

East Herts Council Report

Overview and Scrutiny Committee

Date of Meeting: 20 September 2022

Report by: Executive Member for Planning and Growth

Report title: Planning Enforcement 2022

Ward(s) affected: All

Summary

- This report sets out the Council's approach to Planning Enforcement following adoption and implementation of a new Planning Enforcement Plan in March 2021.

RECOMMENDATIONS FOR OVERVIEW AND SCRUTINY COMMITTEE that:

The Committee considers the content of the report and provides any observations to the Executive Member for Planning and Growth.

1.0 Proposal(s)

- 1.1 This report explains the Council's current approach to Planning Enforcement following adoption and implementation of a new Planning Enforcement Plan in March 2021.

2.0 Background

- 2.1 Concern has been expressed that there is a lack of planning enforcement action being taken by the Council. This report

outlines the Council's current approach to planning enforcement following adoption of the Planning Enforcement Plan in March 2021¹ and provides a review of the effectiveness of the measures within it.

2.2 Under the current Planning Enforcement Plan all reported enforcement reports are triaged. In terms of how the triage works, a desktop study is undertaken in the first instance and then an investigation file is opened, and a site visit undertaken if a breach of planning is identified. If a planning breach is not identified, the reporting party is informed once this desktop assessment has been concluded. This process is usually undertaken quickly and means that timely responses can be made. If a planning breach is identified and an investigation file is opened, the reporting party is informed.

2.3 The Planning Enforcement Plan establishes the following investigation priorities:

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 of 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.

¹ Planning Enforcement Plan March 2021 [https://cdn-eastherts.onwebcurl.com/s3fs-public/2021-08/EHDC Planning Enforcement Plan APPROVED 02 March 2021_0.pdf](https://cdn-eastherts.onwebcurl.com/s3fs-public/2021-08/EHDC%20Planning%20Enforcement%20Plan%20APPROVED%2002%20March%202021%200.pdf)

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

- The Council will aim to record a report and allocate an investigation reference number to it within 5 working days of receipt and the report will be acknowledged.
- The Council will aim to determine whether it is expedient to investigate the matter and assess investigation priority within 10 working days of receipt.
- In cases where the Council decides that it is not expedient to investigate further the Council will aim to advise the complainant within 14 working days of receipt.
- Investigations of cases within Priority Level 1 will commence immediately.

2.5 It is not possible to set target timescales for the completion of investigations as all enforcement cases have different circumstances and require differing degrees of investigation. As outlined in paragraph 5.8 in The Planning Enforcement Plan, some investigations are very complex, and these will take a considerable time to complete. However, the Council will keep the individual who made the report advised of any significant changes or progress.

3.0 Considerations

3.1 Concern has been expressed that there is a lack of enforcement action being taken by the Council to address identified breaches of planning.

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 requires

constant monitoring to ensure that staff resources are 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 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 regularise 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 it is not “expedient” to take any further action.

3.7 Following the updated Planning Enforcement Plan in March 2021, a triage system was introduced in order to help manage the number of cases opened in relation to 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 or those that are permitted development. 264 cases were triaged in 2021. Currently for 2022, 369 cases have been triaged.

2021		
Number of alleged breaches reported	266	
Total cases opened	155	58%
No Action required	104	39%
Duplicate cases	2	1%
Further information required	5	2%
Total	266	100%

3.8 As indicated above, from the 1st March 2021 to the 31st December 2021 the Council received 266 reports of breaches of the planning system. Following the triage protocol 155 formal cases were opened which is 58%.

The table below shows that from the 1st January 2022 up to the 17th August 2022, 369 reports were received and following triage 193 cases have been opened which is 52%.

2022		
Number of alleged breaches reported	369	
Total cases opened	193	52%
No Action required	67	18%
Duplicate cases	104	28%
Further information required	5	1%
Total	369	100%

3.9 Notwithstanding that a significant proportion of investigations are resolved without the need for formal action, there are circumstances when this is the most appropriate course of action. Figures on action taken from 2020 to 2022 (to date) are summarised below.

Type of Notice Served	2020	2021	2022 (to date)
Breach of Condition (BCN)	6	2	7
Operation Development	7	2	1
Material Change of Use (MCOU)	6	0	0
Enforcement Notice (EN)	0	3	6
Temporary Stop Notice (TSN)	0	0	2
Injunction	2	1	2
Section 215	0	0	0
Total Notices Served	21	8	18

3.10 From the figures in the tables above it is clearly evident that there is a total mismatch between the number of 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.

3.11 Given the disparity between the number of enforcement cases and the number of enforcement notices served there appears to be an assumption that the enforcement service is underperforming.

3.12 Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost-effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore, in some instances formal enforcement action may not be appropriate.

3.13 Central Government advises that enforcement action should be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case. In deciding, in each case, what is the most appropriate way forward, the Council would usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area.
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development.
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

3.14 The service of an enforcement notice does not resolve the planning breach automatically. Nearly all served enforcement notices result in an appeal. The Planning Inspectorates published data for time taken to determine an enforcement appeal is:

- Written Representation 53 Weeks.

- Hearings 107 weeks.
- Inquires 82 weeks.

3.15 So as an example, if a householder built an extension and the Council served a notice with a 2-month compliance period, the owner appeals and the appeal is dismissed. The appeal has taken a year after the 2 months the owner has not complied, the Council then prosecutes which in real terms would take at least 6 months. The owner is found guilty of failure to comply with the Notice and is issued a fine. After 2 months the owner has still not complied, so the Council prosecute again which results in a further fine, after minimum of 2 years the extension is still in situ.

3.16 Whilst many investigations are swiftly resolved, some are more complex and it shouldn't be assumed that just because formal enforcement action hasn't taken place, enforcement activity on the case has ceased. There are many cases where detailed discussions with planning agents and other bodies remain ongoing for significant periods before the issue is resolved. Currently the Council has 476 investigations that are ongoing. The most complex of these cases dating back to September 2018.

3.17 The government has published data on the number of notices served for the financial year 2021 to 2022 by local authority. The numbers vary considerably and whilst it is difficult to make a fair comparison because of the service impacts of Covid 19 over that period, and the fact that the circumstances and characteristics of every authority differ, it does show that East Herts is not bucking the trend. The data² shows that the most frequent number of notices served by the 180 District Authorities reported was 1 or 2 notices, East Herts served 4.

² Published July 2022 by Department for Levelling Up, Housing and Communities and Ministry of Housing, Communities & Local Government.

The average was 7 but this average is considerably skewed by a small minority of districts that served in excess of 10 notices.

4.0 Enforcement Business Processes

4.1 In terms of business processes, enforcement has been through a lean process review with various recommendations being taken forward to improve the enforcement process and information to customers. As part of that, The Planning Enforcement Plan March 2021 procedure was reviewed. The lean process review identified a couple of areas that would benefit from collecting more information on the online reporting form at the time an alleged breach was being reported. The newly revised online reporting form would in turn assist Senior Officers when carrying out the triage process for alleged breaches. These recommendations will be followed up by the Enforcement Team.

5.0 Conclusions

5.1 From the above the following conclusions are evident:

- The level of enforcement complaints remains high.
- The triage system introduced in the 2021 Enforcement Plan is working effectively and has enabled Officer time to be directed on the reports that warrant investigation.
- 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”).
- There is no evidence to suggest East Herts is taking less formal enforcement action comparative to other District authorities in the country.

- 5.2 It is considered that the Council's current approach to planning enforcement as outlined in the 2021 Planning Enforcement Plan is in line with Central Government Guidance.
- 5.3 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.
- 5.4 However, it is appropriate to establish a method of quarterly reporting to Members and Town and Parish Councils based on:
1. The number of cases reported and triaged and the number of cases opened.
 2. The number of cases by ward opened and closed.
 3. The number and type of enforcement notices issued and appeal decisions.

Note detailed information on live investigations cannot be provided in order to ensure that cases are not prejudiced and that the Council is in line with GDPR.

- 5.5 Officers are proposing to commence with quarterly reporting from Q4 this year (reporting on Q3 information).
- 5.6 Those wishing to report suspected breaches (including Members) should continue to use the online reporting form as the information provided allows Officers to triage the case more effectively than having to spend time gathering all the required information manually. This is the quickest and most

effective way of engaging with us and enables us to register the concern, investigate, record and feedback information to the registered reporting party.

- 5.7 For information, a link to the enforcement online reporting form can be found here - <https://www.eastherts.gov.uk/planning-building/planning-enforcement/planning-enforcement-reporting-form>

6.0 Implications/Consultations

- 6.1 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 considered when reaching decisions on all enforcement action.

Environmental Sustainability

There are no specific environmental sustainability implications arising from this report. However, environmental sustainability may be a factor in determining whether enforcement action is taken.

Financial

Planning Enforcement 2022 does not propose any additional resources.

Health and Safety

There are no specific health and safety implications arising from Planning Enforcement 2022. 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 this report.

Human Rights

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

17.0 Background papers, appendices and other relevant material

17.1 None

Contact Member

Councillor Jan Goodeve, Executive Member for Growth and Planning
jan.goodeve@eastherts.gov.uk

Contact Officer

Sara Saunders, Head of Planning and Building Control, Tel: 01992 531656. sara.saunders@eastherts.gov.uk

Report Author

Karen Page. Service Manager (Development Management and Enforcement), Tel: 01992 531580. karen.page@eastherts.gov.uk