

PLANNING ENFORCEMENT REVIEW

Overview & Scrutiny Panel 18th February 2021

Report Author	Iain Livingstone
Portfolio Holder	N/A
Classification:	Unrestricted
Key Decision	No
Ward:	Thanet Wide

Executive Summary:

The report provides an overview of the planning enforcement work of the Council, discussing the legislation, process and enforcement protocol. The report responds to the contention that the planning enforcement process is slow in Thanet, and provides an outline of the review programme to make the process more efficient.

Recommendation:

Members are requested to comment and note the report.

Corporate Implications

Financial and Value for Money

The Enforcement Team consists of two officers. The report does not recommend an amendment or adjustment to the resources allocated to the service. The setting of the 2021-22 budget is nearing completion and there are no additional resources available for allocation.

Legal

There are no legal implications arising directly from this report, however the report includes reference to work carried out by the Legal team on behalf of the planning department in the process of formal enforcement action and prosecution.

Corporate

The report covers factors which form part of the Council's corporate statement around the Environment, which includes an enforcement approach where necessary. In particular, to maintain strong enforcement action in planning and support for the Thanet Local Plan.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

In the opinion of the author of this report the Public Sector equality duty is not engaged or affected by this report.

CORPORATE PRIORITIES

This report relates to the following corporate priorities:

- Environment

1.0 Introduction

1.1 This report follows a request for a review of Planning Enforcement by the Council's Overview and Scrutiny Panel. The information provided with the request states the following: "Why is the planning enforcement process seemingly so slow in Thanet and how can it be made more efficient?".

1.2 This report will provide an overview of Planning Enforcement control at Thanet District Council, the legislation and guidance for the operation of planning enforcement functions, the resourcing for officers and the process for considering complaints.

2.0 Background to Legislation

2.1 A breach of planning control is defined in Section 171A of the Town and Country Planning Act as the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted. Local Planning Authorities have responsibility for taking necessary enforcement action that is in the public interest in a proportionate manner. The power to take enforcement action is discretionary, when it is regarded as expedient to do so having regard to the development plan (Thanet Local Plan 2020) and any other material considerations.

2.2 The National Planning Policy Framework paragraph 58 states:

"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in

a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

2.3 Specific time limits are in place after which development becomes immune from enforcement if no action (formal - such as through the serving of an enforcement notice) is taken. These timescales are:

- within 4 years of substantial completion constituting operational development (for example building of a permanent structure).
- within 4 years for an unauthorised change of use to a single dwellinghouse.
- within 10 years for any other breach of planning control (changes of use of land, breach of planning conditions)

Certain exemptions to the above deadlines exist, including when there has been a deliberate concealment of a breach of planning control.

2.4 As outlined by government guidance and the Council’s corporate priorities, effective enforcement is important to tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area, maintain the integrity of the decision-making process, and to help ensure that public acceptance of the decision-making process is maintained. The Council’s corporate statement outlines that the Council will “maintain strong enforcement action in the areas of planning, building control and parking”.

3.0 The Planning Enforcement Process

3.1 The Council operates a complaints based system, which aims to balance the resources that we have available with public expectation. The primary purpose of our enforcement work is to protect public amenity. The Council’s Planning Enforcement Protocol is appended at Annex 1. This outlines a system of prioritisation for complaints that are received:

- **High priority** will be given to ensuring compliance with section 106 agreements, dealing with breaches that cause significant irreparable damage to Listed Buildings, harm to specially protected areas including conservation areas, and other visually prominent development and protected trees. Priority will also be given to breaches that cause significant and unacceptable harm to living conditions.

- **Low priority** will be given to other cases, particularly where the development has relatively limited visual impact and/or effect on living conditions.

3.2 The investigation process can be summarised as follows:

1. **Establishing whether the works need planning permission/other form of consent.** This includes an assessment of whether the development is permitted by legislation such as the General Permitted Development Order, exemptions for

works to listed buildings or tree protection legislation, whether the change constitutes “development” under the planning act, whether the work is immune from enforcement and whether permission has been granted for the works. In some cases the Council will conclude that no action will be taken either because the alleged breach does not exist or that the breach is not significant so as to warrant further action.

2. **Seek to resolve the matter without formal action** where possible. Our first aim is to work with the contravener to assist them in complying with planning law and policy. The council will aim to resolve breaches where possible by negotiation and agreement. This will normally occur through requiring a planning application to be submitted for the work within a defined time period, to allow for public consultation and assessment of the work against planning policy.
 3. **Decide whether or not to take action** at the earliest possible stage following the conclusion of our investigations. A decision would also be made if no submission of an application is requested, or no resolution can be found to remediate the breach. This decision takes account of the staff and financial resources available at the time. A written record of the decision whether or not to take further action is made and communicated to the complainant.
- 3.3 Within the first stage of the investigation process, in certain instances when it appears to the Council that a breach of planning control may have occurred, the Council may serve a Planning Contravention notice to find out more information before deciding what if any enforcement action to take. A failure to complete or return a notice within 21 days is an offence, as is providing false or misleading information on the notice.
- 3.4 Within the third stage of the investigation process, the Council will take action only if the development conflicts with planning policy or other corporate initiatives and policies, and causes significant harm to public amenity and if it is judged expedient to do so. In addition, the Council will have regard to legal advice as to the quality of evidence and likelihood of the success of such action, as well as the resource implications of taking action.
- 3.5 Formal action would constitute the serving of a:
- Planning Enforcement notice
 - Stop Notice
 - Temporary Stop Notice
 - Breach of Condition Notice
 - Listed Building Enforcement Notice
 - Tree Replacement notice

For certain types of breaches, the Council can prosecute without serving a notice, for example the display of unauthorised advertisements and unauthorised removal of protected trees. The Council can also apply to the High Court or County Court for an injunction to restrain a breach of planning control in particular circumstances. If a notice is not complied with within the set timescale, a further decision is taken to

determine whether to prosecute the non-compliance with the notice, using the same Enforcement protocol criteria.

- 3.6 The Council's legal department is responsible for reviewing the notices prepared by the Planning Enforcement team, advising on any evidence for prosecution and progressing any cases to prosecution heard at Magistrates, County and the High Court on instruction. All enforcement notices are signed off by the Planning Applications Manager. Certain notices can be appealed (such as Planning Enforcement notice and Listed Building Enforcement notice), with the appeal being held by a Planning Inspector. Any prosecution is held in abeyance pending the outcome of any logged appeal.
- 3.7 The planning enforcement team works closely with colleagues in private sector housing, environmental health, licensing, streetscene enforcement, Margate task force and community safety to share information and determine the most appropriate process and legislation for formal action to be taken if a planning complaint also constitutes a breach of other legislation. In addition, officers also communicate with the Health and Safety Executive, Forestry Commission and Kent Police (including Wildlife Liaison officer) when necessary following complaints which are not covered by planning legislation.
- 3.8 Further information about the planning enforcement process is available via the National Planning Practice guidance (<https://www.gov.uk/guidance/ensuring-effective-enforcement>)
- 3.9 The Council also ensures compliance with Section 106 agreements and unilateral undertakings linked to planning permissions, which includes monitoring developments and trigger points for financial contributions within legal agreements, and requesting payments from developers or actions for compliance when a breach is identified. The agreements can be enforced by injunction, or direct action with expenses recovered. This work is vital to ensuring mitigation from development is provided and funding secured for infrastructure in the district.

4.0 Resourcing of the Planning Enforcement team

- 4.1 The planning department currently has 1x FTE Planning Enforcement Officer and 1x FTE Planning Enforcement Assistant who report to the Planning Applications Manager. Planning officers (responsible for the assessment and determination of applications) assist with the grounds for issuing notices and in defending enforcement appeals. Prior to 2010, the Council had 4 officers covering the planning enforcement and tree preservation. This was reduced to 1.5 officers following restructuring across the organisation, with a change in staffing and use of planning fee income resulting in an increase to the current staff levels in 2018.

- 4.2 From a sample of 10 Kent authorities, the number of planning enforcement officers across Kent range between 3-5 officers at different levels (i.e Team leader, qualified planning officers, compliance assistant). This information is summarised at Annex 2.
- 4.3 There is one person in the Legal team who is able to deal with reviewing, assessing and prosecuting cases. This is the Principal Litigation Solicitor who deals with all litigation for the council, including housing enforcement. She is assisted by a senior Lawyer, who is funded via the Housing Revenue Account and therefore concentrates on housing cases. The rest of the legal team comprises a second Principal Lawyer who deals with all property work and a second senior Lawyer who deals with contract and procurement and therefore are not able to carry out work for planning enforcement.

5.0 Complaints and Formal action

- 5.1 Complaints can be logged by email to planning.enforcement@thanet.gov.uk or via the Council's website (<https://www.thanet.gov.uk/info-pages/planning-enforcement/>). The Council does not accept anonymous complaints and complainant information is kept confidential. In 2019, the planning enforcement team logged 335 complaints with 78 being high priority cases. In 2020 the team logged 330 complaints with 74 high priority cases. The aim of the department is to acknowledge a complaint within 7 days and initially investigate whether a breach has occurred within 28 days. When requesting an application from a contravener, a standard 28 day deadline is set for the submission, whereas the time period for remedying a breach varies depending on the nature of the work required. There is no defined timescale for determination of action when a breach has been ascertained. This is due to the inability to adequately compare complaints solely on time taken, as this does not account for the complexity of individual cases which will affect how long the Council takes to determine action. In addition, rigorous investigation and gathering robust evidence could be compromised through an attempt to meet arbitrary deadlines.
- 5.2 Planning enforcement have served 26 enforcement notices in the last 2 years; 14 in 2019 and 12 in 2020. The details of each notice are provided at Annex 3 including the outcome of the action.
- 5.3 Planning enforcement investigations and action can vary in time to completion. This is dependent of a number of factors which do not necessarily mean the process is slow:
1. **Complexity** - Depending on the nature of the complaint, some matters can be resolved within a matter of days, however most cases will require an assessment against legislation and case law, with the input with planning officers and legal, as well as a site visit. Cases can involve accessing historical information, formally requesting information (through a Planning Contravention notice or Requisition for information) and interviews under caution to gain the evidence required to bring a successful prosecution (if

notices are not complied with). This complexity can often mean that expectations of the public need to be managed about the potential immediate resolution of cases.

2. **Perception** - Breaches of planning control can often be emotive, creating a sense of injustice and significant public interest. As enshrined in the Council's Enforcement protocol, the Planning Enforcement team seek to work with any contravener to assist them in complying with planning law and policy prior to considering formal action. This could include a formal warning with a timescale of the breach to be remedied or in the majority of cases to invite a planning application for the works. This is to bring the consideration of the works back into the planning process, however this does not mean that the application will be approved. The consideration of the planning merits of works are required within the serving of an enforcement notice (and any subsequent appeal), meaning that it is vital that due consideration, including public consultation, is given to works. There will be instances where breaches are significant which demand formal action rather than inviting a planning application for development which is clearly contrary to Local Plan Policy, however this still involves gathering of evidence, preparation of notice and legal review of the case. Given that formal action has significant ramifications (including appeals and potential costs against the Council), this requires a considered approach rather than a rush to act.
3. **Delays outside control** - Planning Enforcement notices can be appealed within 28 days of serving to the Planning Inspectorate, who have a defined appeal process involving submission of evidence and particular grounds of appeal. Appeals can involve public hearings, written representations or in some instances public inquiries. All action is held in abeyance until the appeal process has concluded (which can take between 6 months - 1 year) and upon decision, when enforcement notices are upheld, any compliance period for a notice begins at the date of the appeal decision. The Inspectorate can also increase any defined compliance period in a notice. This can add considerable additional time before breaches are required to be remedied, with prosecution if the notice isn't complied also beholden to court availability.
4. **Capacity** - As identified, a system of prioritisation in handling complaints is required to balance the impact of public amenity and the finite resources available within the Council. The Council has two full-time members of staff dedicated to planning enforcement and whilst working closely with planning officers, assistants and the technical team, as well as other departments in the Council, this limits the speed of resolution of the quantity of complaints received. The planning enforcement team is also reliant on capacity in the legal department to bring forward cases of non-compliance with enforcement notices. As stated above, the capacity of the legal team is limited by numbers.

7.0 Enforcement review

- 7.1 The planning department is committed to ensuring that the planning enforcement process is as effective and efficient as possible. Within normal day-to-day work, iterative improvements are being made to process complaints faster, including the use of templated letters, with the increased use of the current planning database, Uniform, currently under review to assist in automatic generation of letters and increased monitoring.
- 7.2 An internal review of the planning enforcement process is currently taking place in response to a recent decision of the Local Government Ombudsman. The decision requested a *“review of enforcement procedures to ensure all reports of potential breaches of planning control are properly recorded and responded to within a reasonable timescale, proper evidence is sought and checked to establish if such a breach has occurred including site visits as necessary and an adequate record is kept of any site visits”*. This will need to consider the extent of work carried out within the Council’s Planning Enforcement procedures to define what we do with the resources available, given the resource-intensive nature of enforcement work.
- 7.3 It is intended for the review to be completed within 6 months and to cover the following stages:
1. **General review** - Review and update the Enforcement Protocol to clearly define which cases we will and will not investigate, process mapping complaints to determine expected timescales and points of response/updates to complainants.
 2. **Use of systems** - Maximise use of Uniform (the planning database system) and investigate integration with google (recording evidence such as photographs), review enforcement pages on the Council website (including publishing documents) and potential methods of filtering low priority cases.
 3. **Defining service standards and review resourcing** - following the first 2 stages, consider updated service standards where possible and formulate business case for additional resourcing/redeployment of existing resources/regular use of external support where appropriate.

8.0 Recommendation

- 8.1 Members are requested to comment and note the report.

Contact Officer: Iain Livingstone, Planning Applications Manager
Reporting to: Bob Porter, Director of Housing and Planning

Annex List

Annex 1: Planning Enforcement Protocol

Annex 2: Resourcing in Kent Authorities 2019
Annex 3: Enforcement Notices served 2019-20

Background Papers

1. National Planning Policy Framework: [NPPF 2019](#)
2. National Planning Practice Guidance: [Planning Practice Guidance](#)

Corporate Consultation

Finance: Chris Blundell (Director of Finance)

Legal: Estelle Culligan, Director of Law and Democracy