

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter:	Review of Planning Enforcement
Meeting/Date:	Overview and Scrutiny Panel (Environmental Well-Being) – 8th December 2015 Development Management Panel 14th December 2015
Executive Portfolio:	Cllr Doug Dew, Executive Councillor for Planning and Strategic Housing
Report by:	Head of Development
Ward(s) affected:	All

Executive Summary:

At its meeting in February 2015 the Overview and Scrutiny Panel (Environmental Well-Being) requested that a report on Planning Enforcement should be submitted to a future meeting and that the Executive Councillor should be invited back to discuss the matter further at that time. A report was presented to the April 2015 meeting. The Panel was advised that a detailed review of Planning Enforcement was already under way and a further report would be made in the summer. This further report has been delayed in part to enable the recently appointed Planning Service Manager (Development Management) to be involved in its preparation as part of his wider Lean Review of Development Management.

The main issues facing the service are the need for clear objectives to enable it to use resources in the most effective and efficient way; to set and adhere to priorities; and to be fair and open in case outcomes. The aim of the review has therefore been to set objectives, priorities and service standards. The goal is a sustainable service that can deliver appropriate planning outcomes in a timely and prioritised manner to agreed service standards, thereby improving stakeholder satisfaction.

The report makes nine main recommendations to address the key issues:

1. Delegating decision-making on cases to Area Enforcement Officers and Team Leader.
2. Reducing the number of planning applications dealt with by the Enforcement Team Leader
3. Enhancing the enforcement team's capacity to deal with planning applications arising from enforcement cases by using Development Management officers.
4. Introducing new time targets for enforcement case milestones and closure.
5. Closing old cases
6. Setting targets for carrying out the first site visit
7. Prioritising cases after the first site visit
8. Managing the expectations of stakeholders
9. Improving communication with stakeholders

Two further measures are also proposed:

10. Updating the Council's Enforcement Policy

11. A series of other process improvements

The recommendations have no financial implications in terms of staffing because work will be carried out with the existing staff resources. It is proposed to purchase add-on case management software to work with the main case recording software (Uniform). This will be funded from savings in the overall Development Management cost-centre.

Recommendations:

That the Overview and Scrutiny Panel comments on the contents of this report.

That the Development Management Panel endorses the contents of this report.

1. WHAT IS THIS REPORT ABOUT/PURPOSE?

- 1.1 The report relates to a review of the Planning Enforcement function which is part of the Development Management service. Planning enforcement deals with breaches of planning control, including unauthorised development, breaches of planning conditions, unauthorised works to listed buildings and protected trees and the display of unauthorised advertisements/banners.

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

- 2.1 At its meeting in February 2015 the Overview and Scrutiny Panel (Environmental Well-Being) requested that a report on Planning Enforcement should be submitted to a future meeting and that the Executive Councillor should be invited back to discuss the matter further at that time. A report was presented to the April 2015 meeting. The Panel was advised that a detailed review of Planning Enforcement was already under way and a further report would be made in the summer. This further report has been delayed in part to enable the recently appointed Planning Service Manager (Development Management) to be involved in its preparation as part of his wider Lean Review of Development Management.
- 2.2 The main issues facing the service are the need for clear objectives to enable it to use resources in the most effective and efficient way; to set and adhere to priorities; and to be fair and open in case outcomes. The aim of the review has therefore been to set objectives, priorities and service standards. The goal is a sustainable service that can deliver appropriate planning outcomes in a timely and prioritised manner to agreed service standards, thereby improving stakeholder satisfaction.

3. OPTIONS CONSIDERED/ANALYSIS

- 3.1 Planning enforcement is one of the three main functions of land use planning, namely development plan preparation; decision making having regard to the provisions of the development plan and securing compliance with decisions and the plan.
- 3.2 Paragraph 207 of the Government's National Planning Policy Framework says: "Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."
- 3.3 More detailed guidance in the Government's Planning Practice Guidance 2014 says that effective enforcement is important to:
- (i) tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
 - (ii) maintain the integrity of the decision-making process;
 - (iii) help ensure that public acceptance of the decision-making process is maintained.
- 3.4 The Lean Review has followed five stages:
1. Define the issues and project goals.

2. Measure critical quality requirements for the service.
3. Analyse the issues, evaluate options and map the desired future service.
4. Improve the service by developing proposals.
5. Control the improvements by documenting, monitoring and reviewing.

Defining the issues and project goals

- 3.5 The main issues facing the service are the need for clear objectives to enable it to use resources in the most effective and efficient way; to set and adhere to priorities; and to be fair and open in case outcomes. The aim of the review has therefore been to set objectives, priorities and service standards. The goal is a sustainable service that can deliver appropriate planning outcomes in a timely and prioritised manner to agreed service standards, thereby improving stakeholder satisfaction.
- 3.6 The review has involved stakeholders including sample Town and Parish Councils, Development Management Panel and Ward Members, complainants, people who have been the subject of complaints and other agencies.
- 3.7 Key themes which emerged in the responses from Town and Parish Councils were:
All responses strongly agreed that:
- an objective should be to tackle breaches that unacceptably impact on amenity
 - dealing with breaches of planning conditions should be a priority
 - danger to highway safety should be a priority
- Other key issues which were frequently raised are:
- 8/11 considered they were not kept adequately informed
 - 6/11 said the time taken to resolve minor cases is unsatisfactory
 - 6/11 felt it is not easy to find out the current stage of a case
 - 6/11 considered that sufficient information is not available about cases
 - 4/11 felt cases were not appropriately prioritised
- 3.8 Key themes which emerged in the responses from District Council Members were:
All responses strongly agreed that:
- an objective should be to tackle breaches that unacceptably impact on amenity
- Other key issues which were frequently raised are:
- 6/9 said breaches of planning conditions should be a priority
 - 6/9 said danger to highway safety should be a priority
 - 8/9 said loss of or damage to listed buildings should be a priority
 - 7/9 said complaints from Ward Councillors should be a priority
 - 3 strongly agreed that Members were kept adequately informed, 3 agreed and 3 disagreed
 - 2 strongly agreed that the time taken to resolve minor cases was satisfactory, 5 agreed and 2 disagreed
 - 1 strongly agreed that the time taken to resolve serious cases was satisfactory, 4 agreed and 3 disagreed
 - 4 strongly agreed that it is easy to find out the current stage of a case, 2 agreed and 3 disagreed
 - 2 strongly agreed that sufficient information is available about cases, 5 agreed and 2 disagreed
 - 5 considered cases were appropriately prioritised and 2 disagreed.

- 3.9 There was insufficient feedback from complainants and recipients for useful analysis.
- 3.10 Process mapping workshops involving the team members identified areas where improvements could be made to processes:
- Improving the reporting of alleged breaches
 - Reviewing which cases are taken to Enforcement Forum (see paragraph 4.2)
 - Enhancing IT (Uniform case handling / Anite document management software)
 - Prioritising cases
 - Providing self-service information for stakeholders on the website
 - Closing old cases to reduce the number of current cases
 - Updating the procedures manual for administrative tasks

Measuring critical quality requirements

- 3.11 Measuring critical quality requirements is concerned with defining and measuring those aspects of a service that provide value for stakeholders. These are the aspects that the service should concentrate on to satisfy its stakeholders. Although taking enforcement action is discretionary, not investigating any complaints or not investigating effectively is unacceptable. The main causes of complaint nationally to the Local Government Ombudsman about planning enforcement are:
- unreasonable delays in assessing whether there is a breach of control, deciding its seriousness and the appropriate course of action and in taking action if justified;
 - failure to keep proper records, such as records of site visits;
 - failure to have or to take account of a written policy;
 - failure to tell the parties involved of its decision or keep them informed;
 - failure to liaise with other departments, e.g. Environmental Health and Building Control.
- 3.12 The actions which have been identified as providing value for all stakeholders are:
- receiving and logging the complaint;
 - prioritising complaints;
 - carrying out an effective, well documented investigation;
 - deciding the appropriate response;
 - taking action if appropriate in a timely manner;
 - keeping stakeholders informed.
- 3.13 The qualitative and quantitative measurements for these critical quality requirements have been identified as:
- receiving and logging complaints
 - i. clearly explaining what planning enforcement can and cannot do;
 - ii. making the process of submitting a complaint straightforward;
 - iii. ensuring that the necessary information is submitted at the outset;
 - iv. promptly acknowledging complaints
 - prioritising complaints
 - i. setting targets for carrying out the first site visit
 - ii. prioritising cases for the subsequent investigation
 - iii. publishing priorities and adhering to them
 - carrying out an effective, well documented investigation;
 - i. researching the actual (not necessarily the alleged) breach;
 - ii. recording the findings;
 - iii. analysing the planning impact (harm) from any identified breach;

- iv. informing stakeholders in a timely manner
- deciding the appropriate response
 - i. publishing how decisions will be made
 - ii. explaining decisions and informing stakeholders in a timely manner
- taking the appropriate action and informing stakeholders
 - i. taking action if appropriate in a timely manner
 - ii. informing stakeholders at key stages.

Analysing issues and developing options

- 3.14 Key Issue 1 – The number of cases on hand. The number increased from 421 in 2009 to over 700 during 2015. The increase came despite the number of new cases remaining relatively consistent at between 300 and 350 per year. Since this review started the number has been reduced to 660. This number is however still too high for effective prioritisation and proactive case management. There are no recognised guidelines and benchmarking with other authorities has not yielded useful information because procedures vary widely. The aim will be to reduce the number of cases being dealt with by the Area Enforcement Officers to less than 100 each and by the Team Leader to around 25. The options that have been considered have the aim of bringing the overall total down to around 225.
- 3.15 Key Issue 2 – Effective prioritisation. The high number of cases on hand is causing significant problems for prioritisation. A lot of time is being spent dealing with matters that have become urgent because of the backlog of cases that are central to the service's objectives. The options that have been considered have the aim, in conjunction with reduced overall caseloads, of enabling cases to be dealt with in this priority order.
- 3.16 Key Issue 3 – Effective communication. Until 2012 town and parish councils were provided with a quarterly update on enforcement cases. This was very labour intensive to prepare and it had to be discontinued when the Team Support Officer's time could no longer be made available. There were also concerns about confidential information being disclosed. Since then only a small number of local councils have asked for regular updates. It is clear however that communication with local councils and Members is an issue.
- 3.17 Communication with complainants was also undertaken to a timetable and as workloads rose this involved an unsustainable amount of work, with very often nothing significant to report.
- 3.18 The options that have been considered have the aim, in conjunction with reduced overall caseloads, and appropriate prioritisation, of giving stakeholders the information they need.
- 3.19 Key Issue 4 – Process improvements. The enforcement process has not been comprehensively reviewed for at least five years. In that time Anite document management software has been introduced, increasing use has been made of email and web-based information systems. The workload pressures on the service and the financial pressures on the Council generally mean processes must be efficient and effective. The options that have been considered have the aim, in conjunction with reduced overall caseloads, appropriate prioritisation, and improved communication of eliminating non-value adding processes and highlighting and prioritising areas for improvement.

Managing the number of cases on hand

- 3.20 Five main actions are proposed to reduce the cases on hand to manageable numbers:
- delegating decision-making to Area Enforcement Officers and the Enforcement Team Leader;
 - reducing the number of planning applications dealt with by the Enforcement Team Leader to provide more time for enforcement cases;
 - enhancing enforcement planning capacity by using Development Management officers to deal with some of the applications arising from enforcement cases;
 - introducing new time targets for case milestones and closure;
 - closing old, inactive cases where significant harm has not been identified.

Proposal 1 - Delegating decision-making

- 3.21 The main procedural change which will be used to improve the throughput of cases is a development of the Enforcement Forum system of decision-making. Currently Enforcement Forum is a fortnightly meeting of the Area Enforcement Officers and the Team Leader with the Planning Service Manager and Head of Development. During the meetings new cases are discussed and if sufficient information is available appropriate outcomes are agreed. Ongoing cases are reviewed when there are issues or there have been significant developments. Closure of cases has to be authorised at a Forum. The system was introduced in 2010 to improve the quality and consistency of decision making and to obviate the need for written case-closure reports. Enforcement Forum outcomes are recorded on a simple spreadsheet.
- 3.22 The objective of achieving consistency has been achieved because team members at all levels have a shared understanding of appropriate outcomes even though there is wide variation in the enforcement issues encountered. The time is now right to delegate decision making from the Planning Service Manager and Head of Development to the Area Enforcement Officers and the Team Leader when these officers are fully satisfied that:
- the breach of planning control, if any, has been accurately identified;
 - when a breach has been identified, the level of harm has been accurately assessed;
 - the appropriate planning outcome has been identified
- 3.23 Because enforcement issues are varied and sometimes raise highly complex legal and planning issues, the Enforcement Forums will continue for discussion of selected cases with the Planning Service Manager. The Head of Development, the Portfolio Holder and the Chairman of the Development Management Panel will be kept informed about key cases by a monthly written Key Cases Briefing.
- 3.24 Two categories of decision will remain with the Planning Service Manager and the Head of Development.
- Decisions whether or not to prosecute an offence; and
 - Decisions to take formal action (enforcement notices, breach of condition notices, stop notices, temporary stop notices) which are delegated under the Constitution to the Head of Development, and in his absence the Planning Service Manager (Development Management), after consultation with the Legal Services Manager.

Proposal 2 - Reducing the number of planning applications dealt with by the Enforcement Team Leader

- 3.25 For the last five years the Enforcement Team Leader has dealt with planning applications on sites where he has knowledge of complex site histories and some of the applications that have been requested through the enforcement process, particularly the complex cases. This has led to conflicting priorities with progressing other enforcement cases, providing planning advice to the Area Enforcement Officers in their more complex cases, managing the day to day work of the team and bringing about continuous improvement. Removing a significant part of the planning case workload will enable a better balance of these roles to be achieved.

Proposal 3 - Enhancing enforcement planning capacity

- 3.26 Some of the enforcement generated planning applications that have been dealt with by the Enforcement Team Leader will, in future, be dealt with by Development Management case officers. This will supplement the enforcement team's capacity to deal with planning applications and give Development Management officers useful experience in enforcement, particularly in writing conditions.

Proposal 4 - Introducing new time targets for case milestones and closure

- 3.27 The 10 working day target for carrying out the first site inspection will continue with the addition of 1 and 3 day targets for specific types of alleged breach.
- 3.28 A new target of 6 weeks is proposed for the first response to complainants once the initial assessment of the case has been made. This response will specify whether there has been a breach and what course of action is to be pursued. In practice many responses in straightforward cases are now, and will continue to be, well before this date. It is appreciated that many stakeholders, particularly complainants, perceive their case as urgent. However, because resources are finite the service has to prioritise according to a dispassionate assessment, deal with all cases in accordance with agreed priorities and manage stakeholders' expectations accordingly.
- 3.29 The second update will be available after 3 months, by which time the case should be progressing to a conclusion.
- 3.30 The proposed target for closing cases is 6 months from the receipt of the first complaint unless an application to regularise the development is being considered or formal enforcement action is under way. Cases older than 6 months will be reviewed by the Planning Service Manager at the first Enforcement Forum beyond the 6 month period and thereafter as necessary until the case has been closed.

Proposal 5 - Closing old cases

- 3.31 A large number of old cases remain open for a variety of reasons. These include the breach having been resolved but officers are unaware and partial resolutions that have addressed the complainant's concerns. These cases will be reviewed and closed wherever possible.

Effective prioritisation of cases

Proposal 6 – Setting targets for carrying out the first site visit

3.32 An informal system is already used to decide how quickly the first site visit should be made. This will be formalised with the following targets:
Within 1 working day - when a quick visit may prevent the breach happening or worsening or could enable evidence to be gathered for a prosecution. For example:

- threatened, ongoing or just completed work to protected trees
- total or substantial demolition of a listed building or conservation area building

Within 3 working days - when a prompt site visit may prevent the breach worsening or could enable evidence to be gathered for a prosecution.

- completed work to protected trees
- alterations to protected buildings
- threat to human health or safety from highway safety, flood risk or contamination

Within 10 working days - in all other cases

Proposal 7 – Prioritising cases after the first site visit

3.33 Following the first site visit further investigation will be prioritised according to the Area Enforcement Officer's assessment of the level of harm in relation to:

- amenity or safety the integrity of the decision-making process (including breaches of conditions)
- public acceptance of the decision-making process (including breaches which are contrary to planning policy)

3.34 Cases will be prioritised as follows:

Priority 1 – Breaches that could cause permanent damage to the environment or a serious risk to health and safety. For example:

- traffic hazards
- development causing pollution or on contaminated land
- development at risk of flooding
- loss of protected trees
- unauthorised work to listed buildings

Priority 2 – Breaches that cause significant harm to amenity, health and safety or the environment; the integrity of decision-making; public acceptance of decision-making. For example:

- building work that is unlikely to be given approval without significant modification
- unauthorised uses causing serious loss of amenity through noise or smells
- persistent breaches, for example fly posting

Priority 3 – Breaches that cause less than significant harm which could be overcome by limited modification. For example:

- building work that may require measures to address privacy concerns
- uses that may require restriction on the hours of operation

Priority 4 – All other cases

Case officers will deal with their caseload in priority order.

Proposal 8 – Managing expectations

3.35 The overarching objective of the enforcement service is to secure broadly the same outcome in cases of unauthorised development as that which would

have resulted from an application. Application outcomes are broadly: unconditional approval; approval with changes and/or conditions and refusal.

- 3.36 When the development (or works in the case of a listed building or display in the case of an advertisement) is likely to have been granted an unconditional approval because no significant harm has been identified, the appropriate outcome for the enforcement case will normally be to seek an application to attempt to regularise the development. It should be noted that in England, local planning authorities do not have the power to require the submission of an application. Government advice is that enforcement action should not be taken merely to regularise unauthorised development. If an application is not submitted, in these circumstances the planning authority will not pursue the matter and the enforcement case will be closed.
- 3.37 When the development is acceptable in principle and likely to be approved with changes and/or regulated by the imposition of conditions, enforcement officers would normally try to negotiate a voluntary remedy or the submission of an application within a given timescale. Formal action will then need to be considered if the application is not submitted.
- 3.38 When development is unacceptable in principle and significant harm has been identified enforcement officers would normally try to negotiate a voluntary remedy within a given timescale but if that is not achieved formal action would be taken.

Effective communication

Proposal 9 – Improving communication

- 3.39 In the short-term the enforcement service will respond promptly (within 7 working days) to requests for updates rather than using its limited resources to try to regularly update all complainants. This includes requests for information from Town and Parish Councils. This will enable more time to be allocated to pursuing breaches whilst ensuring that those who really do want an update receive one.
- 3.40 In the medium term consideration will be given to making information about enforcement cases available on the website so that stakeholders can self-serve.

Proposal 10 – Updating the enforcement policy

- 3.41 The Council's Enforcement Policy, which is approved by the Development Management Panel, was last given a minor update in 2012. With the passage of time and changes to legislation and procedures it is now due for a major update. The National Planning Policy Framework says that local planning authorities should consider publishing a local enforcement plan. In the next three months a draft revised policy will be reported to the Development Management Panel. The Government advocates enforcement plans with development plan status, either as a separate plan or as policy in a local plan. There is currently no provision for a separate plan in the Council's Local Development Scheme but there is an opportunity to include enforcement policy in the next draft of the Local Plan to 2036.
- 3.42 An enforcement policy or local enforcement plan is important because it can:
- allow engagement in the process of defining objectives and priorities which are tailored to local circumstances;

- set out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provide greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- provide greater certainty for all parties engaged in the development process.

Process improvements

Proposal 11 – Minor process improvements

- 3.42 The main improvement proposals have been explained above, other identified process improvements are:
- (i) the website will be updated to explain clearly what planning enforcement does and does not deal with;
 - (ii) complaints will, as now, be accepted online, by telephone, email and in person using simplified consistent forms but not anonymously;
 - (iii) log sheets for complainants to record events will be available to download;
 - (iv) complainants will be required to explain what harm is being caused to assist in prioritisation;

4. COMMENTS OF OVERVIEW & SCRUTINY PANEL

- 4.1 This matter is being considered by the Overview and Scrutiny Panel (Environmental Well-Being on 8th December 2015 and its comments will be conveyed to the Development Management Panel on 14th December 2015.

5. KEY IMPACTS/RISKS? HOW WILL THEY BE ADDRESSED?

- 5.1 The adoption of recommended 'Lean' approach backed up by an up-to-date Enforcement Policy with clear objectives and priorities will enable planning enforcement to target the most significant breaches of planning control in accordance with service standards.

6. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 6.1 The timetable for implementing the changes recommended in section 3 and for reviewing their effectiveness is as follows:

	Improvement Proposal	Implementation date	Measures	Review date
1.	Delegating decision-making	Immediate	Number of complaints	01-06-2016
2.	Reducing Team Leader's planning applications	Number of new applications to be minimised	Number of applications on hand	31-03-2016
3.	Enhancing enforcement planning capacity	Progressively as DM Teams become fully staffed	No specific measures	31-03-2016
4.	Milestone and closure targets	New cases from 01-01-2016	Performance against targets	31-03-2016

	Improvement Proposal	Implementation date	Measures	Review date
5.	Closing old cases	Ongoing	Number of cases more than 6 months old	Monthly
6.	Target for first site visit	New cases from 01-01-2016	Time to first site visit	Monthly from 01-02-2016
7.	Ongoing case prioritisation after first site visit	New cases from 01-01-2016	Milestone and closure targets vs case grade	31-03-2016
8.	Managing expectations	As part of new enforcement policy (see 10. Below - April 2016)	No specific measures	
9.	Improving communication			
(i)	Short-term	01-01-2016	Number of complaints	Quarterly
(ii)	Medium-term	Feasibility study by 01-04-2016		01-04-2016
10.	Updating enforcement policy	April 2016		April 2016
11.	Minor process improvements			
(i)	Update website	01-01-2016		01-01-2016
(ii)	Standardise forms	01-01-2016		01-01-2016
(iii)	Publish log sheets	01-01-2016		01-01-2016
(iv)	Emphasis on ascertaining harm from complainants	Immediate		Monthly

6.2 An update report will be presented to Overview and Scrutiny in one year's time and annual reports will be presented to the Development Management Panel.

7. LINK TO THE CORPORATE PLAN

7.1 The recommendations of this report relate to the following elements of the Huntingdonshire Corporate Plan 2015-2016 (page 6):

- Objective – To enhance our built and green environment (page 7)
- Objective – To Improve health and well-being (page 8)
- Objective – To become more business-like and efficient in the way we deliver services (page 9)

8. CONSULTATION

8.1 As set out in paragraphs 3.7 and 3.8 sample questionnaire surveys and meetings were undertaken with town and parish councils and ward members to inform the review.

9. LEGAL IMPLICATIONS

9.1 The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law

and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

10. RESOURCE IMPLICATIONS

- 10.1 Costs associated with this work will be met from within the Development Management budget.

11. OTHER IMPLICATIONS

- 11.1 The subject of the report and the recommendations have no implications for equalities.

12 REASONS FOR THE RECOMMENDED DECISIONS

- 12.1 The main issues facing the service are the need for clear objectives to enable it to use resources in the most effective and efficient way. The report's recommendations, and in particular the forthcoming review of the Planning Enforcement Policy, are part of a process of setting objectives and priorities which are tailored to local circumstances. The priorities for enforcement action will inform decisions about when to take enforcement action and provide greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers.

13. LIST OF APPENDICES INCLUDED

None

BACKGROUND PAPERS

None.

CONTACT OFFICER

Jacob Jaarsma, Planning Service Manager (Development Management)
Tel No: (01480) 388402