

Planning Committee

30 March 2022



Title	Local Planning Enforcement Policy Updates
Purpose of the report	To update the Planning Services Committee regarding the adopted updated Local Planning Enforcement Policy
Report Author	Liz McNulty – Planning Enforcement Officer
Report Owners	Esme Spinks – Planning Development Manager Fiona Tebbutt – Principal Planning and Enforcement Officer
Ward(s) Affected	All Wards
Recommendations	Committee is asked to: 1. Note the report
Reason for Recommendation	The Local Planning Enforcement Policy was adopted by the Neighbourhood Services Committee on 3 March 2022, and we ask the Planning Services Committee to note this report.

1. Summary of the report

- 1.1 The previously adopted Local Planning Enforcement Policy dated 11 December 2019 did not take into consideration nor make reference to the Human Rights Act 1998, the Public Sector Duty pursuant to the Equality Act 2010 nor the financial implications prior to taking enforcement action. The Policy document has now been amended and updated to address these matters and to reflect the new corporate priorities and values.
- 1.2 This report outlines the updates recently made to the Local Planning Enforcement Policy. More detail is set out below reflecting officer changes to the policy as a result of learning from the outcome of a past prosecution. The team regularly looks at the results of taking action to see how they can continuously improve service delivery.

2. Key issues

- 2.1 Following on from a prosecution for non-compliance of an Enforcement Notice, it was felt necessary to amend the Local Planning Enforcement Policy and particularly the considerations taken prior to enforcement action.
- 2.2 In particular, to consider the following prior to enforcement action:
 - (a) Human Rights Act 1998
 - (b) Public Sector Equality Duty pursuant to the Equality Act 2010
 - (c) Financial Implications
- 2.3 The updated policy includes a new section 10 to cover these – ‘Considerations prior to taking enforcement action’.
- 2.4 In addition, due to the newly adopted Corporate Plan (9 Dec 2021), the ‘Corporate objectives’ section has been updated to align with the new Corporate priorities and values. There are no other changes to the current Local Planning Enforcement Policy.

3. Options analysis and proposal

- 3.1 The Local Planning Enforcement Policy outlines the Council’s approach to dealing with unauthorised development in the borough. It explains the role of the Planning Enforcement function within the Development Management service and how that role is fulfilled. It defines what the priorities are and the various types of breaches of planning control. The policy explains how alleged breaches of planning control are investigated and the enforcement actions available to the LPA. It details the process to be followed when determining whether or not it is expedient to take further enforcement action and the limitations of the law imposed on the Planning Enforcement function.
- 3.2 To manage resources effectively, all reports of suspected breaches of planning control will be investigated and progressed in accordance with the priority rating below. This is not an exhaustive list, and there may be exceptions.
- 3.3 The policy document sets out 3 categories of priority:
 - (a) Category 1: Serious harm (High Priority)
 - Unauthorised demolition of Listed Buildings and ancient monuments.
 - Felling or lopping of a preserved tree or tree in a Conservation Area.
 - Where development has started and is subject to planning conditions which are required to be agreed before commencement (e.g. contamination, archaeology, nature conservation or trees).
 - Development or breach of conditions likely to cause serious harm/danger to people or amenity
 - Harmful unauthorised development which is about to become immune from any action being taken against it because of the passage of time periods set in legislation
 - (b) Category 2: Significant and widespread harm to local amenity (Medium Priority)
 - Unauthorised development causing significant or widespread harm.

- Breaches of planning conditions causing serious nuisance to adjoining residents.
- Breaches that are contrary to well established planning policies such as Green Belt
- Unsightly buildings or untidy land that is causing serious harm to the amenity of neighbours

(c) Category 3: Other

- Breaches of a technical nature and not in significant conflict with planning policy
- Breaches which are temporary and unlikely to result in any long-term harm
- Advertisements not included above
- Breaches of other planning conditions
- Other changes of use
- High hedges
- Unauthorised pitching of caravans
- Businesses being operated from home
- Development not in accordance with the plans during the build process

3.4 Individual cases may be re-prioritised as the investigation progresses.

3.5 To ensure that an adequate overall service is provided resource allocation will be periodically reviewed. The quality of evidence and support provided by complainants can also impact on the outcome of an investigation, and where such support is likely to increase the chances of a successful outcome, the matter will be prioritised.

3.6 The Planning Enforcement function falls under the Planning DM service. The table below sets out statistics of workload for the last four years.

Enforcement Case Types & Notices	2018	2019	2020	2021
BCN - Breach of Condition Notices	0	2	0	1
PLNCON - Breach of Planning Conditions	41	53	38	41
COURTB & BUSRES - Change of Use from Residential to Business	22	18	15	24
COU - Change of Use (Other)	36	41	34	35
CONSRV - Conservation Area	0	1	0	1
ENF - Enforcement Notices	9	7	3	1
HMO - Houses in Multiple Occupancy	N/A (a)	30	18	24
LBCOM - Listed Buildings	3	5	2	2
MISC - Miscellaneous	45 (b)	27	29	40
HIGHH – High Hedges	N/A (c)	N/A	N/A	1
PCN - Planning Contravention Notice	13	9	4	5
S215 – Untidy Land	0	5	3	7
STOP - Stop Notices	0	1	0	0

TCAEN - Unauthorised Work to Trees in a Conservation Area	0	1	2	0
TEMP - Temporary Stop Notices	2	3	2	0
TPO - Tree Preservation Orders	5	8	7	16
UNADV - Unauthorised Adverts	7	15	6	10
UNDEV - Unauthorised Development	136	153	172	188
UNOUT - Unauthorised Residential Use of Outbuilding	N/A (d)	N/A	N/A	N/A
Uncategorised	10	13	6	0
Totals	319	379	335	396

3.7 Legend for the above table:

- (a) No stats available for this type of breach (HMO) in 2018 as the type did not exist in our database and has only recently been added to give more granularity. Prior to this new breach type HMO breaches were recorded as MISC.
- (b) 2018 MISC cases higher as this included HMO cases prior to the creation of an HMO breach type in 2019.
- (c) No stats available for this type of breach (HIGHH) pre 2021 as the type did not exist in our database and has only recently been added to give more granularity. Prior to this new breach type HIGHH breaches were recorded as MISC.
- (d) No stats available for this type of breach (UNOUT) pre 2022 as the type did not exist in our database and has only recently been added to give more granularity. Prior to this new breach type UNOUT breaches were recorded as COUOTH.

3.8 Overall there has been an increase in planning enforcement complaints by 24% from 2018 to 2021.

3.9 In this update of the policy there has been additional sections added to consider the Human Rights Act, the Public Sector Equality Duty, and the financial implications to be considered when making a decision to take enforcement action. This is aligned with our continuous improvement practices and the consideration given to all feedback and suggestions received regarding our working practices.

3.10 In response to advice received from Counsel by a Planning Enforcement Officer at a recent prosecution for non-compliance with an Enforcement notice to ensure that our policy demonstrates the need to consider Human Rights, Public Sector Equality Duty, and any financial implications prior to taking enforcement action.

3.11 For this reason the updated Local Planning Enforcement Policy was adopted in order to provide a more robust policy in line with the Public Sector Equality Duty and Human Rights considerations.

4. Financial implications

4.1 The revised Local Planning Enforcement Policy includes the financial considerations outlined below. This demonstrates a strong and thorough argument for the expediency of any enforcement action taken.

4.2 In taking enforcement action the Local Planning Authority (LPA) must consider the financial implications in doing so. The LPA must first determine

that there is a specific breach of planning control and that the harm caused far outweighs the cost of rectifying the breach.

4.3 The Council must also consider the likelihood of recuperating costs from the recipient of the enforcement action. The LPA has sought to successfully do so under the specific provisions of the Town and Country Planning Act 1990 and under the Proceeds of Crime Act if appropriate.

4.4 The Council must exhaust all means of negotiation for a resolution to the breach prior to commencing any costly enforcement action.

5. Other considerations

5.1 It should be noted that the resourcing of the planning enforcement team is matched to meet the current enforcement policy. However, in view of the increasing workload, this is under review. If there is to be a change in the enforcement policy, this would impact on our resources and could potentially require additional officers.

5.2 Planning enforcement training for members has been undertaken in the past and a further session is planned in 2022.

6. Equality and Diversity

6.1 Human Rights Act 1998

(a) the LPA should pay due regard to the Human Rights Act 1998. In particular, the requirement not to act in a way which is incompatible with any relevant Convention rights which include the right to a fair trial, the right to respect for private and family life, the prohibition of discrimination and protection of property.

6.2 Public Sector Equality Duty (Equality Act 2010)

(a) The Council should:

- i) eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
- ii) advance equality of opportunity
- iii) foster good relations

6.3 The addition of these considerations ensures the provision of more robust reasoning and justification for all enforcement action, which in turn strengthens our arguments on appeal or prosecution and will lead to more successful legal outcomes for the Council.

7. Contact

7.1 For any queries regarding the Local Planning Enforcement Policy, please contact Liz McNulty, Planning Enforcement Officer on l.mcnulty@spelthorne.gov.uk or Fiona Tebbutt, Principal Planning and Enforcement Officer on f.tebbutt@spelthorne.gov.uk

Appendices: Local Planning Enforcement Policy 2022.