

POLICY REVIEW AND DEVELOPMENT PANEL REPORT

REPORT TO:	CORPORATE PERFORMANCE PANEL		
DATE:	13 April 2022		
TITLE:	PLANNING ENFORCEMENT UPDATE		
TYPE OF REPORT:	Update/Monitoring		
PORTFOLIO(S):	Regeneration and development		
REPORT AUTHOR:	Matthew Clarey/Stuart Ashworth		
OPEN/EXEMPT	OPEN	WILL BE SUBJECT TO A FUTURE CABINET REPORT:	No

REPORT SUMMARY

PURPOSE OF REPORT/SUMMARY:
<p>The report as requested provides background to the planning enforcement function, and sets out the current status and the past four years performance.</p>
KEY ISSUES:
<p>Performance of the team</p>
OPTIONS CONSIDERED:
<p>N/A</p>
RECOMMENDATIONS:
<p>That Corporate Performance Panel are invited to note the report.</p>
REASONS FOR RECOMMENDATIONS:
<p>Update report for panel.</p>

REPORT DETAIL

1.0 Background

- 1.1. The council's planning enforcement team mainly oversees the enforcement of planning legislation. There are also elements of other legislation that are dealt with by the team, for example protection of hedgerows.
- 1.2 Government guidance set out in the National Planning Policy Framework (NPPF) states that effective enforcement is important to maintain public confidence in the planning system. However, it does also make clear that enforcement is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.
- 1.3 The type of breaches that are investigated include:
 - Unauthorised operational development (building/ construction works).
Examples - oversized outbuildings, fences/ walls exceeding permitted provisions, unauthorised demolitions.
 - Unauthorised material changes of use
Examples – garden encroachment into the countryside, use of a non-residential building as a dwelling, commercial uses of residential properties. Matters relating to waste transfer are overseen by NCC.
 - Unauthorised work/ damage to a listed building – the activity can constitute a criminal offence/ prosecution.
 - Unauthorised work/ damage to a protected tree, either subject to a tree preservation order or by virtue of location within a conservation area - the activity can constitute a criminal offence/ prosecution, and or a requirement to plant a replacement tree of a size and species specified by the council.
 - Power to require proper maintenance of land – notices can be served to clear and tidy properties(section 215 notices).
Examples – cutting back overgrown gardens, clearing stored items from domestic properties.
 - Advertisements displayed without consent – this constitutes an offence and can also affect highway safety in some instances and cause unnecessary clutter detrimental to the street scene.
 - Protection of non-garden hedgerows - replacements can be required in some circumstances
 - High hedge complaints – remedial notices can be served to require a reduction in height and on-going maintenance.
However, not able to address overhanging/ encroachment, leaf litter or fouling from birds, also a common misconception is that a hedge must be maintained at a height of two metres.

- Breaches of conditions attached to planning decisions – can potentially have serious implications/ risks to public health and or the natural environment due to non-compliance.

As mentioned above some enforcement investigations relate to potential criminal offences. However, it is also noteworthy that most do not, cases relating to changes of use, breaches of condition and building works can be unauthorised but an offence will not have been committed initially.

- 1.4 Where a breach of planning control is considered unacceptable and planning permission is unlikely to be approved, there are formal notices that can be served to require the breach to cease. If in turn the requirements of an effective notice are then breached, this does constitute an offence punishable in the courts. The council can also take direct action to secure compliance with a notice.

The table below at 2.0 shows the number of notices served across Norfolk during the reporting period.

- 1.5 The enforcement team comprises:

Team leader – full time

Enforcement officer – full time

2 x Enforcement officers – part time (3 days p/w each)

Our newest officer joined the team in November 2021

- 1.6 When complaints are made to the enforcement team they are recorded as an enforcement case, and they are assigned to an officer to investigate. The enforcement case load to 15th March 2022 was recorded at 511 live cases.

- 1.7 The figures for the number of enforcement cases opened in the last four years is as follows:

2018 – 556

2019 – 596

2020 – 491

2021 – 570

- 1.8 The number of Enforcement cases closed in the last four years is as follows:

2018 – 548

2019 – 557

2020 – 407

2021 – 433

1.9 As mentioned above a breach of a formal enforcement notice, unauthorised work to a protected tree or damage to a listed building can be prosecuted in the courts.

1.10 A number of cases have been dealt with over recent years that have resulted in prosecutions, and with these cases a significant amount of work is undertaken by the officer to prepare papers for our legal team to in turn present the matter professionally. In some cases the officer will also be required to provide verbal evidence to the court at the hearing.

Circa 10 cases have been taken to court in the four year reporting period.

1.11 Formal notices –

Enforcement notice (operational development, material changes of use and breaches of conditions) is the most common notice that formally requires cessation of use, removal of works or compliance with conditions. Failure to comply allows the council to carry out the works in default.

Breach of condition notice. This cannot be appealed but does not allow the council to undertake the requirements in default.

Temporary stop notice and stop notice – A temporary stop notice must be backed up/ supported by an enforcement notice as only lasts 28 days. Service of a stop notice can lead to a compensation claim against the council.

Planning contravention notice -It is noteworthy that these are a requisition for information, not a formal requirement to stop an activity and through effective investigations information can often be obtained without the need to necessarily serve these.

1.12 It is of note that some notices carry a right of appeal and when this occurs the breach of planning control is permitted to continue until the appeal is determined.

1.13 As such the law also allows the use of planning injunctions to apprehend breaches of planning control that need stopping immediately. These need to be obtained from the High court. A breach of an injunction can constitute contempt of court. As can be seen in the table below the council has obtained injunctions in the recent past.

1.14 Where an appeal is lodged against an enforcement notice, the enforcement officer and in some cases a planning officer will need to defend the decision to take enforcement action, and the notice. Enforcement notice appeals can be very technical, and there are seven separate grounds of appeal.

1.15 Most appeals are by the submission of detailed written representation. However, oral testimony can sometimes be required and if at a public inquiry this will be under oath and the officer can be cross examined by the appellant's side.

- 1.16 We investigate the majority of complaints through to resolution. However, there are no particular trends, patterns or common cases, and some complaints cannot be investigated by the team. In these cases an explanation will be given to the complainant as to why and if there is a possibility another council department can assist this will also be advised.
- 1.17 Relevant complaints are logged and allocated to the officer to be investigated and where a breach is considered a priority (irreversible harm to a heritage asset/ protected tree etc) this will be addressed more swiftly.
- 1.18 There is not a set written procedural guide to follow and because of the differences with each case, some will inevitably take longer to conclude than others, and due to the high case load mentioned above it is not possible to keep complainants proactively informed of progress. We inform complainants of this at the outset, although we do confirm that complainants are welcome to contact the case officer for updates directly.
- 1.19 Very few complaints are not followed up in some way, although the outcome might not be what was desired. The investigation might conclude that the matter reported simply does not constitute development or that it benefits from a provision of permitted or deemed consent.
- 1.20 There are no targets for determining or considering cases, in the same way as there is for a planning application, mainly because of the differences between each case and the potential way they can be dealt with. We do not therefore have figures for the average time taken to resolve cases. However, if an individual investigation is shown to be too slow or if mistakes have been made then complaints can be made to the Local Government Ombudsman (LGO).
- 1.21 In the main the majority of the caseload is a result of complaints where the breach has already taken place/ commencing. However, some proactive work is created by our condition monitoring team.
- 1.22 A significant number of cases are resolved informally by negotiation where the owner remedies the breach without formal action.

Broadland								
2018	9	0	1	3	5	0	0	18
2019	2	0	1	1	1	0	0	5
2020	0	0	0	1	2	0	0	3
2021	5	0	0	0	3	0	0	8
Total	16	0	2	5	11	0	0	35
South Norfolk								
2018	4	0	0	0	2	0	0	6
2019	2	0	0	0	1	0	0	3
2020	4	0	1	0	3	0	0	8
2021	2	0	0	0	0	0	0	2
Total	12	0	1	0	6	0	0	19
Great Yarmouth								
2018	6	0	0	1	23	0	0	30
2019	6	0	3	3	22	0	0	34
2020	1	0	2	3	15	0	0	21
2021	0	0	2	0	12	0	0	14

Total	13	0	7	7	72	0	0	99
North Norfolk								
2018	7	1	1	3	3	0	0	15
2019	10	0	3	1	7	0	0	21
2020	2	0	0	0	1	0	0	3
2021	3	0	0	0	3	0	0	6
Total	22	1	4	4	14	0	0	45
Norwich								
2018	12	0	0	3	3	0	0	18
2019	14	0	0	8	8	0	0	30
2020	6	0	0	5	1	0	0	7
2021	4	0	0	0	16	0	0	25
Total	36	0	0	16	28	0	0	80
BCKLWN								
2018	26	0	1	10	14	1	0	52
2019	19	0	0	4	15	0	0	38
2020	13	0	0	5	2	0	0	20

2021	15	0	0	4	14	3	0	36
Total	73	0	1	23	45	4	0	146

2.1 These figures, which are taken from government returns, show that the council has served more official notices than any other authority in Norfolk, particularly those requiring positive action to address planning breaches.

3.0 Corporate Priorities

3.1 The enforcement function is perhaps best aligned with the following corporate priority.

Priority: Creating and maintaining good quality places that make a positive difference to people's lives

4.0 Financial Implications

4.1 There is the cost of providing the service, with the team currently consisting of 3.2 FTE posts.

5.0 Any other Implications/Risks

5.1 There is a risk to the reputation of the council if no enforcement action is taken, although this needs to be balanced and proportionate, as per the NPPF guidance.

6.0 Equal Opportunity Considerations

6.1 No specific equal opportunity considerations.

7.0 Environmental Considerations

7.1 Taking action can, in some circumstances, have a positive impact on the environment, for example, clearing up an untidy site under section 215 of the Town and Country Planning Act.

8.0 Consultation

8.1 N/A

9.0 Recommendation

9.1 That Corporate Performance Panel note the report.

10.0 Background Papers

Local Government returns