

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

TO: MSDC Council BDC Council	REPORT NUMBER: BC/22/49
FROM: Planning Enforcement Task and Finish Group	DATE OF MEETING: 20 March 2023 (MSDC) 22 March 2023 (BDC)
OFFICER: Tom Barker, Director of Planning and Building Control	KEY DECISION REF NO. N/A

DRAFT JOINT LOCAL PLANNING ENFORCEMENT PLAN 2023

1. PURPOSE OF REPORT

2. The current Joint Local Planning Enforcement Plan (JLPEP) was adopted in 2017. Its primary purpose was to ensure that Councillors and Officers, external agencies and the public were aware of the Council’s approach to its planning enforcement responsibilities. This approach reflected the governments advice in the National Planning Policy Framework.
3. In February 2020 the Joint Overview and Scrutiny Committee recommended to Council that a Member/Officer Task and Finish Group should be established to review the JLPEP and that they should be encouraged to have regard to best practice and other examples of other published Local Enforcement Plans in that process of review.
4. The group has concluded its work and have now developed the draft policy appended to this report. They have done so having regard to related transformation activity which has been continuing within the planning enforcement service.

5. OPTIONS CONSIDERED

- 5.1 The first option is to “do nothing” and leave the current policy in place. This has been discounted given the recommendations of Overview and Scrutiny Committee who were mindful that the current policy does not capture essential principles of good customer service in providing information to the public or provide “good practice” measures which are up to date and can demonstrate efficient planning enforcement activity.
- 5.2 There are potential alternative options which could include adopting various elements of good practice identified elsewhere in the planning enforcement policies of other Councils. The group has not pursued these as it is considered that the recommended draft policy embraces and consolidates key aspects of good practice from those Councils and combines them with in-house improvements around the casework process, the prioritisation of investigations and performance management of the service.

6. RECOMMENDATIONS
6.1 That the draft Joint Local Planning Enforcement Policy 2023 (JLPEP) set out at Appendix A be adopted and published on the Councils website.
6.2 That the Director of Planning and Building Control be authorised to make any necessary consequential amendments to finalise and publish the JLPEP.
6.3 That the policy be reviewed by a Joint Member Working Group within 12 months of its implementation
REASON FOR DECISION
The current Joint Local Planning Enforcement Plan requires updating and amendment to reflect current approaches to good practice and good customer service.

7. KEY INFORMATION

Councillors will appreciate and acknowledge the importance of planning enforcement in the management of development. An effective Enforcement Policy should outline, give structure as well as provide guidance on how we as the Local Planning Authority (LPA) determine breaches of planning control and assess the circumstances in which effective and proper enforcement will be used to manage the harmful effects of unauthorised development.

The Town and Country Planning Acts give Councils their powers to control unauthorised development. The National Planning Policy Framework (NPPF) states “Effective enforcement is important as a means of maintaining public confidence in the planning system...” as well as also assisting in:

- Tackling breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area.
- Maintaining the integrity of the decision making process.
- Helping to ensure that the public acceptance of the decision making process is maintained.

Enforcement powers are discretionary. Whilst we must carry out robust and appropriate investigation into all complaints we receive, we are not required to take action because there has been a breach of planning control as it may not be expedient to do so. Enforcement action is intended to be remedial rather than punitive and should only be taken where there is demonstrable planning harm. This means minor technical breaches that have only a small impact may not warrant the time and expense in taking action and we will usually seek to negotiate a resolution of the breach. Any action therefore will generally be held in abeyance whilst an investigation is conducted and a valid planning application or appeal are determined.

Enforcement policies should also explain how reported issues are prioritised. We rank cases depending on their gravity, the harm being caused and the material planning considerations involved. If a report relates to unauthorised works to a listed building this will be a high priority whilst unauthorised developments, which would be likely to receive planning permission are normally given low priority.

Priority is not driven or decided by who reports a complaint, or how persistently they report matters. The identity of persons reporting matters are kept confidential.

Other than in very specific situations (for example, works affecting the character of a listed building), the fact that something is unauthorised does not, in itself, amount to a criminal offence. It is therefore important that we treat unauthorised developments on their individual merits, the same way as we do for applications for proposed developments. The underlying principle is that we may issue an enforcement notice where it appears that there has been a breach of planning control **and** that it is expedient to issue the notice.

The key issues identified in the review.

The Task and Finish Group considers breaches of planning control very seriously. They are also aware of the importance of having an up to date and usable planning enforcement policy that provides clarity to the public and to the staff within the service.

The group have reviewed the current policy and drafted a replacement (please see Appendix A). The alterations have been focused on making the policy easier to follow for those making a complaint as well as those to whom the complaint relates, streamlining the prioritisation process (these details are explained in Appendix B) and to ensure the plan is supported by a more effective performance management culture. The process workflow that has been developed through service transformation is also included at Appendix C in a simplified form for public information alongside the draft policy.

The key revisions to the policy can be summarised as follows:

- Streamlining the document, using plain English where possible and removing much of the technical language, so it is much easier to follow.
- Providing a clearer insight into what planning enforcement is and what it seeks to achieve.
- Providing a clearer picture to those who rely on the service as to what they can expect when they are involved in either reporting or being asked to act in response to a planning enforcement matter.
- Providing an explanation as to why, in some circumstances, the Council might decide that it is not expedient to take formal action against a breach of planning control.
- Ensuring that the policy offers the Council the flexibility to exercise its enforcement powers in the most effective and appropriate way.
- Affirming the importance of keeping interested parties aware of our progress in a timely manner
- Ensuring the online reporting system allows officers to collect an acceptable level of information, to aid the investigation, from the start.

Conclusion

The development of this new draft policy draws on examples of the very best practice in the profession. It also aligns to related transformation activity which has been continuing within the planning enforcement service and it is being recommended for approval by members of the Task Group whose community leadership on planning matters has proved invaluable throughout the review process.

8. LINKS TO CORPORATE PLAN

Planning enforcement is an integral part of the development management process, it ensures we can deliver economic growth and prosperity within the districts and investment within our communities that enables them to be happy, healthy and connected places to live in and visit. An effective enforcement function also protects and enhances the environment and protects our communities from unauthorised development which causes harm. Its integrity, how the process is applied, is also a barometer of how the Council is viewed by the public and so it carries with it important responsibilities that must also ensure our reputation is not damaged.

9. FINANCIAL IMPLICATIONS

10. There are no financial implications in relation to the review of the Draft Joint Local Planning Enforcement Plan.

11. LEGAL IMPLICATIONS

- 11.1 Without an effective Planning Enforcement Plan in place the Council's decisions on whether to take, or not to take, enforcement action (including prosecutions) may in future be subject to legal challenge through the Courts.

12. RISK MANAGEMENT

13. This report is most closely linked with the Development Management Services Operational Risks No. 12 and 13, a summary of these risks and mitigation measures are set out below:

Key Risk Description	Likelihood 1-4	Impact 1-4	Key Mitigation Measures	Risk Register and Reference*
Ineffective internal controls and the misinterpretation of policy might give rise to appeals and costs to the Council	2	2	The Planning Enforcement Plan reduces the risk at appeal or by judicial review as it clearly sets out the process and timescales by which enforcement complaints will be investigated and progressed. It sets out the reasonable expectations which may drive an application.	12
Perceived failure to take enforcement action may have a detrimental impact on the Council reputation	2	2	Precise clarification of when we agree it is expedient to take action is set out in the policy, the tests are based on degree of unacceptable impact on the amenity of the area.	13

			Staff and Councillors are confident in these measures and staff are suitably developed and supported to apply appropriate enforcement outcomes	
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14. CONSULTATIONS

- 14.1 A joint Member/Officer working group was established in April 2021. Mindful of the pandemic the group did not meet and commence work until September 2021. Since then, the group met to set out expectations for the policy, to review examples from other Councils and to instruct officers in the groups consensus expectations for a new policy.
- 14.2 There have been no public consultations on the draft JLPEP.

15. EQUALITY ANALYSIS

16. The decision recommended has a remote or low relevance to the substance of the Equality Act. There is no perceived impact of the policy on those who will come into contact with the service.

17. ENVIRONMENTAL IMPLICATIONS

Failure to have an effective planning enforcement policy could result in an increase in unauthorised developments and delays in investigating breaches in planning control. This could lead to inconsistency and adverse impacts on the environment resulting in long term harm.

18. APPENDICES

Title	Location
(a) Joint Local Planning Enforcement Plan (JLPEP)	Attached
(b) Planning Enforcement Prioritisation Strategy	Attached
(c) Planning Enforcement Workflow – Public Version 2023	Attached

19. BACKGROUND DOCUMENTS

- 19.1 None

20. REPORT AUTHORS

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