

BABERGH and MID SUFFOLK DISTRICT COUNCIL

TO:	Joint Overview and Scrutiny Committee	REPORT NUMBER: JOS/23/39
FROM:	Director for Planning and Building Control	DATE OF MEETING: 22/04/24
OFFICER:	Chief Planning Officer	

AN OVERVIEW OF THE HANDLING PROCESSES FOR ENFORCEMENT CASELOAD

1. PURPOSE OF REPORT

- 1.1 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 existing Planning Enforcement Plan 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.
- 1.2 The Task and Finish Group consisted of the following Members: David Burn (Cllr); Kathie Guthrie (Cllr); Andrew Stringer (Cllr); John Field (Cllr); Clive Arthey (Cllr); John Ward (Cllr); Peter Gould (Cllr); David Busby (Cllr); Trevor Cresswell (Cllr); Jane Gould (Cllr); Peter Beer (Cllr). Officers who were also a part of this group were Tom Barker; Philip Isbell; David Clarke; Julie Havard; Simon Bailey & John Mawdsley.
- 1.3 To address concerns relating to the performance of the Planning Enforcement team, specifically in relation to speed and efficiency, the Task and Finish Group reviewed the existing Enforcement Plan, developed a process map of a 'typical' Planning Enforcement case, and prepared a strategy for the efficient and effective prioritisation of new reports received. The purpose of the "prioritisation strategy" being to ensure resources are directed to those cases most in need of action.
- 1.4 The revised Joint Local Planning Enforcement Plan (JLPEP) was adopted in March 2023 and brought into effect in May 2023. Its primary purpose was to provide greater clarity and 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.
- 1.5 When Full Council adopted the revised JLPEP in March 2023 they requested a review of the implementation of the plan and its Prioritisation Strategy (PEPS) be undertaken after 12 months of use. A joint member working group is being arranged to conduct this review from May 2024. Transformation activity within the planning enforcement service has continued since the JLPEP was brought into effect.

2. OPTIONS CONSIDERED

- 2.1 The first option is to “do nothing” and leave the revised JLPEP in place. A second option is to identify iterative improvements as the operational implementation of the plan progresses, and to delegate authority to the Director for Planning & Building Control to embed changes “in real time” in consultation with the Cabinet Members for Planning. The revised plan is considered to capture essential principles of good customer service through providing information to Members and the public and providing “good practice” measures which are up to date and can demonstrate efficient planning enforcement activity. In addition, this option provides further opportunities for embedding use of the PEPS in day-to-day operational practice within the team.
- 2.2 There are potential alternative options which could include detailed statistical analysis of use of the PEPS and its outcomes in order to add efficiency to the directing of appropriate resources accordingly. At the time of writing, it is considered there is insufficient data to do this.
- 2.3 The Task and Finish group is due to meet in May 2024 to review the implementation of the JLPEP and its associated PEPS. Analysis of use and efficacy of the documents is expected to be an element of the agenda for the group. To obtain a qualitative measure of the success of the implementation of the JLPEP and PEPS, it may be appropriate to seek anecdotal evidence from Parishes and Communities amongst others. The parameters for “success” for would need to be carefully defined.

3. RECOMMENDATIONS

- 3.1 That the Committee note that the Joint Member/Officer working group is being established to review the revised JLPEP and PEPS to assess implementation and achievement of desired outcomes as expected by Council in March 2023.
- 3.2 That the Committee set out their specific recommendations and areas for enquiry to the Joint Member/Officer working group on the JLPEP.

REASON FOR DECISION

The revised Joint Local Planning Enforcement Plan and PEPS have been in place for nearly 12 months and Full Council required a review one year after implementation. The delegation of authority to amend or update the JLPEP or PEPS will ensure that lessons can be learnt efficiently and without undue formality.

4. KEY INFORMATION

- 4.1 Councillors will appreciate the importance of planning enforcement in the management of development. An effective Enforcement Plan 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.

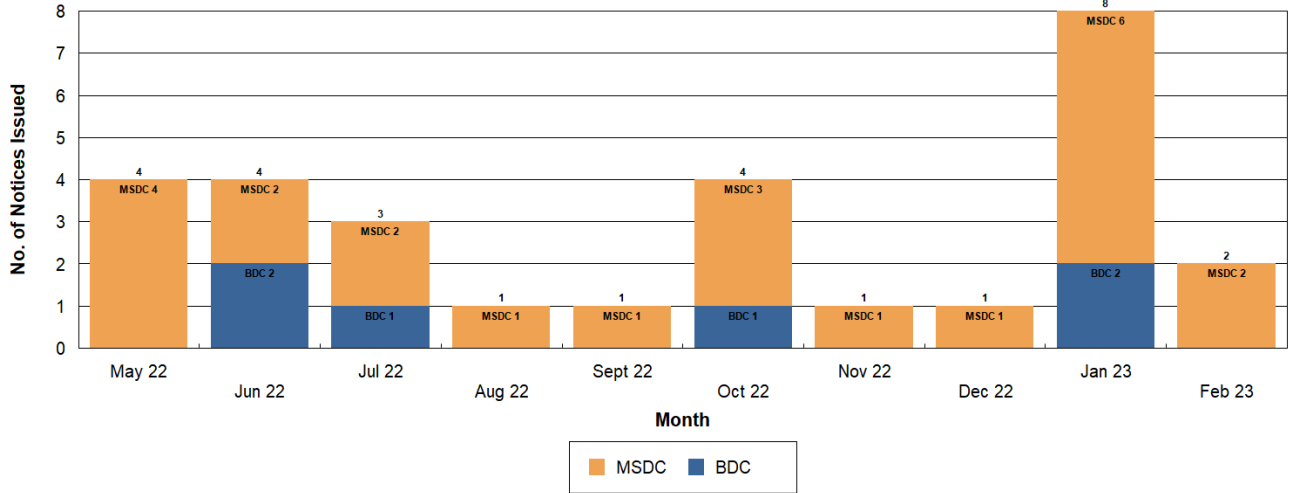
- 4.2 The Town and Country Planning Acts give Councils their powers to control unauthorised development. The National Planning Policy Framework (NPPF) states “*Effective enforcement is important as a means of maintaining public confidence in the planning system...*” as well as also assisting in:
- Tackling 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.
- 4.3 Enforcement powers are discretionary. Whilst the service must carry out robust and appropriate investigation into all complaints it receives, the Council is not required to take action simply 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.
- 4.4 The revised JLPEP brings in prioritisation of reports received using the PEPS so that the team is equipped with a toolkit to direct resources to those investigations which are a priority and most require time and energy. Conversely, those cases which involve minor technical breaches with minimal impact can be swiftly and robustly removed from the team’s workload.
- 4.5 The scoring mechanism in the PEPS allows officers to assess new reports based on clear criteria, planning harm and material planning considerations. There is an element of planning judgement, but the PEPS enables a standardised approach to be taken across the District in the interests of consistency.
- 4.6 Cases are scored 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 score higher whilst unauthorised developments, which would be likely to receive planning permission are would receive a lower score. 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.
- 4.7 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.

Implementation, progress, & performance.

- 4.8 Implementation of the revised JLPEP (and PEPS) involved a significant change to the operation and performance management of the Planning Enforcement Team. The previous Plan included only one performance target – that being from receipt of the report to the date of the initial site visit. The new Plan includes example timescales within the Workflow process map to ensure that investigations are progressed appropriately towards an appropriate resolution. A number of new internal performance targets have been developed to measure workflow. It should be noted that these performance targets are set internally as there are no current Central Governmental targets set for planning enforcement (see paragraph 4.13).
- 4.9 Initially, use of the PEPS by the team was limited to those reports considered to involve only minor transgressions and the team developed an approach to consistency of practice from these first. Subsequently, use of the PEPS has been expanded to include all new reports received in order to consistently ensure appropriate resource allocation.
- 4.10 The Team has been involved in a constant development process to ensure the PEPS is fit for purpose. The PEPS was developed based on a similar document from another Local Authority but required significant adaptation to become appropriate for our Districts and the developments we commonly encounter. Notwithstanding this, a criteria-based strategy such as this inevitably has limitations insofar as it has a “one-size-fits-all” approach where new types of breach can be encountered as society and technology etc changes.
- 4.11 To ensure the PEPS remains focused appropriately over time on the most significant breaches of planning control it is considered appropriate to keep its provisions under regular (at least bi-annual) review by the Director for Planning & Building Control in consultation with the Cabinet Members for Planning.
- 4.12 A comparison of notices issued by month from May 2023 (when the JLPEP was brought into effect) to February 2024 (and the same period in previous year) is below. As a result of implementation of the PEPS the team is now able to attribute resource and focus to those cases which require our attention as demonstrated by the service of a greater number of notices. A comparison of reports received since January 2020 is also included to provide a picture of activity just prior to the Covid pandemic and beyond.

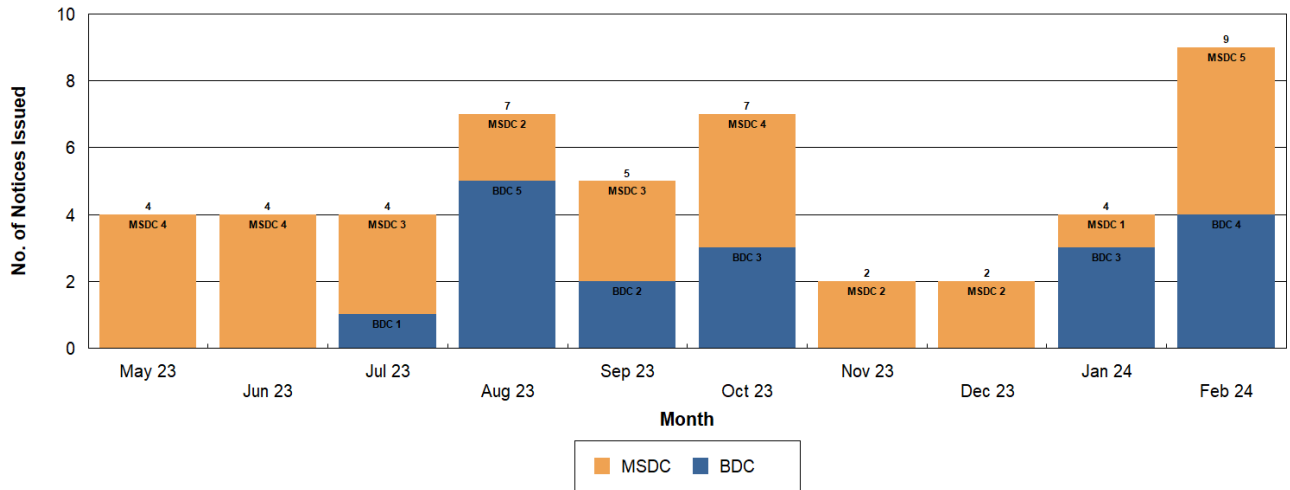
01 May 2022 to 28 February 2023

BMSDC EN Notices Issued - By Month / Type



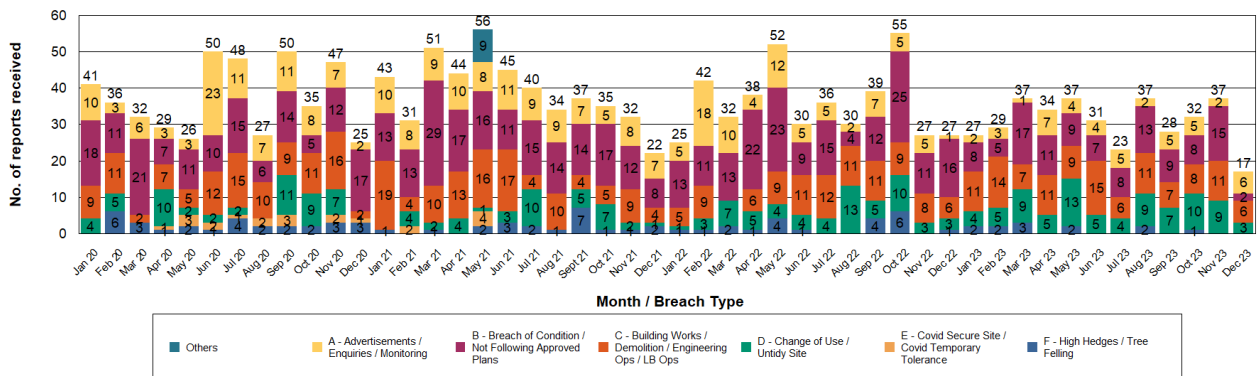
01 May 2023 to 29 February 2024

BMSDC EN Notices Issued - By Month / Type



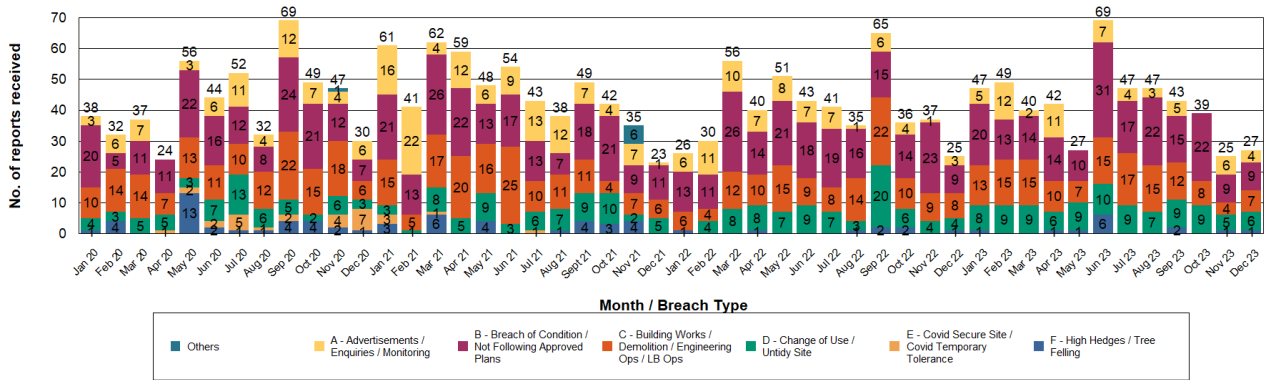
Enforcement reports received between 01 January 2020 to 31 December 2023

BDC - Enforcement Reports Received By Month



	Total Reports Received	Advertisements - STD	Breach of Condition - EXP	Breach of Condition - STD	Building Works - EXP	Building Works - STD	Change of Use - EXP	Change of Use - STD	Covid-19 Temporary Tolerance - STD	Demolition - EXP	Engineering Operations - STD	Enquiry	High Hedge Complaints	Listed Building Alterations - EXP	Listed Building Alterations - STD	Monitoring - STD	Not Following Approved Plans - EXP	Not Following Approved Plans - STD	Prosecution	Tree Felling and Logging - EXP	Tree Felling and Logging - STD	Untidy Site - STD
2020	446	13	0	76	2	88	0	43	15	0	4	80	1	0	15	1	1	70	0	2	26	9
2021	470	16	2	88	8	85	0	34	6	3	13	82	0	6	0	3	0	89	9	2	19	5
2022	433	14	2	117	0	74	0	54	0	0	1	65	3	8	14	0	0	55	0	0	18	8
2023	369	9	0	73	0	95	1	60	0	0	0	37	0	0	21	0	0	39	0	0	12	22
Total	1,718	52	4	354	10	342	1	191	21	3	18	264	4	14	50	4	1	253	9	4	75	44

MSDC - Enforcement Reports Received By Month



	Total Reports Received	Advertisement - STD	Awaiting Appeal Decision	Breach of Condition - EXP	Breach of Condition - STD	Building Works - EXP	Building Works - STD	Change of Use - STD	Covid-19 Temporary Tolerance - STD	Demolition - STD	Engineering Operations - STD	Enquiry	High Hedge Complaint	Injunction	Listed Building Alterations - EXP	Listed Building Alterations - STD	Monitoring - STD	Not Following Approved Plans - EXP	Not Following Approved Plans - STD	Prosecution	Tree Felling and Logging - EXP	Tree Felling and Logging - STD	Untidy Site - STD
2020	510	5	0	1	96	0	119	59	24	2	13	64	3	1	2	16	0	0	72	0	5	25	3
2021	555	16	1	2	97	5	110	59	5	0	12	94	1	0	12	8	3	2	90	5	3	21	9
2022	485	6	0	0	113	0	106	70	0	0	0	64	1	0	5	16	1	3	83	0	2	5	10
2023	502	7	0	0	132	1	108	90	0	1	1	52	0	0	0	27	0	0	64	0	0	13	6
Total	2,052	34	1	3	438	6	443	278	29	3	26	274	5	1	19	67	4	5	309	5	10	64	28

Planning Enforcement Performance Targets

4.13 In 2023 the government undertook a technical consultation on stronger local planning authority performance (see Appendix D). Views were sought on the suitability of various metrics including Planning Enforcement metrics. The consultation listed the following metrics:

1. Average number of weeks taken to respond to suspected breaches of planning and determine the appropriate course of action.
2. Average number of weeks to take action where a breach of planning has occurred, having decided it is expedient to do so.
3. Total number of cases over 6 months old as percentage of all open cases.

In its response to this consultation the government noted as follows *E. Planning Enforcement metrics: enforcement varies significantly across local planning authorities and that an authority’s approach to enforcement is better guided by their local enforcement plan.*

The government further re-iterated its intention to introduce a new planning performance framework once we have increased planning fees and invested in supporting the capacity and capability of planning departments. At the present time there is no further clarity as to what if any planning enforcement metrics are intended.

4.14 In the circumstances, performance management is being developed iteratively as the JLPEP becomes established. The new performance indicators are therefore a work in progress and are effective in relation to only part of the overall workload, as some cases will predate the introduction of the JLPEP. The new performance indicators are based on the key stages in the workflow relative to case priority. It is expected that a similar approach to performance measurement to that approach in Development Management will be established over time. The approach in Development Management has been to seek to achieve percentage targets for time taken recognising that not every case will fully match the workflow.

For example, the internal target for Major application processing is 90% (compared to 60% for Government target within 13 weeks) and 95% for Non-Major applications (compared to 70% for Government target within 8 weeks). In planning enforcement, we would expect to develop key indicators as we gain experience following these JLPEP processes.

Conclusion

- 5.1 The development of the JLPEP drew 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 was recommended for approval by members of the Task Group whose community leadership on planning matters proved invaluable throughout the review process.
- 5.2 The JLPEP provides an effective explanation to the public, Councillors and Parish Councils about the Councils approach to this discretionary, non-income generating, service. The implementation of the PEPS successfully enables the service to prioritise its resources and time on the most harmful breaches of planning control within a publicly stated policy structure.

6. LINKS TO CORPORATE PLAN

- 6.1 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.

7. FINANCIAL IMPLICATIONS

- 7.1 There are no financial implications in relation to the review of the adopted Joint Local Planning Enforcement Plan.

8. LEGAL IMPLICATIONS

- 8.1 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.

9. RISK MANAGEMENT

- 9.1 This report is most closely linked with the Development Management Services Operational Risks No. 10 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.	10
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. Staff and Councillors are confident in these measures and staff are suitably developed and supported to apply appropriate enforcement outcomes	13

10. CONSULTATIONS

- 10.1 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.
- 10.2 There have been no public consultations on the adopted JLPEP and PEPS.

11. EQUALITY ANALYSIS

- 11.1 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.

12. ENVIRONMENTAL IMPLICATIONS

- 12.1 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.

13. APPENDICES

Title	Location
(a) Joint Local Planning Enforcement Plan (JLPEP)	Attached
(b) Planning Enforcement Prioritisation Strategy (PEPS)	Attached
(c) Case Studies	Attached
(d) Government Technical Consultation	Technical consultation: Stronger performance of local planning authorities supported through an increase in planning fees: government response - GOV.UK (www.gov.uk)

14. BACKGROUND DOCUMENTS

None

15. REPORT AUTHORS

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