condition, including, on larger developments, matters such as construction hours and noise. Each case is required to be investigated on its own merits but in many cases they result in a conclusion that there has been no breach. Of the cases closed since January 2019, the majority (45%) were closed because the investigation showed that there was no breach. There are a number of reasons for this outcome but it can be because the complaint received is not a planning matter, the breach alleged

was not unauthorised because it was permitted under legislation, or the development is immune from enforcement action owing to the time it had been unauthorised.

- 3.2 It can take time to determine whether there has been a breach of planning control, particularly if there is an allegation of a material change of use. As the Local Planning Authority is unable to control matters that are not a breach and as they form a majority of cases, an aim in the enforcement plan is to reduce these types of matters being reported. This will be through communications and the modernisation programme, but it is an important part of the plan to explain about these matters, as it is an issue that is often queried.

4.0 Types of breaches

- 4.1 Whilst the majority of cases dealt with by the Planning Enforcement Team are breaches of planning control, other types of planning breaches investigated include unauthorised works to listed buildings, untidy land (under Section 215 of the Town and Country Planning Act 1990), unauthorised advertisements and breaches of statutory planning notices. Unauthorised works to listed buildings do not have immunity from action, unlike breaches of planning control. These types of cases make up a proportion of historic breaches currently held by the Planning Enforcement Team.
- 4.2 It is not a criminal offence to breach planning control and the actions that can be taken are remedial and not punitive in nature. Enforcement action can only be taken through the issue of an enforcement notice where it is expedient to do so.

5.0 Expediency

- 5.1 Expediency is a common term in planning enforcement, but it is also enshrined in legislation. The National Planning Policy Framework advises that enforcement action should be proportionate, and the National Planning Practice Guidance explains that planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. A local enforcement plan is also material in considering whether it is expedient to take enforcement action.
- 5.2 Since January 2019, 23% of cases were closed because it was not expedient to take action (this included other planning breaches not falling within the remit of breaches of planning control). This means there is a planning breach but the circumstance of the breach means it does not warrant action being taken. It is often the case that this is a contentious part of a planning enforcement investigation. As part of a case, the team often receive communications from complainants who query the concept of expediency and ask for the Council to take action even if it is not expedient to do so and in some cases request that informal action be taken that would go beyond that which planning legislation will allow. In order to assist with this situation, and allow officer time to focus on expedient matters, it is proposed through the Planning

Local Enforcement Plan to provide more clarity with regards to expediency and how a decision concerning expediency impacts upon informal negotiations. This should, as a result, help improve decision making and manage customer expectations. In addition to this, it may assist in resolving historic cases held by the team.

6.0 Full Compliance

- 6.1 Some 22% of cases closed since January 2019 were as a result of full compliance. This could have been due to either informal negotiations or compliance with a Notice. Since January 2019 some 81 enforcement notices (included listed building enforcement notices), 7 breach of condition notices, 6 Section 215 notices, and 1 Stop Notice has been served. This means in most cases informal negotiations are used to resolve breaches of planning control where it is expedient to take action.
- 6.2 It can be the case that customers request that immediate action be taken, without informal negotiations being sought. If it expedient to take action it can often be the case that informal negotiations are a quicker route to resolving the breach. This is because there is a right for relevant parties receiving a notice to appeal. Once the appeal is lodged it holds any remedial steps in abeyance. This has meant in some of our cases that the resolution has been on hold for a number of months and in certain cases over a year. However, to provide certainty for all parties including complainants, contraveners and any other bodies it has been clarified in the policy where informal negotiations will not be used or when notices will be served. This includes where it is expedient to take action and significant irreversible harm is taking place, or where there is a reasonable prospect of immunity being reached by the development, or where the landowner or other relevant persons are not engaging with the Planning Enforcement Team.

7.0 Criminal investigations

- 7.1 Criminal investigations are treated differently to that of breaches of planning control. This is because different legislation is associated with criminal investigations. However, the main difference is that a criminal investigation will result in a decision as to whether the Council will prosecute an individual which may result in a trial at court. This includes the consideration of the evidential and the public interest test. These are not the same as determining whether there is a breach of planning control and expediency. For the first time the evidential and public interest test is identified within the Council's Local Enforcement Plan. This provides any person who is potentially committing a criminal act, in planning enforcement terms, an understanding of the situation and process. It also provides any complainant with the necessary information to understand the process which is followed.

8.0 Working with other departments

- 8.1 Planning enforcement can cross over with other enforcement functions of the Council. Sometimes different legislation can achieve the same outcome, but it

is often the case that a development in breach of planning control can be in breach of other legislation which seeks to achieve a different outcome. This can cause confusion for customers including both contraveners and complainants. The aim of the plan is to avoid duplication where possible, and to identify a lead enforcement agency in these circumstances and to identify where liaison between services will take place.

9.0 Customer Service

- 9.1 The 2018 policy identifies priorities and allocates a timescale to visit a site in accordance with that priority. There are three priority levels but in practice most cases fall within the mid category, and this is because the priority is based upon the information that is received from the complainant.
- 9.2 The proposed Planning Local Enforcement Plan also identifies priorities but does not associate a time scale with them. The process requires an initial desk top assessment by an officer and contact with the complainant within a specified timescale. At this stage the priority of the case can be identified. The new updates which occur sooner in the process will overcome an issue with the previous policy which meant a complainant was not contacted until 8 weeks post acknowledgement, which usually resulted in communications requesting an update. It also acknowledges that in many cases further information is required from the complainant. The Plan also clarifies that not all cases will result in a site visit and low priority cases may take longer to resolve. This change in policy seeks to help prioritise those cases which require formal enforcement action and as a result manages customers' expectations.
- 9.3 In this iteration of the Plan, service targets for resolution of cases have also been included to help consideration of whether resources match case load and also to give an indication to customers as to timescales that are being achieved in cases.