

PLANNING ENFORCEMENT UPDATE

Development and Conservation Advisory Committee - 15 October 2019

Report of Chief Officer - Planning & Regulatory Services

Status: For Consideration

This report supports the Key Aim of Protecting the Green Belt

Portfolio Holder Cllr Julia Thornton

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Recommendation to the Development and Conservation Advisory Committee

That the contents of the report be noted.

Summary

This is a report to provide an update regarding the work and function of the Planning Enforcement team to the Development and Conservation Advisory committee. This report looks at the role and function of Planning Enforcement. It also considers and explains the structure of the team. The report also identifies success and achievements of the team and considers the current issues faced by the team. Most importantly, it also informs the Advisory Committee of what improvements the team intend to make.

Introduction and Background

- 1 This report has come to the Advisory Committee to provide an update of the work and function of the Planning Enforcement Team, which works within the Development Management Service.
- 2 An update on the Planning Enforcement team was brought before the Planning Advisory Committee in April 2016 and therefore it was considered important to highlight the work that has been carried out since this date and make you aware of some of the challenges that the team face.
- 3 The report will look at the following issues and will address each one in turn:
 - The work, role and function of the Planning Enforcement Team
 - Staffing
 - Successes and Achievements
 - Current issues faced by the team
 - Proposed areas for improvement

The work, role and function of the Planning Enforcement Team

- 4 The Government provides guidance to local authorities regarding planning enforcement. In particular paragraph 58 of the National Planning Policy Framework, states the following:

“Effective enforcement is important to maintain 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. They 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 appropriate”.

- 5 In light of this, the Council adopted the Local Enforcement Plan on 5 March 2016 (See Appendix A). This 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 the timescales set out in the Plan;
- We will give priority to the most serious complaints based on the degree of harm caused by the development;
- We will use our statutory powers, where expedient and in the public interest, 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; and
- We will keep the identity of complainants confidential.

- 6 The team follow the priorities laid out above, with the main aim of effectively investigating and resolving breaches of Planning Control. The type of development that they investigate includes the following:

- an unauthorised erection of a building or extension to a building, a material change of use or land, or the display of unauthorised advertisements.
- Unauthorised works to listed buildings
- Unauthorised works to trees subject to a tree preservation order (TPO) or in a conservation area
- Unauthorised works to a locally listed building where an Article 4 Direction is in place
- Breaches of conditions attached to planning permissions
- Not building in accordance with the approved plans of planning permissions
- Untidy land where it affects the amenity of the area (This is referred to as a Section 215 Notice)

- Unauthorised engineering operations such as raising ground levels or the construction of bunds
- Failure to comply with a planning legal agreement or pay the required Community Infrastructure Levy (CIL)
- Deliberate concealment of unauthorised building works or changes of use.

7 These breaches of planning control can be reported to the team in a number of different ways including using an online form, via e-mail, by letter, telephone or personal visit.

8 With each case the team will log the complaint, make an initial site visit, they will then decide which course of action that should be taken in regard to the works that have taken place. It should be noted that some of this investigation work could require numerous site visits to gain sufficient evidence. It also consists of a thorough research of the planning history of the site and potentially negotiating with the owner or developer to cease or remove the breach and discussions with legal colleagues. Whilst the team always like to deal with breaches of planning control as quickly as they can, not all breaches can be rectified within a short time scale. The decision made on each case could involve concluding that no breach has taken place or could lead to formal enforcement action being taken. Each case is different and the team aim to keep complainants and other interested parties updated on the progress of each one. This element will be improved upon - more on which a little later.

9 To give you an idea of the work carried out by the enforcement team over the last 3 years, you can see in the table below that the following has taken place;

Date	Cases Closed	Complaints Received
2019 - to date	975	470
2018	310	485
2017	836	598

10 This shows that the number of complaints that the team receive remains high. You can also see that officers are working hard to investigate breaches of planning control and are also seeking to close more historic cases. We have managed to close 975 cases this year so far which exceeds the two previous years and we still have 3 more months of the year to go, this highlights the good work that the team are currently doing.

11 For your information, there are a number of reasons why we close cases, this can occur for the following reasons. To assist I have listed the reasons in order, with the highest reasons for closure at the top of the list.

- No breach of planning has occurred
- An appeal has been allowed
- Planning breach has been rectified
- Planning permission was granted
- The works are permitted development
- Not expedient to take enforcement action.
- Works have been in place for so long they are immune from enforcement action.
- The Enforcement Notice has been complied with.

12 You will see from the list above that the main reason for closing complaints this year was because a breach of development management had not occurred. You will also see that for a high number a planning application was submitted to resolve the situation and that for a high number the breach was rectified, this means either that the owner/developer has ceased a use or removed the development due to contact from the members of the planning enforcement team.

13 For your information again. Please also see below the type of formal enforcement action the team have also taken recently:

Year	Enforcement Notices Served	Breach of Condition Notices	Injunctions Served	Planning Contravention Notices	Section 215 Notices	Temporary Stop Notices	Stop Notices
2019	3	0	2	15	1	0	0
2018	24	3	5	16	4	2	1
2017	9	3	1	14	2	0	0

14 In taking enforcement action it is important to note as stated in our Enforcement Plan that:

“Government guidance advises that enforcement action should be a last resort. We are expected to give those responsible for a breach of planning control, the opportunity to put matters right or to seek to regularise the breach before we resort to serving a formal notice. We must ensure that the service of a formal notice is proportionate with the scale and impact of the breach of planning control.

This means that we might not take formal enforcement action in all cases where there has been a breach of planning control identified”.

- 15 Therefore a breach of planning control in itself is not sufficient reason to take enforcement action. We therefore use the test of expediency as a test of whether the unauthorised activities or development are causing **harm to the environment or amenity** of the area having regard to our local plan policies, the guidance in the National Planning Policy Framework (NPPF) and all other material planning considerations.
- 16 Where there is a breach of control and officers propose to close a case because of lack of harmful impact, we will advise local councillors via e-mail as to our view. There may be occasions where councillors will refer the matter to our Development Control Committee.

Staffing

- 17 The Planning Enforcement team is made up of a:
- Planning Standards Manager
 - Senior Planning Enforcement Officer
 - Planning Enforcement Officer,
 - Compliance Officer;
 - Temporary Compliance assistant.

We have also employed a Senior Planning Enforcement Officer for a year to assist in dealing with day to cases, working on historic cases and also helping us to improve our way of working.

- 18 Since the time of the last report, the enforcement team have needed to deal with staff turnover issues, with the Senior Enforcement Officer who managed the team retiring, and other staff leaving either to retire or to further their career. This resulted in a period of time, when the enforcement team had only one officer to manage a large number of cases. This period with a number of vacancies has had an impact in terms of the planning enforcement team's performance. It has not allowed the team to meet all the priorities laid out in the enforcement plan or to review and improve their practices. This has also caused a delay in investigating cases and from taking formal enforcement action. Which we are now in the process of rectifying.
- 19 Since the beginning of the year we have received 490 complaints and so far 970 cases have been resolved. At this time 402 investigations remain open. The team has an informal target of reducing the number of outstanding complaints to 60 per officer - although we are still not at this target good progress is being made.

Successes and Achievements

- 20 Despite the issues raised above, the Council dealt with a number of high profile cases and issues in the last year and some of the successes and achievements are listed below:
- a) The Planning Enforcement team have recently secured a grant from the Government of £50,000 towards a project to help the Council deal with unlawful development in the Green Belt. We were one of a few Councils in the country to be given this. The money will be spent on a Triage officer with planning qualifications to 'validate' complaints to ensure we have the right information to free up the team to investigate the actual breaches of planning control. The Triage officer will also be expected to improve relations between other teams and provide planning advice to the enforcement team on their cases amongst other things.
 - b) The team have had a number of successful recruitments to the team, as there are now no vacancies.
 - c) The team have reduced the number of cases within the team from over 1000 to 402 since the beginning of the year.
 - d) The team have introduced a document management system to the team, which electronically manages each officer's workflow. It reminds staff of new cases and reminds them to notify complainants and other interested parties at key stages for example. This means our work is now documented electronically, in the same place, so it is easy for any officer to see what has occurred on each case.
 - e) The team have started to finalise templates so there is consistency to the information we provide to customers when contacting them in regard to enforcement issues.
 - f) The team have also set up a file closing note so that each officer has to provide a clear reason as to why we close/resolve each case. This needs to be signed off by a senior manager, to ensure consistency and oversight.
 - g) The team have successfully defended an Injunction at the High Court regarding a site in Horton Kirby.
 - h) The team have successfully served a Section 215 Notice (which require people to tidy their land) at a controversial site near Farningham.
 - i) An injunction has been served and upheld against works to protect a TPO woodland at a site near Knockholt.
 - j) There are two sites, one in Edenbridge and one in Horton Kirby where the Enforcement notices were upheld and the structures that were erected are now being removed.

- k) Officers have recently been to court with other departments in regard to a site in Swanley. The first defendant found guilty and fined £5000 with £10 000 towards the Council's costs. Other defendants in regard to this case are in court in December.

21 This all shows that despite some of the issues raised the team is still working hard to deal with the complaints, provide a good customer service and also protect this District from breaches of planning control.

Current issues faced by the team

22 Whilst we are working hard and always looking to improve, the team is facing the current challenges:

- We are the busiest enforcement team in Kent and therefore receive a high number of new complaints each week.
- Many customers do not understand the role of the planning enforcement team. Many people think that the enforcement team have faster and stronger powers than what we actually have. In line with Government guidance, formal enforcement action is seen as a last resort and we are required to negotiate first. This means that it can take time to deal with complaints.
- We are still 'catching up' following the period where there were a number of vacancies in the team.
- On occasion, we have not informed complainants or interested parties (such as members or Parish or Town Councils) of our progress on enforcement cases as well or as fast as we would have liked to. This is unacceptable.
- Some of the team are new and need training in certain areas.
- A number of the complaints we receive are not actually breaches of planning control. For example some interested parties just want to know what is going on, on a particular site. So our officers are sometimes distracted from actually dealing with breaches of planning control.
- A number of complaints are received, not because the development is considered to be harmful, but as people consider that the developers should be punished. In line with paragraph 24 above, we would only consider taking enforcement action if there was harm to the environment or amenity and not just because someone has done something without consent. So we have to spend time investigating and then explaining our course of action.
- On a number of occasions, we are not given the correct information or description of development. Some descriptions are too vague and officers have difficulty identifying the issue. This takes time away from

investigating and taking formal enforcement action against more complex and harmful cases.

- There is a shortage of planning knowledge and qualifications within the Planning Enforcement Team.

Areas for improvement

23 Through looking through this report and reviewing the work of the Planning Enforcement team, it is clear that there are areas where the team can improve and we are constantly looking at ways of doing this.

24 Below are the areas where the team will improve over the next year:

- a) Review the current Enforcement Plan, to ensure that it follows up to date practise and case law. This will also help the team to consider how we work and what priorities are given to each case once a site visit has taken place.
- b) It is recognised that the team need to continue to improve customer service and in particular the communication with the complainants and other interested parties such as Parish and Town Councils and Local Members. The team have now set up a document management system that will automatically remind officers to contact complainants at key points during our investigation and we will continue to review our processes and templates to ensure that the correct information is given at the appropriate time.
- c) It is anticipated that over the next year the team will see considerable improvements in the use of technology to undertake the planning enforcement function. We have already started the first phase by using a document management system, to help us manage our work and processes, but this can be utilised further and there are other systems that can be used to help us manage and store data.
- d) The team are looking at ways of improving the communication within Development Management so that enforcement cases that go on to be planning applications are followed through.
- e) The team will be carrying out training sessions both for members and Town and Parish Councils, so that there is better understanding of our role and also informing them as to how they can assist further.
- f) 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.

g) Employing a triage officer in the Planning Enforcement Team, which is hoped to bring the following improvements

- A reduction in the amount of complaints that go through to full investigation and site visits, as non breaches and complaints without sufficient information would not be set up as formal cases.
- A validation checklist for enforcement complaints as this would enable the enforcement team to have the correct information when investigating a complaint.
- Assisting officers within the team to identify the breaches of planning control and to assist in the more complex cases as this will reduce the time between receiving the enforcement complaint and taking action.

h) We are looking to work better with other colleagues within and outside of the Council as some may be taking enforcement action already, where breaches of planning control could be dealt with quicker by other legislation.

25 As you can see from the above, there are a number of ways that we will improve. Our aim is to have a fast acting Planning Enforcement Team, that continually keeps complainants and other parties informed at every stage of their investigation. Most importantly we are looking to set up a team to ensure that enforcement cases are dealt with appropriately and quickly to ensure that the character and amenity of the District is protected and maintained.

Key Implications

Financial

As this report is just informative, there are no financial implications regarding this report.

Legal Implications and Risk Assessment Statement

As this report is just informative, there are no legal implications regarding this report.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Appendices

Appendix A - Sevenoaks District Council's
Enforcement Plan

Background Papers

None

Richard Morris

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