

Neighbourhood Services and Enforcement Committee



21 March 2024

Title	Local Planning Enforcement Policy Updates
Purpose of the report	To make a recommendation to Neighbourhood Services and Enforcement Committee to adopt the updated Local Planning Enforcement Policy.
Report Author	Liz McNulty – Planning Enforcement Officer
Report Owners	Esme Spinks – Planning Development Manager Richard Jones – Planning Enforcement Team Leader
Ward(s) Affected	All Wards
Exempt	No
Exemption Reason	N/A
Corporate Priority	Community Environment
Recommendations	Committee is asked to: 1. Adopt the updated Local Planning Enforcement Policy
Reason for Recommendation	The current adopted Local Planning Enforcement Policy is dated 03 March 2022. The Policy document has been reviewed, amended and updated.

1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> The current adopted Local Planning Enforcement Policy is dated 03 March 2022. The Policy document has been reviewed, amended and updated. 	<ul style="list-style-type: none"> The LPA has a <u>duty</u> to investigate planning breaches. Planning Enforcement ultimately preserves the integrity of, and public confidence in, the planning system by ensuring that development accords with the rules.
This is what we want to do about it	These are the next steps

- To agree the Enforcement Plan which sets out priorities and enforcement action which may be taken.

- Adopt the updated Local Planning Enforcement Policy

- 1.1 This report seeks approval for the adoption of the updated Local Planning Enforcement Policy. More detail is set out below reflecting officer changes which are being suggested to the policy as a result of learning from the outcome of past investigations. The team regularly looks at the results of taking action to see how they can continuously improve service delivery.
- 1.2 Planning enforcement is not statutory but the failure to take action can, and has, led to successful ombudsman complaints in other LPAs. We have a duty to investigate planning breaches and it is only the taking of further action that is discretionary. Labelling it a 'discretionary service' is therefore a misnomer. The purpose of planning enforcement is to uphold the integrity of the planning system and therefore it plays a very important role. However, it generates very little income (only the submission of retrospective applications generates a planning fee). Therefore, the inevitable increase in workload associated with the Levelling-up and Regeneration Act 2023 (the LURA) is likely to lead to only a very modest increase in planning application fees. The adequacy of resources in the planning enforcement team will be kept under review.

2. Key issues

- 2.1 Section 4 of the Local Planning Enforcement Policy - In consideration of taking enforcement action, reference is now made to any breach of planning policy.
- 2.2 Section 5 of the Policy - A further explanation of case priorities that the priority may change after initial investigation.
- 2.3 Section 5 of the Policy - Addition of categorisation of BNG – Biodiversity Net Gain pre commencement conditions as Category 1.
- 2.4 Section 5 of the Policy – Category 3 clarification of 'Other changes of use' to 'Other changes of use including HMOs'.
- 2.5 Section 6 of the Policy - Change the order of the ways of making a complaint, by placing the online form first in the list.
- 2.6 Section 10 of the Policy – Updated the Corporate Priorities and Values for the 2024 – 2028 Corporate Plan.

3. Options analysis and proposal

- 3.1 Option 1 – To agree the revised Enforcement Policy. This option would lead to the approval of the amended and updated Enforcement policy and is recommended.
- 3.2 Option 2 – To retain the existing policy. This option would result in an **out-of-date** enforcement policy. It does not reflect an update to the priorities and

does not make reference to the various legislation changes to planning enforcement such as the addition and enforcement of pre-commencement BNG – Biodiversity Net Gain conditions. This option is not recommended.

- 3.3 Option 3 - To make further recommendations to revise or amend the policy. There is an option for members of the committee to revise or amend the policy further if there is a view that certain matters require more resource to deal with it. It will be for councillors to determine what those changes are based on evidence and intelligence.
- 3.4 The Local Planning Enforcement Policy (**Appendix 1**) 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.
- 3.5 To manage resources effectively, all reports of suspected breaches of planning control will be investigated and progressed in accordance with the priority rating below. The priority rating is given at the initial stage following the receipt of a complaint. However, depending on the outcome of that initial response, the priority rating may be changed. If a reported breach of unlawful change of use or unlawful development turns out to be temporary in nature (for e.g. a weekend marquee) then the priority would be lowered. On the other hand, if a reported breach turns out to be causing more harm than initially reported then the priority level would be increased (unlawful development of a listed building that was initially reported as a neighbouring unlisted building).
- 3.6 This is not an exhaustive list, and there may be exceptions.
- 3.7 The policy document sets out 3 categories of priority:
 - (a) Category 1: Serious harm (High Priority)
 - Unauthorised demolition of Listed Buildings, ancient monuments and locally Listed Buildings.
 - 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.
 - Failure to discharge BNG – Biodiversity Net Gain pre-commencement conditions.

(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 including HMOs (which are not permitted development)
- High hedges
- Unauthorised pitching of caravans
- Businesses being operated from home
- Development not in accordance with the plans during the build process

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

3.9 To ensure that a good 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.

3.10 The Planning Enforcement function falls under the Planning Development Management service. The table below sets out statistics of case workload for the last four years.

3.11 The enforcement case types received by the Planning Enforcement Team for the last four years are set out in the table below. The case type is a means officers use to categorise the nature of the complaint as perceived and submitted by the resident or complainant. It is worth noting that in many instances after investigation, the alleged breach turns out to be a mixture of breaches, a different breach all together or not a planning breach. Therefore, the initial categorisation type is not a confirmation of the number and type of actual breach types, but rather an indication of the perceived nature of the complaint. For example, in 2023, 25 complaints or enquiries were received regarding HMOs. Of these:

- 7 were confirmed as permitted development as there were a maximum of 6 occupants
- 12 are currently under ongoing investigation
- 4 were not HMOs and no breach was found
- 1 was for EH to check the licensing only
- 1 was an 8 person HMO and planning permission was granted

Enforcement Case Types	2020	2021	2022	2023
PLNCON - Breach of Planning Conditions	38	41	47	72
COURTB & BUSRES - Change of Use from Residential to Business	15	24	5	28
COU - Change of Use (Other)	34	35	28	39
CONSRV - Conservation Area	0	1	1	1
HMO - Houses in Multiple Occupancy	18	24	6	25 (see 3.11)
LBCOM - Listed Buildings	2	2	0	2
MISC - Miscellaneous	29	40	13	21
HIGHH – High Hedges	N/A(a)	1	0	1
S215 – Untidy Land	3	7	4	3
TCAEN - Unauthorised Work to Trees in a Conservation Area	2	0	0	0
TPO - Tree Preservation Orders	7	16	8	5
UNADV - Unauthorised Adverts	6	10	6	14
UNDEV - Unauthorised Development	172	188	111	124
UNOUT - Unauthorised Residential Use of Outbuilding	N/A(b)	N/A(b)	3	15
Uncategorised	6	0	3	0
Totals	332	389	235	350

3.12 Legend for the above table:

- No stats available for this type of breach (HIGHH) pre 2021 as the type did not exist in our database and was added to give more granularity. Prior to this new breach type HIGHH breaches were recorded as MISC.
- No stats available for this type of breach (UNOUT) pre 2022 as the type did not exist in our database and was added to give more granularity. Prior to this new breach type UNOUT breaches were recorded as COUOTH.

3.13 Overall, there has been an increase in planning enforcement complaints by 49% from 2022 to 2023.

3.14 There can be large variations in timescales regarding the length of time a case remains open. Some cases are simple to resolve and are open and closed very quickly, for e.g., the breach is a minor technical issue, there isn't a breach or planning permission has already been granted. However, other cases can take years to complete the investigation and can involve enforcement and stop notices, planning and enforcement appeals and prosecution proceedings for non-compliance with an enforcement notice. In

such instances, the case will remain open until there is a satisfactory resolution.

- 3.15 Notices - When enforcement action has been deemed expedient and formal notices have been served, the statistics are listed in the table below:

Enforcement Notices	2020	2021	2022	2023
BCN - Breach of Condition Notices	0	1	0	1
ENF - Enforcement Notices	3	1	4	16
PCN - Planning Contravention Notice	4	5	5	3
STOP - Stop Notices	0	0	1	0
TEMP - Temporary Stop Notices	2	0	1	0
ENF Appeals Started	7	1	1	9
Totals	9	7	11	20

- 3.16 The number of notices served as expected dropped 2020-2021 and started increasing in 2022 again with an 82% increase in notices served in 2023 compared with the preceding year.
- 3.17 In particular, Enforcement Notices have jumped to double digits in 2023. With a 300% increase from 2022 to 2023.
- 3.18 The number of Enforcement Appeals is the highest recorded over the past 6 years. The number of appeals has increased by 800% over the same period. During this time, resources in planning enforcement have actually decreased due to the loss of one member of staff in April 2023. However the enforcement team have remained focussed and effective in working through the increased workload.
- 3.19 The more notices served the more resource heavy these cases are, as evidence must be gathered, statements, reports and often appeal documentation compiled. If the notices are not complied with, then resources must be allocated to potential prosecution.

Levelling-up and Regeneration Act 2023 (LURA)

- 3.20 On 26 October 2023, the Levelling-up and Regeneration Bill became law. The Act has introduced a number of changes which impact on planning enforcement. The provisions are not yet in force and this will occur when the Regulations are issued by Parliament. Overall, the proposals will strengthen the LPAs powers in taking action against unauthorised development and are welcomed, although the changes are highly likely to lead to additional resource implications associated with the additional work.

In summary the changes are:

- A new power to issue Temporary Stop Notices (TSN) in respect of works to Listed Buildings. This can be in force for up to 56 days.
- A new provision for Development Commencement Notices. Following the grant of planning permission and before work has begun, the person proposing to carry it out must give notice (a 'commencement notice') to the LPA, specifying when they propose to commence the

work. Where it appears to the LPA that a person has failed to comply with the requirements set out above, they may serve a notice on any relevant person, requiring the relevant information to be submitted to the LPA. This change has positive connotations as far as the commencement of developments should be recorded formally. The failure to provide the LPA with the information requested introduces an offence for which the planning enforcement would likely be responsible for pursuing.

- The Planning Act has been amended to include reference to 'termination of planning permission'. This applies where a planning permission has been granted for development and is subject to the 'commence within 3 years' condition, and this condition was complied with, but the development has not been completed. If the LPA are of the opinion that the development will not be completed within a reasonable time period, then they may serve a notice ('completion notice') stating that the planning permission will cease to have effect at a specified time ('the completion notice deadline').
- A change to the time limits for taking enforcement action to 10 years. At present, a change of use of a building to residential and operational development (i.e., constructing a building) can only be enforced against within a period of four years, other changes of use are subject to 10 years. This change to the time limits will mean that all breaches of planning control can only become immune from enforcement action after 10 years.
- A change to the duration of temporary stop notices (TSNs) from 28 days to 56. This change means that LPAs can have more time to consider next steps. LPAs may set shorter TSNs if necessary.
- Introduction of Enforcement Warning Notices (EWNs). Under this provision, LPAs can issue an EWN where it appears to them that there has been a breach of planning control and that there is a reasonable prospect that, if an application is made, permission would be granted. Issuing an EWN 'stops the clock' on immunity and can reduce the number of appeals for 'acceptable' developments when an enforcement notice has been issued.
- Restrictions on appeals against enforcement notices. This change means that if planning permission for what is alleged in an enforcement notice has been refused by the LPA and that refusal was appealed and dismissed, an appellant in an enforcement appeal **cannot** appeal under ground (a) (i.e., planning permission should have been granted). This change effectively removes the possibility of a '3rd' bite at the cherry. Whereas previously an applicant could apply for planning permission, appeal a refusal, then receive an enforcement notice and have 'another go' at obtaining planning permission through ground (a), this is now barred at the 3rd attempt.
- Undue delays in appeals. There is a new power for the Secretary of State to dismiss appeals where it appears to them that the appellant is responsible for undue delays in the progress of the appeal. This

change applies to both s176 enforcement appeals and s195 certificate of lawfulness appeals.

- Penalties for non-compliance. The level of fine has been increased for breach of condition notices and for non-compliance with a S215 notice. This means that, on conviction, the fine for breaching a breach of condition notice is now unlimited in theory on conviction, the fine for breaching a S215 notice can now be higher than previously (amounts vary).
- Power to provide relief from enforcement of planning conditions. The Secretary of State may provide that an LPA may not take or is subject to specified restrictions in how it may take relevant enforcement measures in relation to any actual or apparent failure to comply with a relevant planning condition.

3.21 The release of the Regulations (secondary legislation) by Parliament will provide detailed guidance on how these changes will work and when they will commence. The Government has not provided the likely date for this although speculation amongst the Planning profession is that the date could be April 2024. The provisions will provide greater powers to the LPA Planning Enforcement, which is to be welcomed, although there will also be a commensurate increase in workload pressures on the Team, particularly the change to the time limits for taking enforcement action from 4 years to 10 years, as it will capture a number of sites which under the current legislation would be time expired for action to be taken. This matter will be kept under review.

3.22 Following the release of the Regulations, the Enforcement Policy will be updated to reflect the changes, and come back to committee.

4. Financial management comments

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 been successful under the specific provisions of the Town and Country Planning Act 1990 and the Proceeds of Crime Act (POCA) if a criminal offence has been committed.

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

4.5 The forthcoming changes to planning enforcement legislation provisions in the LURA will provide greater powers to Planning Enforcement which is to be welcomed. However, there will also be a commensurate increase in workload pressures on the Enforcement Team, particularly the work associated with the

change to the time limits for taking enforcement action from 4 years to 10 years, as it will capture a number of sites which, under the current legislation, would be time expired for action to be taken. This matter will be monitored following the introduction of the legislation.

5. Risk management comments

- 5.1 The purpose of planning enforcement is to uphold the integrity of the planning system the risks associated with not taking action when necessary are high . Whilst enforcement action is not a statutory process the failure to take action can, and has, led to successful ombudsman complaints in other LPAs. We have a duty to investigate planning breaches and it is only the taking of further action that is discretionary.

6. Procurement comments

- 6.1 This is not applicable.

7. Legal comments

Policies do not create legal rights but often serve useful functions in promoting good administration. It is essential for the Council to ensure that its services operate within up to date Local Plan Enforcement Policy. The policy should remain up to date with the latest legislation and in accordance with other internal policies to reduce any potential legal challenge and provide compliance with legal requirements.

An up-to-date policy is critical to the ongoing success of planning enforcement, assists in the performance of public duties and helps increase trust and transparency with the community.

8. Other considerations

- 8.1 The Local Planning Enforcement Policy advises under section 6 how to make a complaint or enquiry concerning a suspected breach of planning control using the standard form on our website, or by email, or letter.
- 8.2 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 or require a further review of the Councils Enforcement Policy and the prioritisation process in particular.
- 8.3 Planning enforcement training for members has been undertaken in 2023 and further training will be undertaken once the legislative changes outlined in this report have been confirmed. Furthermore, there is a short article on Planning Enforcement in the Borough's Spring Borough Bulletin and a longer article is planned for the Summer Bulletin to advise the local community on the work of the enforcement team, the enforcement process and how enforcement complaints are prioritised.

9. Equality and Diversity

9.1 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.

9.2 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

9.3 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.

10. Sustainability/Climate Change Implications

10.1 There are no sustainability/climate change issues.

11. Timetable for implementation

11.1 It is recommended:

- i) the updated Local Planning Enforcement Policy be adopted with immediate effect,
- ii) a review of the Policy to reflect the legislative changes will be brought to Committee within six months of the changes coming into effect and,
- iii) member training be undertaken following the introduction of the legislative training.

12. Contact

12.1 For any queries regarding the Local Planning Enforcement Policy, please contact:

Richard Jones, Planning Enforcement Team Leader on
r.jones@spelthorne.gov.uk,

Liz McNulty, Planning Enforcement Officer on l.mcnulty@spelthorne.gov.uk or

Lynsey Tracey, Planning Enforcement Officer, on l.tracey@spelthorne.gov.uk

13. Background papers:

- i) The currently adopted Local Planning Enforcement Policy – version 9 – located under ‘Downloads’ - <https://www.spelthorne.gov.uk/enforcement>

14. Appendix 1: Local Planning Enforcement Policy 2024.