

PLANNING ENFORCEMENT UPDATE

Planning Advisory Committee - 19 April 2016

Report of Chief Planning Officer

Status: For Consideration

This report supports the Key Aim of Protecting the Green Belt

Portfolio Holder Cllr Piper

Contact Officer Mark Turner, Development Manager, Ext. 7361

Recommendation to the Planning Advisory Committee:

That the contents of the report be noted.

Introduction and Background

- 1 This purpose of this report is to provide an update with regard to the planning enforcement function of the development management service.
- 2 The Government provides guidance to local authorities regarding planning enforcement. It states:

“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.” (NPPF para. 207).
- 3 The Council adopted the Local Enforcement Plan on 5 March 2016. It states that the Council’s approach to enforcement is based on the following key principles.
 - We will ...investigate all complaints received about breaches of planning control (*) and aim to visit the site concerned within three working days.
 - We will ...give priority to the most serious complaints based on the degree of harm caused by the development subject of the complaint.
 - We will ...use our statutory powers to remove harmful development.

- We will ...explore solutions to remove harm caused by unauthorised development.
 - We will ...keep complainants and those who are the subject of complaints informed throughout our investigations.
 - We will ...keep the identity of complainants confidential.
- 4 It is acknowledged that undertaking formal planning enforcement action is a discretionary function. However, the Local Enforcement Plan underpins the Council's commitment to addressing unauthorised development where it can be established that the matter is contrary to the Development Plan and other material considerations.
- 5 This report will consider planning enforcement activity from 1 April 2015 to 1 April 2016.

Staffing

- 6 The planning enforcement team is made up of a Senior Investigation Officer, two Investigation Officers and a Technician. All matters regarding allegations of unauthorised development come within the scope of the team as do matters appertaining to the collection of S106 and Community Infrastructure Levy (CIL) payments.

Senior Investigation Officer

- 7 During the latter part of 2015 the Senior Investigation Officer, who has first line responsibility for managing the enforcement team as well as undertaking her own investigations, took an unexpected, extended period of sick leave. The Officer remains on sick leave at this time. Authorisation was given by SMT to appoint a temporary Senior Investigation Officer. This took some time to achieve due to the limited number of suitably qualified available candidates. An officer has now been appointed and will remain in place until the permanent member of staff has returned to full-time work. The prolonged period of this post's vacancy had an impact in terms of planning enforcement performance.

Quantum

- 8 During the period 1106 complaints were received and 1012 cases were resolved (a discussion as to means of resolution is provided later). At this time 618 investigations remain open. The team has an informal target of reducing the number of outstanding complaints to 60 per officer - although some way off it is worth noting that good progress has been made in the first quarter of the year with 320 cases being closed though it should be noted these were mostly older, monitoring matters rather than live investigations.

Timeliness

- 9 Performance in terms of timescale has long been a matter of discussion. Previous governments considered imposing a timescale for enforcement similar to that for determining planning applications. This proved an unsuitable measure because of the diversity of matters being dealt with, the occasional difficulty in establishing a breach, and the expectation that most matters will be resolved by negotiation with formal action being the exception rather than the norm. A graph is shown in Appendix A illustrating the time periods to close complaints.

Time to commence investigation

- 10 It has recently become apparent that the means to measure time to commence investigation i.e. the lag between receipt of complaint and first site visit (presuming a site visit is necessary) is inaccurate. This is primarily because of the manner in which the Council's adopted software programme was being used. This process has been changed and it is anticipated that more accurate data can be provided in future reports. Improved procedures have been trialled for period 1/1/2016 - 1/4/2016 and these have shown that the investigation of 78% of cases was commenced within the 3 day timescale specified in the Local Enforcement Plan.

Reasons for closure

- 11 Planning enforcement is possibly one of the most misunderstood areas of development management. The most commonly held beliefs are that any development without first obtaining planning permission is illegal and that retrospective planning applications are unacceptable. A full breakdown of the reasons for closing complaints during the 2015/16 period is provided in Appendix B. The most notable data being that 47% of the complaints closed were because a breach of development management had not occurred.

“Getting away with it!”

- 12 A comment regularly made about unauthorised development is that the Council “let them get away with it”. There are statutory time limits after which the Council is barred from taking formal action. Data shows that only 2% of the cases closed in 2015/16 were closed because the breach was out of time (4 years/10 years).
- 13 The second strand of the “getting away with it” debate is complaints closed because a decision has been made that it is not appropriate to take formal action. Legislation requires the Council to determine whether or not a) a breach has occurred and b) it is expedient to take formal action having regard to the Development Plan and other material considerations (Town and Country Planning Act 1990 (as amended) Section 179).
- 14 The word “expedient” is not defined in legislation although the word has been used since the 1947 Act. The Oxford English Dictionary defines

“expedient” as fit, proper or suitable to the circumstances of the case” and this is the manner in which it is used in the planning enforcement function.

- 15 Data shows that 3% of cases were closed in 2015/16 because it was not expedient to take formal action. The Local Enforcement Plan requires officers to receive confirmation from Ward Councillors if such a decision is to be made therefore the 3% referred to above were all with the confirmation of the respective Ward Member.

Formal Action

- 16 On occasion formal enforcement action is an appropriate response to actual (or rarely apprehended) breaches of development management. During 2015/16 the team issued 18 Planning Contravention Notices and 21 Section 330 Notices. These are statutory based mechanisms for obtaining information from individuals regarding land use and ownership. These may often be all that is required for an individual to accept that what they have done requires planning permission and could be a driver for either the 13% of complaints that are resolved through negotiation or the 8% that result in a planning application being submitted to regularise the situation.
- 17 A total of 12 planning enforcement notices were served, 6 related to unauthorised operational development and 6 related to unauthorised material changes of use. The team also served 1 Temporary Stop Notice, obtained 1 planning injunction from the High Court and served two Article 4 Directions.

Section 215 Notices

- 18 These types of formal notices are available to the Council when any land in its area is in such a condition that it adversely affects the amenities. It is worth noting that the term “amenities” is not defined in law. It is equally important to note that there are statutory grounds for appealing such notices and the only way in which they can be “appealed” is in the Magistrates’ Court.
- 19 The Council issued 4 Section 215 Notices in the 2015/16 period.
1 has been partially complied with.
2 have not been complied with and are the subject of legal proceedings
1 has been complied with.
- 20 There is enthusiasm for working with Ward Members to identify sites of concern within the District that would be suitable for such action. It is anticipated that those matters currently the subject of legal proceedings will provide a useful benchmark to judge future complaints.
- 21 It is worth noting that 42 of the 1106 complaints received during the 2015/16 period related to “untidy sites”.

Section 106 Payments

- 22 The planning enforcement team monitor new starts for construction to ensure compliance with pre-commencement conditions, S106 and CIL payments. In addition to the monies collected “normally” the team have successfully collected in excess of £25k in overdue payments.

Comparisons

- 23 It is difficult to make a direct comparison with other Councils as the nature of the breaches of development management they address may differ considerably. Government collects data from all Councils and produces this nationally. Details of the amount and type of formal enforcement action undertaken by Kent Councils are produced in Appendix C. It should be noted that data with regard to Section 215 Notices is not available.

Successes

- 24 The Council dealt with a number of high profile issues during the 2015/16 period. A selection of these has been anonymised and are summarised below.
- a) The Council received reports regarding a possible unauthorised incursion onto land by gypsies and travellers. The land is owned by an individual who identifies himself as a gypsy. The possible incursion was rumoured to occur over a Bank Holiday period. The Council was successful in applying for an emergency injunction, primarily because of the size of the site and its potential to accommodate a very large number of mobile homes/caravans. The injunction was subsequently confirmed by the Judge. It has been the subject of a possible challenge but the Council has been advised that this challenge will now not proceed.
 - b) A breach of development control with regard to a dwellinghouse that had been built incorrectly along with an unauthorised subterranean garage. 3 months of complex negotiations including site meetings were undertaken. The owner subsequently submitted a series of planning applications that received planning permission without the need to resort to formal action.
 - c) The Council had concerns with regard to the possible sale of a large area of land in plots. There was a possibility that the land would be subdivided with fencing and caravans placed onto the individual plots. Action was taken to serve an Article 4 Direction on the land removing these Permitted Development Rights thus requiring planning applications should the owner wish to carry out this form of development.
 - d) The Council was made aware of an individual’s intention to hold a market (car boot sales) on the land. Concern was expressed about using Permitted Development Rights to undertake this form of

development thus causing an unacceptable impact in highway, green belt and AONB terms. An Article 4 Direction was served to remove these rights and the individual concerned has confirmed his intention to postpone the proposed markets and apply for planning application in due course.

Future Concerns

- 25 Planning Enforcement continues to receive criticism from some quarters although it is arguable these are based on historic issues rather than the performance today. It is hoped that 2015/16 saw an improvement in the enforcement team's communication with Members and the public with clearer explanations for decisions being taken. There is little doubt that the service can continue to improve.
- 26 It is anticipated that 2016/17 will see considerable improvements in the use of technology to undertake the planning enforcement function. A considerable amount of preparatory work is underway with the IT team to allow the enforcement team to adopt paper-less working to mirror that of the rest of the service.
- 27 The amount of case law focussing on planning enforcement continues to grow. It is important to ensure that officers remain up to date and a focus on training (particularly taking advantage of the current temporary Senior Investigation Officer's skills) is underway.

Appendices

Appendix A - Time to close complaints

Appendix B - Reasons for closing complaints

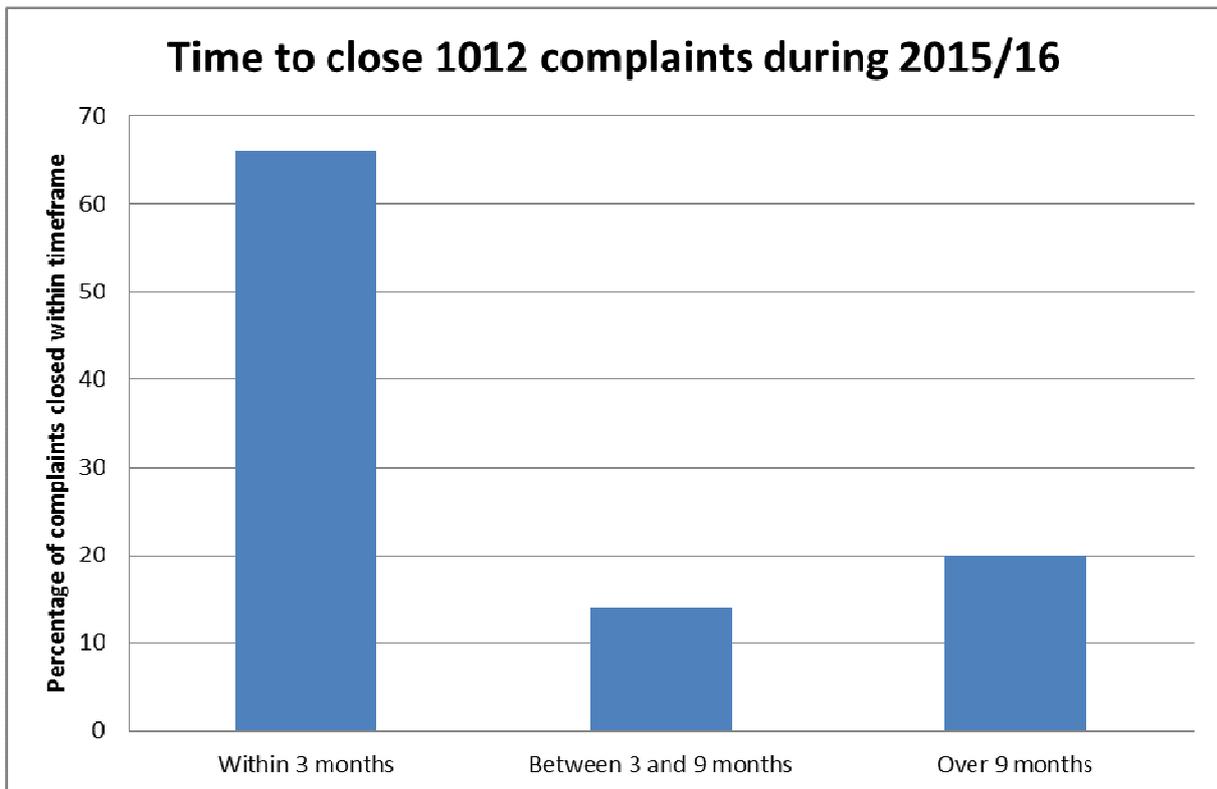
Appendix C - Enforcement Action in Kent Councils

Background Papers:

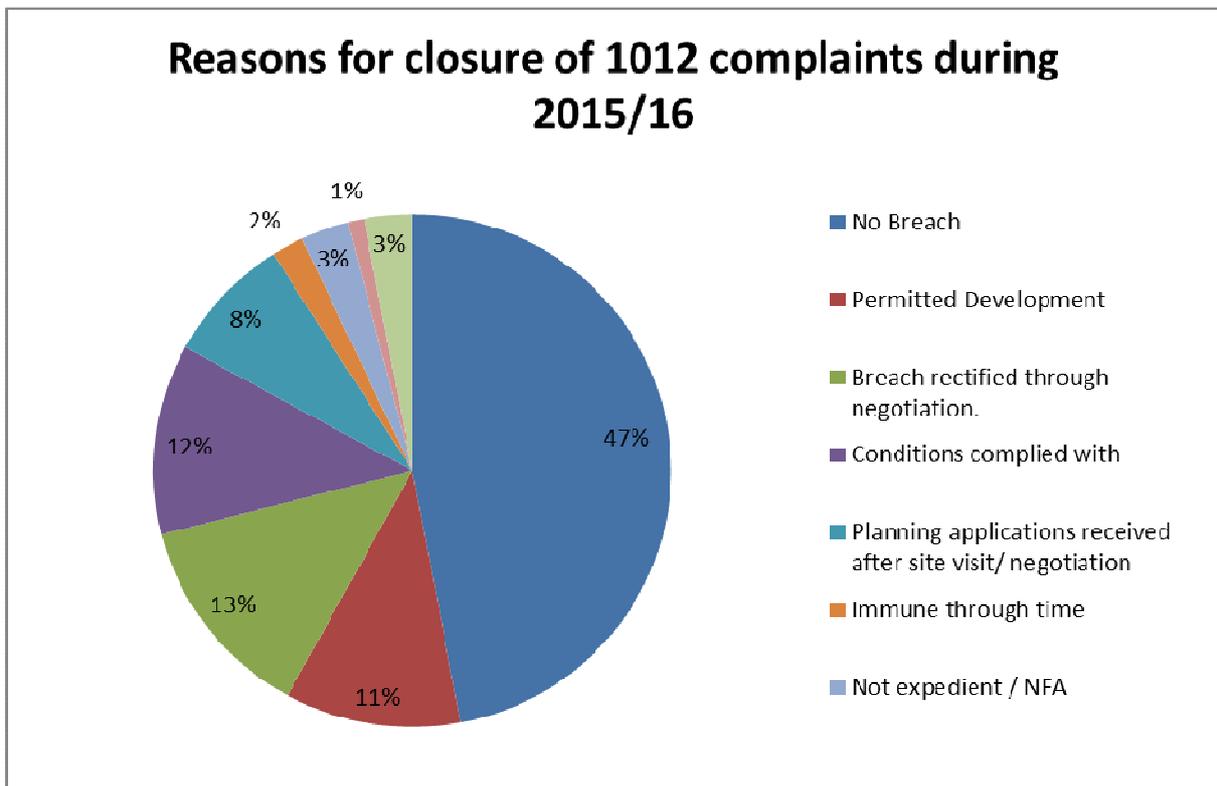
Local Enforcement Plan (Adopted 5 March 2015)

Richard Morris
Chief Planning Officer

Appendix A



Appendix B



Appendix C

Planning authority	Enforcement Notices issued	Stop Notices issued	Temporary Stop Notices issued	Breach of Condition Notices served	Planning Contravention Notices served	Enforcement injunctions granted by High Court or County Court
Ashford	11	4	3	-	7	-
Canterbury	-	-	-	1	26	-
Dartford	5	-	-	-	-	-
Dover	10	-	-	-	-	-
Gravesham	2	-	-	1	-	-
Maidstone	4	2	1	-	4	-
Sevenoaks	16	-	-	2	9	1
Shepway	6	-	1	3	10	-
Swale	18	2	6	-	21	-
Thanet	27	-	-	-	1	-
Tonbridge and Malling	22	-	1	1	2	1
Tunbridge Wells	9	-	-	-	9	3

It is important to note that the statistics provided by DCLG to inform this table is based on 2015 only and therefore does not strictly mirror the 2015/16 period that is the focus of this report.