



## Environment and Sustainability Committee

03 December 2024

<b>Title</b>	Local Planning Enforcement Policy Updates
<b>Purpose of the report</b>	To make a decision.
<b>Report Author</b>	Liz McNulty - Planning Enforcement Officer Richard Jones – Planning Enforcement Team Leader
<b>Ward(s) Affected</b>	All Wards
<b>Exempt</b>	No
<b>Exemption Reason</b>	N/A
<b>Corporate Priority</b>	Community Environment Services
<b>Recommendations</b>	<b>Committee is asked to:</b> 1. Adopt the updated Local Planning Enforcement Policy
<b>Reason for Recommendation</b>	The current adopted Local Planning Enforcement Policy is dated 21 March 2024. The Policy document has been reviewed, amended and updated mainly to include new legislation which has come into force this year.

## 1. Summary of the report

What is the situation	Why we want to do something
<ul style="list-style-type: none"> <li>The current adopted Local Planning Enforcement Policy is dated 21 March 2024. The Policy document has been reviewed, amended and updated to include new enforcement legislation which came into effect this year and other minor changes.</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul>
This is what we want to do about it	These are the next steps
<ul style="list-style-type: none"> <li>To agree the Enforcement Plan which sets out priorities and enforcement action which may be taken.</li> </ul>	<ul style="list-style-type: none"> <li>Adopt the updated Local Planning Enforcement Policy</li> </ul>

- 1.1. The Local Planning Enforcement Policy was updated in March 2024 following consideration by the former Neighbourhood Services and Enforcement Committee. The Committee agreed that the Plan should be amended to include the new enforcement legislation which was due by virtue of the Levelling-up and Regeneration Act but had not come into effect. These regulations which are reflected in this updated policy has strengthened the ability of councils to take enforcement action and is to be welcomed. The new regulations are now in force and the Plan has been updated. A copy of the Committee report and adopted enforcement policy are attached as **Appendices 1 and 2.**
- 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. 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. Para. 6.6 of the Policy –The time limit for enforcement against unlawful building operations or structure is updated from 4 years to 10 years.
- 2.2. Sections 11.2, 11.3, 11.4, 11.5 of the Policy – The monetary amount of the various fines are recommended to be removed as these figures quickly become out of date and they are a matter for the courts and not for the LPA to determine or confirm.
- 2.3. Section 11.6 of the Policy – The period of time that a Temporary Stop Notice can be applied is updated from 28 days to 56 days for both listed and non-listed buildings.
- 2.4. Section 11.8 of the Policy – There is the addition of the new Enforcement Warning Notice which ‘stops the clock’ on immunity from enforcement.
- 2.5. Section 11.9 of the Policy – This adds the Development Commencement Notice where developers must give notice to the LPA specifying the commencement date for the development.
- 2.6. Section 11.10 of the Policy – This adds the Completion Notice which allows the LPA to have more control over the completion of developments as planning permissions become invalid once the Completion Notice deadline has passed.
- 2.7. Section 16 – The addition of allowing minor amendments to the Local Planning Enforcement Policy to be approved by the Planning Development Manager in consultation with the Chair of the Environment and Sustainability Committee.

## **3. Options analysis and proposal**

- 3.1. Option 1 – To agree the revised Local Planning Enforcement Policy. All updates (both additions and deletions) are highlighted in red in Appendix 3.

**This option would lead to the approval of the amended and updated Local Planning Enforcement policy and is recommended.**

- 3.2. Option 2 – Not to agree the revised Policy’. This option would result in an out-of-date Local Planning Enforcement Policy. It does not make reference to the various legislation changes to planning enforcement such as the increased time limit for enforcement of unlawful building operations from 4 to 10 years. 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 changes. It will be

for councillors to determine what those changes are should be reasonable, capable of being dealt within existing resources and based on evidence.

- 3.4. The Local Planning Enforcement Policy (**Appendix 3**) 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. It is a current adopted policy and no changes are proposed to the majority of the document, including the Council's approach to dealing with enforcement.

#### **4. Financial management comments**

- 4.1. 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 it is expedient to take action.
- 4.2. The changes to planning enforcement legislation provisions in the LURA provides 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**

- 7.1. Policies do not create legal rights but often serve useful functions in promoting good administration and providing clarity as to how a public authority can exercise their powers. 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.

- 7.2. 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 Council's Enforcement Policy and the prioritisation process in particular. This will be kept under active review.
- 8.3. There was a short article on Planning Enforcement in the Borough's Spring Borough Bulletin and a longer article was included in the Summer Bulletin which advised 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
  - 9.1.1. The LPA should:
    - 9.1.1.1. 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)
  - 9.2.1. The Council should:
    - 9.2.1.1. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
    - 9.2.1.2. advance equality of opportunity
    - 9.2.1.3. 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. With the introduction of BNG – Biodiversity Net Gain conditions on development, there will be a need to confirm compliance, and this will have a positive impact on sustainability.

## **11. Timetable for implementation**

11.1. It is recommended:

11.1.1. the updated Local Planning Enforcement Policy be adopted with immediate effect,

11.1.2. 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,

11.1.3. 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](mailto:r.jones@spelthorne.gov.uk)
- Liz McNulty, Planning Enforcement Officer on [l.mcnulty@spelthorne.gov.uk](mailto:l.mcnulty@spelthorne.gov.uk)
- Lynsey Tracey, Planning Enforcement Officer on [l.tracey@spelthorne.gov.uk](mailto:l.tracey@spelthorne.gov.uk)
- Colin Butcher, Planning Enforcement Officer on [c.butcher@spelthorne.gov.uk](mailto:c.butcher@spelthorne.gov.uk)

## **13. Appendices:**

**Appendix 1 – Neighbourhood Services and Enforcement Committee Report - 21 March 2024**

**Appendix 2 – Local Planning Enforcement Policy V11 – Adopted April 2024**

**Appendix 3 - LocalPlanningEnforcementPolicy V12 – Updated October 2024**