

East Herts Council Report

Overview and Scrutiny Committee

Date of Meeting: 2 February 2021

Report by: Cllr Goodeve Executive Member for Planning and Growth

Report title: Planning Enforcement Plan 2021

Ward(s) affected: All

Summary

- This report sets out the approach to the updated Planning Enforcement Plan 2021.

RECOMMENDATION FOR Overview and Scrutiny Committee that:

A. The Committee reviews the new Planning Enforcement Plan 2021 (Appendix 1) prior to be it being considered by the Executive and Council for adoption.

1.0 Proposal(s)

1.1 This report explains that the Council's current adopted Planning Enforcement Plan is no longer fit for purpose due to a number of factors and sets out the approach to the updated Planning Enforcement Plan (Planning Enforcement Plan 2021 attached as Appendix 1).

2.0 Background

2.1 The Council's Planning Enforcement Plan was last updated in 2016. However, fundamentally its content dates from 2010.

2.2 Under the current Enforcement Plan all reported enforcement reports are investigated. An investigation file is opened and a

site visit is undertaken.

2.3 The current plan establishes the following investigation priorities:

Urgent cases

- Unauthorised alterations to listed buildings;
- Unauthorised alteration to or demolition of buildings in Conservation Areas;
- Unauthorised development having severe and possibly irreversible impact on surroundings;
- Unauthorised travellers sites;
- Felling of protected trees;
- Development causing danger to highway users;
- Activities requiring the service of an urgent Article 4 Direction (a direction removing permitted development rights);
- Unauthorised developments having the potential to become immune from enforcement action within a period of six months.

All other cases

- All other unauthorised developments or changes of use of land and buildings.

2.4 The 2016 Enforcement Plan set out the performance targets which are summarised as:

Urgent cases

1. Acknowledge complaint and site visit on the same day or next working day as receipt or next day;
2. Within 2 working days reach a decision and if necessary commence formal action.

All other cases

1. Acknowledge complaint within 3 working days;
2. Within 15 working days undertake a site visit in 90% of cases;
3. Within 25 working days reach a decision;
4. Within 40 working days issue an enforcement notice if applicable.

3.0 Considerations

- 3.1 There are a number of issues with the current operation of the planning enforcement service and the current Planning Enforcement Plan is no longer considered to be fit for purpose.
- 3.2 The Planning Enforcement function of the Council is under constant pressure and the level of work arising from reports about potential breaches of planning control far exceeds the level of staff resources available to investigate the cases coming forward.
- 3.3 In addition, work of high priority and intensive in nature such as gypsy and traveller site monitoring that has arisen during 2019 and 2020 has severely impacted on the ability to respond to other enforcement cases and increased the overall pressure.
- 3.4 Planning enforcement is not a statutory service and it is not legally incumbent on the Council to investigate all matters that are alleged as a breach of planning control.
- 3.5 The vast majority of investigations do not lead to formal enforcement action. Government advice states that an enforcement notice should only be served when it is "expedient" to do so in the public interest having regard to the level of harm caused. Enforcement action is not used merely to regularize a breach of planning control. Action should be proportionate to the breach of control and the level of harm caused.

3.6 Many potential breaches of planning control are reported by members of the public, which on investigation fall into the following categories:

- There is not a breach for example the works either do not amount to development or the works involve development that is permitted by the Town and Country Planning (General Permitted Development) Order without the need to apply for planning permission;
- The issue is not a planning matter e.g. It may be a neighbour dispute which is a civil matter (e.g. boundary disputes, anti-social behaviour etc.)
- There is a breach of planning control but planning permission would have been granted if an application had been made;
- There is a breach but this is of a minor nature and having regard to the level of harm caused and it is not “expedient” to take any further action.

Workload

3.7 In 2019 493 enforcement reports were received, with approximately 448 received in 2020. However, notwithstanding that a proportion of investigations are resolved without the need for formal action only 13 Enforcement Notices were served in 2019 and 19 in 2020.

3.8 Currently 458 investigations are ongoing.

3.9 From the above it is clearly evident that there is a total mismatch between the number investigations carried out annually in response to complaints and the number of breaches of planning control that are found to be sufficiently harmful to justify the service of an Enforcement Notice.

3.10 It should also be noted that the 2016 Plan prioritises enforcement investigations by category of breach rather than

by the degree of harm that a breach may potentially cause. The list of categories of breach that are to be regarded as a priority is very extensive and therefore in reality this serves little purpose in establishing priorities.

Resources

3.10 The establishment staff resource is:

1 x (FTE) Principal Enforcement Officer

2 x (FTE) Enforcement Officers

1 x (0.5 FTE) Compliance Officer

However, due to workload pressure it has been necessary to supplement this staff resource with non-establishment staff (agency staff). The current supplement is as follows:

1 x (FTE) Enforcement Officer;

1 x Enforcement Officer (part-time as caseload requires);

1 x Administration Support Officer (15 hours per week).

3.11 Given staff resources and the high level of reports the performance targets set out in the 2016 Plan are unrealistic. Furthermore, the current targets fail to acknowledge the complexity of enforcement investigations which may involve the gathering of evidence over a considerable period of time and numerous site visits.

3.12 The service of an enforcement notice usually results in an appeal and the gathering of further evidence which adds to the ongoing workload.

4.0 Conclusions

4.1 From the above the following conclusions are evident:

- The investigation priorities established in the 2016 Enforcement Plan are out of date
- The level of enforcement complaint is high;
- The majority of enforcement investigations do not result in any further action being taken by the Council either because there is no breach of planning control found, or planning permission would have been granted if an application had been made or the breach is not sufficiently harmful to justify enforcement action (i.e. “not expedient”);
- Investigation workload exceeds the available staff resource;
- The level of investigation being undertaken on matters of low importance reduces the effectiveness of the service in addressing enforcement issues causing harm;
- The investigation priorities established in the Enforcement Plan 2016 are out of date, and do not adequately relate to the potential harm resulting from breaches of planning control;
- Performance targets established in the 2016 Planning Enforcement Plan are no longer realistic and cannot be met;
- Improvements to the communications of the function can be made.

4.2 A further important consideration is the Health and Wellbeing of Enforcement Officers given their levels of workload and the environment in which they are working.

4.3 It is assessed that the Council’s current approach to planning enforcement is unsustainable.

5.0 Options

5.1 The Planning Enforcement Plan 2021 (attached at Appendix 1) proposes a fundamentally different approach to Planning

Enforcement. The intention is to direct priorities and the use of staff resources to breaches of planning control that are likely to result in significant environmental harm.

Proposed Enforcement Methodology and Priorities

- 5.2 It can be judged at the point of receipt of a planning enforcement report whether it is likely that a planning breach has occurred or if a breach has occurred it would not be expedient to take further action. In other words the breach is of a minor nature and does not result in a degree of harm wherein formal enforcement action would be “expedient” in the public interest having regard to government guidance.
- 5.3 Therefore on receipt of an enforcement report a desk top evaluation will be undertaken as to whether it is necessary to open an investigation file. This evaluation will identify the following complaints:
- Those that are not a breach of planning control;
 - Those that are trivial or minor or where it would not be expedient to investigate further.
- 5.4 In these cases the investigation will be by a desktop assessment only and reporting parties will be advised that it is the Council’s decision that the matter is either not a breach of planning control or that it would not be expedient to investigate the matter further. A record of these decisions will be kept but an enforcement investigation file will not be opened.
- 5.5 Where the initial desk top review indicates that further investigation is appropriate and justified complaints will be assessed initially according to the priorities below. These priorities are based on the level of harm likely to be caused rather than by the category of breach approach previously adopted.

Priority 1

Cases where the breach is likely to lead to significant harm to public amenity and matters of wider public interest and are therefore likely to result in enforcement action being taken;

Priority 2

Cases where the breach is likely to result in a degree harm where the balance of considerations indicate that enforcement may be warranted by the service of a Notice or other informal enforcement action;

Priority 3

Cases where the breach is likely to result in some harm to issues of acknowledged importance and where further investigation to obtain the facts is justified.

Performance targets

- 5.6 Enforcement investigations are often complex and are likely to involve the gathering of evidence over a considerable period of time before a position has been reached to enable the service of an enforcement notice. It is therefore not possible or appropriate to establish performance targets based on the completion of investigations.
- 5.7 However, it is appropriate to establish performance targets for the administration of enforcement reports having regard to providing a good standard of customer service. The proposed performance targets set out in the 2021 Plan are as follows:
1. The Council will aim to record an enforcement report and allocate an investigation reference number to it within 5 working days of receipt and the complaint will be acknowledged.
 2. The Council will aim to determine whether it is expedient to investigate the matter and assess investigation priority within 10 working days of receipt.

3. In cases where the Council decides that it is not expedient to investigate further the Council will aim to advise the reporting party within 14 working days of receipt.
4. Investigations of cases within Priority Level 1 will commence immediately.
5. The Council will regularly update the reporting party as to the progress of an investigation.

5.8 Improvements to reporting and dialogue with Town and Parish Council's will also be explored as part of implementing the 2021 Plan.

7.0 Risks

The above report recognises that the current Enforcement Plan (2016) is now out of date and needs updating in order to reflect changing priorities and resource arrangements. If an updated Planning Enforcement Plan is not adopted, it is likely that the function will continue to face operational difficulties and will not be effective.

8.0 Implications/Consultations

8.1 Planning Enforcement is a confidential activity that does not involve public engagement.

Community Safety

There are no specific community safety recommendations arising from the updated Planning Enforcement Plan 2021.

Data Protection

All planning enforcement investigations are carried out on a confidential basis in line with GDPR. Anonymous enforcement reports will not normally be investigated.

Equalities

Equalities implications must be taken into account when reaching decisions on all enforcement action.

Environmental Sustainability

There are no specific environmental sustainability implications arising from the updated Planning Enforcement Plan 2021. However, environmental sustainability may be a factor in determining whether enforcement action is taken.

Financial

The updated Planning Enforcement Plan 2021 does not propose any additional resources.

Health and Safety

There are no specific health and safety implications arising from the updated Planning Enforcement Plan 2021. However, some enforcement investigations may involve health and safety issues and are covered by the agreed risk assessment for the Planning Service.

Human Resource

There are no human resources recommendations arising from the updated Planning Enforcement Plan 2021.

Human Rights

Private interests must be balanced against the wider public interest and against competing private interests. However, human rights issues must be taken into account when reaching decisions on all enforcement action. This position is outlined in the National Planning Practice Guidance and updated Planning Enforcement Plan 2021.

Legal

Whilst enforcement action is discretionary there may be a risk, like with every decision that a customer may seek to challenge by way of a judicial review. . However, the courts recognise the wide discretionary power of the Council in relation to planning enforcement and have been inclined not to interfere with that discretion.

Specific Wards

None.

9.0 Background papers, appendices and other relevant material

9.1 Appendix 1 - Planning Enforcement Plan 2021

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