



East
Northamptonshire
Council

Policy and Resources Committee – 12 September 2011

Review of Planning Enforcement

Purpose of report

Following a review of the Planning Enforcement Team agreed by the Personnel Sub-Committee councillors are now asked to approve a revised Enforcement policy that sets out the council's proposed priorities in this area matched to the reduced level of resources available.

Attachment(s)

Revised Enforcement Policy

1.0 Background

- 1.1 At the Personnel Sub Committee meeting on 22 March members agreed to commence a review of the level of staff resources dedicated to Planning Enforcement.
- 1.2 A review has therefore been carried out of the planning enforcement service, in terms of the ability to deliver the service, with a reduction in staffing levels from 3 to 2 officers. As a result of the 'at risk' process associated with the review one of the Enforcement Officers has been redeployed elsewhere in the council.
- 1.3 In order to enable a permanent reduction in staff, the relevant staff job descriptions have to be changed to amalgamate the role of the Enforcement Officers and the Compliance and Monitoring Officer. The current Enforcement Policy also requires a review to match policy to available resources.
- 1.4 The current Enforcement Policy has been amended to include revised priorities to this end. It is attached for consideration. Text that it is proposed to be deleted is crossed through and new text is underlined.

2.0 The Main Changes Proposed to the Enforcement Policy

- 2.1 The most significant changes proposed are:
 - Timescales for responding to complaints are longer
 - Certain types of complaints are given less priority
 The service will have to become less proactive than it has been in recent years. In particular the council will no longer be able to chase up unauthorised development which is not causing any particular harm just because it doesn't have planning permission.
- 2.2 Overall it is less likely that it will be possible to provide an excellent service with reduced resources, however it is hoped that it should still be possible to provide a good service to our customers. It will also not be possible to ensure that the service is continually improving in terms of its speed and effectiveness although efficiency improvements will continue to be sought.

3.0 Recent Performance

- 3.1 Planning enforcement has in the past consistently been meeting its performance targets. For the year 2010/11:

90% of all complaints were acknowledged within 3 working days

91% of site inspections were carried out in accordance with the prioritisation scheme

92% of complainants were contacted within 20 working days and advised of our findings

3.2 Some notable successes are :

- Removal of barn being used as living accommodation in Great Addington
- Direct action taken in relation to a former shop in West Street, Oundle
- Work now having commenced on the removal of the unauthorised barn at 336 Newton Road Rushden

3.3 By being proactive the service has managed to catch issues in a timely manner before they have had the chance to become major issues. Some examples are:

- Levels issues that arose at the Wellingborough Road site in Irthlingborough
- 14 portable residential units were installed at Brooks Farm in Raunds. A temporary stop notice was served and we were able to stop the units being used for residential purposes. An Enforcement Notice was served and the units have now been removed.

3.4 Part of the service includes the monitoring of conditions and S106 Agreements. A couple of notable successes have been:

- Obtaining £39,000 in off-site public open space contribution to Castle Fields in Higham Ferrers which was subsequently passed on to the Town Council
- The provision of the footpath to Moulton College

3.5 In April/May the service was able to respond to a larger than normal influx of complaints.

4.0 Future Monitoring

4.1 It is difficult to assess the precise impacts that the revisions to the Enforcement Policy will have and therefore there will be a requirement for careful monitoring.

5.0 Equality and Diversity Issues

5.1 There are no equality and diversity implications arising from the proposals.

6.0 Legal Implications

6.1 If the quality of the enforcement service suffers there is a danger that development could become immune from enforcement action.

7.0 Risk Management

7.1 A risk is that we might not be able to provide an acceptable enforcement service which could result in ombudsman complaints. Not taking action in a timely manner could result in more work ultimately needing to be carried out. Enforcement officers have at times been used to help support the processing of planning applications and therefore there is a risk to this area of work as well as enforcement.

8.0 Financial Implications

8.1 The changes to the planning enforcement service would save 1 full time post equating to revenue savings of £35k a year.

9.0 Corporate Outcomes

9.1 The changes to the service could provide better value for money. Whilst it will no longer be possible to provide an excellent service it should still be possible to ensure high quality service delivery and a good quality of life for residents.

10.0 Concluding Comments

- 10.1 It is clear that a reduction in staffing levels will result in a less effective service than has been the case in the past. The investigation of complaints will not have as high a priority and the service will be much more reactive. These issues have to be balanced though against the Councils financial position and the on going savings that will result.
- 10.2 It is felt that despite the loss of a post the service will still be able to provide for a proportionate response. In the circumstances it is considered that the savings outweigh the service reductions that will result. The Enforcement Policy as suggested to be amended is attached and these changes will have been considered by the Development Control Committee at its meeting on 7 September. Their views will be reported verbally to the Committee.

11.0 Recommendation

11.1 The committee is recommended to:

- 1) Consider the views of the Development Control Committee as reported from its meeting on 7 September; and
- 2) Agree the amendments to the priorities of the planning enforcement team as set out within the revised Enforcement Policy.

(Reason: In the interests of achieving a balanced budget and noting the revisions required to reflect the reduction in staffing levels within the team.)

Legal	Power: Town and Country Planning Act 1990				
	Other considerations:				
Background Papers: Revised Enforcement Policy					
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Date: 26 August 2011					
CFO		MO		CX	

(Committee Report Normal Rev. 22)



East
Northamptonshire
Council

Enforcement Policy



Handling planning related enforcement matters

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Executive Summary

How East Northamptonshire looks and is developed is important to local residents. Sometimes people will start developments that have either not got the appropriate planning permission or do not follow the planning permission given. This document sets out the Council's approach to enforcement. It explains how we will deliver enforcement and the principles that we will be guided by. It also includes local performance targets.

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1.0 Introduction

- 1.1 This document sets out the Council's approach to handling planning related enforcement matters. It lets the public know what to expect when a breach of planning control is found, where resources will be targeted, and the timescales for responding to certain key stages in the process.
- 1.2 The main outcome that we seek to achieve through planning enforcement is the protection and enhancement of the built environment, which contributes to the quality of life of our residents. If we did not take action our reputation would suffer.
- 1.3 We must also however provide good value for money and we therefore need to prioritise our work. In line with Government advice, we will not just take enforcement action because planning permission hasn't been obtained.
- 1.4 Neighbours and Parish Council's bring issues to our attention and it is important that we work in partnership. Some enforcement issues are not just planning related and we therefore work with other service areas within the Council to resolve matters.
- 1.5 Timescales for action are important as it is easier for us to put things right if we spot them early and because a breach of planning control can cause a lot of distress to neighbours and economic hardship if there is delay or substantial building work needs to be demolished.

2.0 Statement of Intent

- 2.1 We aim to deliver an effective and accessible service, which is available equally to all. Our service aims to be quality driven and responsive.

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3.0 Scope

- 3.1 The planning enforcement service will be accessible to all residents within the Council's area and we will also become involved in matters across boundaries, when appropriate.
- 3.2 Customer Service

Underpinning the planning enforcement service is the need to provide good customer service. One aspect of this is helping our customers to understand the process and we produce a leaflet which explains the legal basis for planning enforcement and the powers which are available to remedy breaches of planning control, see planning services (www.east-northamptonshire.gov.uk/developmentcontrol). A second aspect is ensuring that customers are informed of the progress of enforcement investigations.

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3.3 Local Performance Targets

3.4 It is very difficult to measure enforcement performance, because unlike our work on planning applications, there are no specific timescales laid down by the Government. We also seek to reach a negotiated solution and avoid the service of a formal notice. However, in some instances the service of a notice is the most effective way to enforce. We do not therefore consider that the number of enforcement notices served, which is a measure some Council's use, would be a useful indicator. Also, cases can be very different. Some can be resolved fairly quickly, others take much longer, and it is not therefore possible to use the length of time taken to resolve a breach as a measure of our performance.

3.5 We have set ourselves the following local performance targets for enforcement and we will monitor our success against them:

- All letters or emails received that suggest a breach of planning control may have taken place will be acknowledged within 5 working days
- A site inspection will be carried out in line with the prioritisation scheme, which is attached at Appendix 1
- Within 28 working days we will contact the complainant to explain our findings, and what action is proposed
- Where a formal notice is served, we will let the complainant know within 5 working days of service of the notice.
- We will endeavor to conduct a site visit within 28 days prior to the service of any formal enforcement notice.

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3.6 In addition, enforcement is part of development control and the following target is relevant:

High Customer satisfaction with the planning service (50% satisfaction target 2011/2012).

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<#>Satisfaction with the built environment (views to be sought on a regular basis from the residents panel)¶

3.7 The Enforcement Process

We respond to complaints, monitor compliance with permissions and consents granted, and any conditions relating to these.

3.8 When we receive a complaint it is allocated to an Enforcement/Compliance Officer to investigate. We acknowledge receipt of a complaint by letter and this letter lets the complainant know which officer is dealing with the complaint and provides contact details.

3.9 We treat complaints confidentially and the general public does not have access to names and addresses. However, we may need to reveal the identity of a complainant to support the Council's case, if we take formal legal action and if there is an appeal against this action. We may also need to reveal a complainant's identity to the court if a breach of planning legislation leads to a prosecution. As a rule we do not investigate anonymous complaints, to avoid the risk of vexatious complaints, usually between neighbours. However, if the complaint appears to be of a serious nature, we will make initial enquiries to judge whether further action is required.

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3.10 The Enforcement/Compliance Officer then checks to see if there has been a breach of planning control. We use personal contact as much as possible. If we find that there has been a breach, we will first attempt to resolve the matter by negotiation.

If we are unsuccessful, there are a range of enforcement options that we can use, including statutory notices, formal cautions and prosecutions. We will inform Ward Members when formal enforcement action is taken. We keep detailed records throughout the process so that they can be used as evidence at planning appeals or in court.

3.11 In addition to responding to complaints we check some forms of development as it takes place. We will focus on developments where we receive requests to discharge conditions imposed upon planning applications. In addition, officers will, when issues arise, check to ensure compliance with legal agreements related to applications. We will carry out, where resources allow, physical spot checks of new development.

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3.12 To ensure that we provide good value for money, we have to prioritise our activity. Our priorities for enforcement are set out in Appendix 1.

3.13 Discretionary Power

3.14 Planning enforcement is a discretionary power. We should only be taking action if it is "expedient" to do so. This is a technical term in the legislation it means that when deciding to take action the enforcement team has to take into account national and local planning policy and other material considerations, including the effect on a business, the harm to the amenity of neighbours and the public interest.

3.15 It is not a criminal offence to carry out development without planning permission, except for works to Listed Buildings, protected trees and the display of unauthorised advertisements. If a breach could be remedied by imposing planning conditions or with minor changes, the enforcement team will request submission of a retrospective planning application. Government advice is that enforcement action should not just be taken because development has taken place without planning permission. In situations where there is limited harm and the only reason that an application has been requested is to regularize the development the enforcement team will close the case and will not monitor whether an application has been submitted. If we have to pursue a listed building prosecution we will follow the " Best Practice Guidance on Listed Building Prosecutions" published by CLG (www.communities.gov.uk)

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3.16 Usually if a planning application is submitted, we will delay enforcement action; however, there will be cases when it would not be appropriate to do so. For example, where enforcement action may not be possible after specific time periods have elapsed.

3.17 Principles of Enforcement

3.18 The planning enforcement team believes in firm but fair regulation. The enforcement of planning control is guided by the principles contained within the Enforcement Concordat published by the Government's Better Regulation Task Force. The principles are standards, openness, helpfulness, proportionality, consistency, transparency, targeting and a procedure to respond to complaints about the service.

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3.19 Standards

3.20 Our standard response times are set out in paragraph 3.3 and Appendix 1, and we will monitor our performance against these on a quarterly basis. In addition we will monitor our performance against the other measures set out in paragraph 3.5.

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3.21 Openness

3.22 We have published a leaflet explaining the enforcement process in easy to understand language (see section 3.2).

3.23 When dealing with customers we will explain the law and procedures as simply as possible. We will be open about how we work and why we reach a particular decision.

3.24 Helpfulness

3.25 The Council believes that formal action should only be taken as a last resort, and we will therefore help those in breach of planning control to comply with planning legislation. The planning enforcement team will provide a personal, prompt, helpful and courteous service and will provide a positive response to requests for advice and information.

3.26 We will offer training for Parish and Town Councils, subject to resources, so that they can help identify breaches of planning control and understand the limits to enforcement.

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3.27 Proportionality

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3.28 Proportionality means relating the proposed enforcement action to the effect of the unauthorised development and any costs involved. We will try to negotiate an acceptable solution, but some breaches of planning control may be so bad that they require swift and formal action. Other breaches may be so trivial and have no effect that it may not be worth committing resources to pursuing them.

3.29 Consistency

3.30 Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. We aim to achieve consistency in the advice we give, in our responses to complaints, including our decisions about whether we should take enforcement action.

3.31 The planning enforcement team will liaise with colleagues to ensure that the most appropriate service takes action, and that any action we take is consistent with any enforcement action taken by other service areas.

3.32 Transparency

3.33 Transparency is important in maintaining public confidence in the Council's ability to regulate. It means making clear the process by which a decision has been made. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.

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3.34 Transparency is an integral part of enforcement. Staff have been trained and procedures developed to ensure that:

- We explain clearly any actions that we need to take making a distinction between best practice advice and legal requirements
- We provide opportunities to discuss what is required to comply with the law before formal enforcement action is taken. However, sometimes we need to take urgent action, for example, when work to a listed building or protected tree is being carried out, or evidence to support a conviction would not otherwise be available
- We provide a written explanation of any rights of appeal against enforcement action at the time the action is taken.

3.35 Targeting

3.36 Targeting means making sure that effort is directed towards those activities, which are the most serious. Action will be focused on those directly responsible for the breach, and who are best placed to control it.

3.37 Appendix A details the methodology we will use to prioritise breaches of planning control. This prioritises responses according to the severity of the breach. A site visit will be undertaken according to case priority:

- Category A – within 5 working days
- Category B – within 10 working days
- Category C – within 20 working days

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3.38 Where several people share responsibility for a breach, we will take action against those primarily responsible for the breach.

3.39 Complaints

3.40 We hope that you will be satisfied with the Enforcement Service that we provide. If you have any suggestions, concerns or difficulties we want to hear from you. We are committed to improving our service and dealing promptly with any shortcomings.

3.41 We will consider all complaints made about the way in which an enforcement matter has been dealt with. Disagreement with a decision of the Council will not, in itself, be a ground for complaint.

3.42 In the first instance you should discuss the matter with the appropriate Enforcement/Compliance Officer, who will be familiar with the case.

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3.43 The Council has a Corporate Complaints procedure which has been designed to ensure that all complaints are dealt with fully and properly by the most appropriate person in the organisation. Written complaints will be acknowledged, and then fully and promptly investigated. The complainant will be given a written response explaining the outcome of the investigation and any action that we propose to take. If no action is proposed, the reasons will be explained. Stage 1 will be investigation by the officer concerned, followed by Head of Service, then Executive Director.

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3.44 If you feel that we have not followed the correct procedures you can ask the Commissioner for Local Administration (the Local Government Ombudsman) to investigate the matter. The Ombudsman would however, normally expect a complainant to have first followed the Council's formal complaint procedures.

4.0 Monitoring and Reviewing progress

4.1 This Policy will be reviewed annually by the Enforcement Team at the start of each financial year to ensure it is kept up to date.

References

- ENC Leaflet – Planning Enforcement (www.east-northamptonshire.gov.uk/breachofcontrol)
- ENC Leaflet – How to comment, compliment or complain (www.east-northamptonshire.gov.uk/howtocomplain)
- Best Practice Guidance on Listed Building Prosecutions* published by CLG (www.communities.gov.uk)

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Appendix 1 - Prioritisation Scheme for Enforcement and Condition Monitoring

To enable the most effective use of Council resources the following priorities are followed when we investigate breaches of planning control.

Category A - High Priority

Breaches that require urgent action:

- Any unauthorised development which causes immediate, irreparable and serious harm to the neighbourhood
- Any non compliance with a condition or legal agreement, which is causing immediate harm to the environment or public safety
- Unauthorised works to a listed building or Scheduled Ancient Monument, tree protected by Tree Preservation Orders or trees within Conservation Areas
- Unauthorised demolition of a building within a Conservation Area
- Other breaches where any delay may allow the situation to deteriorate significantly or make it more difficult to remedy.

Category B – Medium Priority

The following will be treated as medium priority, providing they are not so severe as to fall within category A:

- Breaches that cause an ongoing serious disturbance to neighbours and the character of the area
- Unauthorised and inappropriate residential extensions or alterations
- Breaches of conditions attached to planning permissions which have serious safety issues
- Breaches relating to untidy land.

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Deleted: <#>Unauthorised display of adverts where it is likely to set a precedent leading to the display of more unauthorised adverts¶

Category C – Low Priority

The following will be treated as low priority provided that the results of the breach are not so serious as to fall within category A or B:

- Technical breaches of planning control where there is no significant harm to the Council's planning policies or objectives
- Breaches contrary to policies in the development plan
- Unauthorised display of adverts including those where it is likely to set a precedent leading to the display of more unauthorized adverts
- Temporary breaches which are likely to resolve themselves
- Matters where an initial assessment indicates it may be "permitted development" or recommended for approval if a regularising application were submitted.

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