

BABERGH DISTRICT COUNCIL and/or MID SUFFOLK DISTRICT COUNCIL

TO: Joint Overview & Scrutiny Committee	REPORT NUMBER: JOS/19/25
FROM: BDC and MSDC Cabinet Members Planning	DATE OF MEETING: 20 February 2020
OFFICER: Philip Isbell, Chief Planning Officer	

PLANNING ENFORCEMENT

1. PURPOSE OF REPORT

1.1 This report reviews the approach to planning enforcement in the District including enforcement processes, the enforcement of planning conditions, the present Joint Local Planning Enforcement Policy (JLPEP) and related Building Control issues.

2. OPTIONS CONSIDERED

2.1 The first option is a “maintain the status quo” approach. This would miss the opportunity to review the JLPEP and to enhance the transparency of the enforcement process for our communities through the public statement of our approach. This would also preclude the opportunity to make clearer the expectations of the planning authority upon those under investigation and the typical timetable for investigations. Foreseeably this option would miss the opportunity to enhance the reputational profile of the planning authority in our communities from planning enforcement activity.

2.2 The second option could be to discontinue planning enforcement activity as this is a discretionary service. This would reduce the perceived effectiveness of the planning process and would foreseeably lead to adverse reputational impacts for the planning authority. There would foreseeably be an adverse effect on the contribution of the land use planning process to environmental safeguarding.

<p>3. RECOMMENDATIONS</p> <p>3.1 That the contents of this report be noted.</p> <p>3.2 The Committee recommend to Cabinet the establishment of a Member / Officer Working Group to review the JLPEP and that this Group be requested to have regard to best practice and other examples of other published Local Enforcement Plans in that process of review.</p> <p>3.3 That an update on progress with service transformation work within the planning enforcement service be provided to the Committee.</p>
<p>REASON FOR DECISION</p> <p>It is appropriate to review and update the JLPEP to reflect current good practice in planning enforcement.</p>

4. KEY INFORMATION

- 4.1 The underlying principle behind the enforcement of planning control is that it is a discretionary service. There is no statutory duty to enforce planning issues and the judgement of planning enforcement matters is determined by a test of expediency. This is not a defined term.
- 4.2 The enforcement of planning matters, including conditions attached to any planning permission, is widely understood to give confidence to the public in the planning process. The planning enforcement process can include new built development, engineering operations or material changes of use. In addition, it also includes advertisement control and listed building control investigations. Where development has not taken place in conformity with a planning permission or listed building consent the extent of deviation from the approval may be a matter warranting enforcement investigation.
- 4.3 Enforcement action can be resource intensive for the local planning authority and therefore the determination of what action is expedient requires careful consideration. It is normally appropriate to seek to achieve compliance with planning control by encouraging remedial behaviour depending upon the nature of the alleged breach and its planning impacts. This may either be inviting co-operative removal / cessation of activity or, if the planning merits appear to be favourable, inviting the submission of an application for determination in the usual way.
- 4.4 It is usual therefore to allow a reasonable period of time for the person / organisation under investigation to co-operate and achieve compliance. In other cases where the nature of the alleged breach and its planning impacts indicate it is expedient to act swiftly then it may be appropriate to proceed directly to serve a notice or issue injunction proceedings.
- 4.5 The discretion as to what and when enforcement action is expedient can be a controversial matter for communities and requires a careful balance. Managing expectations in an appropriate way is therefore desirable.
- 4.6 The Joint Local Planning Enforcement Plan.
- 4.7 Paragraph 58 of The National Planning Policy Framework (NPPF) states that *“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.”*
- 4.8 More detailed guidance is contained in the National Planning Policy Guidance (NPPG) <https://www.gov.uk/guidance/ensuring-effective-enforcement>
- 4.9 The present plan dates to 2017 and describes enforcement processes and a high, medium and low priority approach to investigations (see Appendix a)
- 4.10 Planning conditions and their enforcement

- 4.11 In relation to the enforcement of planning conditions the guidance in paragraph 55 (NPPF) expects “*Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.*”. The enforceability of a condition is an established planning tests for the reasonableness of its imposition. The use of planning conditions has grown over time and they are an effective way in which to overcome unacceptable planning impacts which the NPPF expects should be used where that will enable the grant of planning permission.
- 4.12 The discharge of planning conditions has become formalised through a specific application process under the present Planning Portal system and the use of a “plans listing” condition has enabled “material” and “non-material amendments” to the approved plans to be agreed or rejected in a formal manner. Further details of the volume of activity associated within conditions investigations is detailed below.
- 4.13 Planning enforcement investigations and typical processes.
- 4.14 The process of each investigation is distinct having regard to case priority, complexity and planning issue revealed. The typical process and timeline will often vary according to the type of matter under investigation. Appendices (b) and (c) describe the processes for a breach of condition and an unauthorised building. Two example case studies are attached at (f).
- 4.15 Having brought the planning Enforcement service together with Development Management service work is actively ongoing to review processes and efficiencies that may be realised through better alignment and co-ordination. This transformation work is ongoing and includes team activity to critically review and manage active caseloads, to make better use of Uniform software to link and research site records and to develop the use of Enterprise for improved case management.
- 4.16 In order to improve transparency Councillors are now provided with weekly reports on new investigations which have been opened and those which have been closed. Work is ongoing to develop further appropriate reports and it is expected that the suite of information regarding the active state of investigations which can be provided to Councillors will increase as streamlined processes are finalised. An example of one such report being developed and in draft form is appended at (e).
- 4.17 Planning enforcement activity in the calendar year 2019.
- 4.18

	BDC	MSDC
Total No. of Investigations into alleged breaches of planning control (inc. breaches of condition)	248	272
Total No. of which resolved into applications for planning permission, advertisement consent or listed building consent	27	22
Total No. of the following notices served:		
Planning Contravention Notices	0	12

Enforcement Notices	7	19
Breach of Condition Notices	4	2
Total No. of enforcement appeals in process at the start of 2019	0	0
Total No. of enforcement appeals in process by 31 December 2019	2	19
Total No. of prosecutions in 2019 (where enforcement notices were not complied with or it was expedient to pursue prosecution for other reasons)	0	2

4.19 As to the investigation of breaches of condition in the calendar year 2019:

	BDC	MSDC
Total No. of alleged breaches of condition investigations	34	44
Total No. of which were resolved into discharge of condition applications or non-material amendment / minor material amendment applications	3	3
Total No. of Breach of Condition Notices served	3	3
Total No. of Enforcement Notices in relation to investigations of matters in breach of a condition	0	0
Total No. of these investigations that were concluded to be either unfounded, not expedient to pursue, not development, lawful or not a planning matter	12	22
Total No. of active remaining investigations	11	17

4.20 Planning enforcement and links to the Building Control regime.

4.21 The Building Control regime is a distinct regulatory framework. Established practices ensure that there are good links between the planning team as a whole and Build Control Surveyors and anecdotal experience is that this constructively enables resolution of many build issues which reduce the need for planning enforcement investigations.

- 4.22 Some Building Control cases are undertaken by Approved Inspectors (AI) and in these cases records of that case transfer from the local authority are held but no further detail is usually available with Uniform software. There is a commonly held perception that such cases are subject to less exposure and thus less scrutinised by the local planning authority for compliance with conditions. At the present time it is not possible to report the extent to which sites under an AI are or are not a feature of regular enforcement investigations.
- 4.23 Planning enforcement of conditions requested by Suffolk County Council (SCC) stakeholders.
- 4.24 SCC typically recommends the imposition of planning conditions on any permission in relation to technical highway or drainage matters. These conditions are not discretely recorded within Uniform software and it has not been possible to analyse the frequency with which enforcement investigations concerning SCC condition matters have been undertaken.
- 4.25 As a matter of jurisdiction any SCC recommended condition is for the planning authority to consider the expediency of enforcement. Good working relations between BMSDC Officers and SCC Officers ensure that investigations are progressed with the right technical input and this is enhanced by proximity at Endeavour House.

5. LINKS TO JOINT STRATEGIC PLAN

- 5.1 Planning enforcement is most closely linked to “Unlock Barriers to Growth”

6. FINANCIAL IMPLICATIONS

- 6.1 The operational cost of providing the planning enforcement function is limited to revenue expenditure only, primarily employee costs. The budget for running this service for both 2019/20 and 2020/21 is shown below. Expenditure is shared equally between the Councils.

	2019/20	2020/21
	£'000	£'000
Employee Costs - direct	306	339
Employee Costs – indirect (eg travel)	12	12
Legal Expenses	6	6
Other items	1	1
TOTAL EXPENDITURE	325	358

7. LEGAL IMPLICATIONS

- 7.1 The planning enforcement process, where notices are not complied with, may lead to prosecution of those who have failed to comply. Any review of the Local Enforcement Policy should be the subject of consultation with Legal Services in order to ensure that any revisions are appropriate and that any legal implications can be addressed.

8. RISK MANAGEMENT

8.1 This report is most closely linked with the Council's Corporate / Significant Business Risk No. 3. Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Development does not come forward as planned and enforcement investigation delays the delivery of permitted schemes	3	1 to 3 subject to complexity and priority	A robust and timely investigation process that is transparent and is seen to be followed consistently underpinned by a published enforcement plan will safeguard public confidence and ensure that the delivery of schemes is not unduly affected.
Development takes place which has not been permitted	3	1 to 3 subject to complexity and priority	A robust and timely investigation process will safeguard public confidence and ensure that development is appropriately planned and managed.

9. CONSULTATIONS

9.1 No formal consultations have been undertaken in the preparation of this report. Informal discussion has been undertaken with other Council services including Building Control.

10. EQUALITY ANALYSIS

10.1 It is not considered that any of the protected grounds may be affected as a result of the recommendations in this report. A review of the Local Enforcement Policy will ensure that the approach of the Council to enforcement investigation safeguards equality.

11. ENVIRONMENTAL IMPLICATIONS

11.1 The effective enforcement of planning control contributes to the safeguarding of environmental characteristics through appropriate regulation. A review of the Local Enforcement Policy will ensure that the Councils approaches remain fit for purpose. Option 2 described above at 2.2 would foreseeably have adverse implications upon environmental safeguarding within the District.

12. APPENDICES

Title	Location
(a) Joint Local Planning Enforcement Policy 2017	Attached
(b) Process map – Enforcement investigation: Breach of condition	 Breach of Condition example.pdf
(c) Process map – Enforcement investigation: Unauthorised building	 Erection of building example.pdf
(d) General process map	 Enforcement Process.pdf
(e) Current workload report (headline and site visit data) DRAFT	 EN1. Main Summary Report - EN Workload
(f) Case Studies	 Overview & Scrutiny Report - Case Studies  Overview & Scrutiny Report - Case Study C

13. BACKGROUND DOCUMENTS None