

**CABINET
4TH JANUARY 2018**

**REPORT OF MRS JENNY CLIFFORD, THE HEAD OF PLANNING, ECONOMY
AND REGENERATION**

LOCAL ENFORCEMENT PLAN

Cabinet Member(s): Cllr Richard Chesterton
Responsible Officer: Mrs Jenny Clifford, Head of Planning, Economy and
Regeneration

Reason for Report:

Following the decision taken at the Cabinet meeting on the 5th January 2017 to agree the content of the Local Enforcement Plan and agree it for public consultation purposes, this report outlines the comments received following public consultation undertaken together with resultant changes to the Enforcement Plan.

RECOMMENDATION: That Cabinet recommend to Council that the Local Enforcement Plan as attached at Appendix 1 to this report be adopted.

Relationship to Corporate Plan: The primary purpose of the planning system is to regulate the use and development of land in the public interest and be a positive force in protecting what is good in our environment and preventing what is unacceptable. The Planning Service is a statutory service, the effective operation of which is central to the delivery of Corporate Plan priorities of community, housing, economy and environment

Financial Implications: None

Legal Implications: The Planning Service, including the enforcement of planning control, must operate within the legal and performance parameters established through legislation, case law and Government performance indicators, but should also command public confidence in the system. The operation of the Planning System and its enforcement will, by its nature, often involve making difficult decisions that will not be universally supported within the community.

Risk Assessment: Local Planning Authorities are expected to operate in a reasonable way, in accordance with statutory requirements and Government guidance. There is an expectation that the Council will be able to justify its decision making.

Equalities Impact: There are no equality issues identified in this report. The Local Enforcement Plan sets out investigation timescales associated with different alleged breaches of planning according to prioritisation criteria. The application of such criteria gives greater transparency over the way planning enforcement complaints are investigated.

1.0 BACKGROUND.

1.1 A Local Enforcement Plan was considered in draft at Cabinet on 5th January 2017 and consulted upon between 13th March and 2nd May 2017. It was advertised by way of press release, notification of Parish and Town Councils and on the Council's website. Section 2 of this report summarises the responses from the consultation process and provides an officer response where required. Section 3 details the scope of the

revisions to the Enforcement Plan that are proposed following consideration of the comments and following discussion at two PPAG meetings on the 14th September and 13th December 2017. A copy of the Local Enforcement Plan is attached at **Appendix 1**.

- 1.2 Sections 1.3 – 1.5 below provides a brief overview of the Planning Enforcement Process.
- 1.3 Planning enforcement is a statutory function of local government although the power to take formal action is discretionary. The Council as Local Planning Authority has responsibility for the investigation of reported breaches of planning control. Unauthorised development can be detrimental to the local environment and a source of community tension. Failure to investigate and enforce planning conditions or address unauthorised development can reduce the effectiveness of a Local Planning Authority and undermine public confidence in the planning system. The enforcement of planning control is not subject to national performance targets in the same way as the determination of planning and other applications.
- 1.4 In March 2012, the Government published the National Planning Policy Framework which replaced much of the previous advice contained in Planning Policy Guidance ('PPG's) and Planning Policy Statements ('PPS's). With regards to enforcement of planning control, Planning Policy Guidance Note 18 (Enforcing Planning Control) was replaced by the following single paragraph:

Enforcement

207. Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so.

- 1.5 In order to increase transparency and manage public expectations with regards to the resourcing, powers and tools available to the Local Planning Authority, a Local Enforcement Plan has been drafted in line with the advice set out in the National Planning Policy Framework.
- 1.6 It sets out the legislative framework that the Council enforces, defines what does and what does not constitute a breach of planning control, how reported breaches will be investigated and the procedures for commencing formal enforcement action. It sets out new performance targets and clearly indicates the priority given in terms of high, medium and low to the investigation of differing breaches of planning control and the response time that can be expected. This is considered important in order to prioritise resources and manage expectations.

2.0 **CONSULTATION RESPONSES.**

The public consultation produced 9 responses, of which 6 were from Parish Councils and 3 were from members of the public. The responses and officer comment upon them are set out below:

2.1 **Parish Council responses**

Bow Parish Council – no comment

Holcombe Rogus Parish Council – no comments

Burlescombe Parish Council – no comments

Bradninch Parish Council – no comments

Thelbridge Parish Council – Congratulate you on producing an easy to read and understand document. The flow chart and service targets table are particularly useful. Since much of the content is determined by statute, the council does not have any further comments to make.

Willand Parish Council – raised a number of queries which are identified below and after each query a response has been provided. A full copy of the consultation response is attached as **Appendix 2** to this report.

Query 1. The word expedient is often used but does not appear in Policy DM31 or paragraph 207 of the NPPF.

Response: The terminology ‘expedient’ is a common phrase used in enforcement practice, and relates to whether or not the impact arising from a breach of planning control is of a level of magnitude and harm that formal action should be taken to redress the breach. For instance if in the case of an extension to residential dwelling that has been constructed with a footprint that is deeper than shown on the approved plans, if it does not result in any harm (reference to the test at policy DM13 as set out below) then it would not be expedient to take enforcement action. However if it resulted in a situation of uncomfortable overlooking of the neighbouring garden because an addition window had been included in the build then it would be expedient to take formal action.

Query 2. Who decides what is ‘appropriate’ and ‘in the public interest’?

Response: In terms of completing an enforcement investigation this is completed by the 3 enforcement officers. Once the investigation is completed and it is confirmed that a breach of planning control is committed, the enforcement officer and Area team Leader/Group Manager then agree an appropriate course of action. If the breach results in identifiable harm and the matter cannot be resolved through negotiations, formal notice would be served to redress the breach (refer to page 12 of the Plan). If such action is required there is a requirement to seek approval from the planning committee to take formal action after the officer team have decided that it would be appropriate and expedient to do so. This effectively ensures that there is a public interest check on all cases where formal action that is taken.

Query 3. The priority classifications and response times should be reviewed and amended to reflect a practical, proactive and effective response. High priority should be afforded a same day response if it is to be effective.

Response: Please refer to paragraph 3 of this report.

Query 4. The use of the term ‘discretion’ in the proportionality section causes conflict and loss of confidence in the enforcement process.

Response: Ultimately as with any case there is an element of professional judgement to be undertaken by the officer team in arriving at the way forward on a case. There

is the opportunity to complete this part of the process in discussions with the relevant elected members where their input is required.

Query 5. Last sentence of the section on retrospective planning applications should be reconsidered as if a decision is made to invite an application it must be considered that one is required.

Response: In some instances (i.e. if an unauthorised development/change of use) is considered to be policy compliant, is not causing any identifiable harm and is not required to be subject to any further controls then whilst a retrospective application would be invited no further action would be taken if one was not submitted. As stated in the Plan as drafted at paragraph 11 there will be instances where if a retrospective is not submitted the default course of action is to take formal action, serving either an enforcement notice and/or breach of condition notice.

Query 6. Concerned regarding the repeated emphasis on cost in the section regarding commencing formal enforcement action.

Response: The reference to the costs that any transgressor could be liable is factual information. This could be removed if members considered that to be appropriate.

Query 7. Consider more emphasis on ensuring that actions are taken and proper communication is maintained if Parish Councils report matters.

Response: Communication with Parish Councils on matters that are reported is considered to be an important and critical part of the process and now that the Enforcement Team is fully staffed and is operating with a single Area team Leader as the line manager with responsibility for the staff in the team, the staff group are confident that this will be standard practice going forward.

Query 8. The reference to: “Achieve a balance between protecting amenity and other interests and allowing acceptable development to remain, or to continue, in the absence of permission”.

Response: This means that where a breach of planning control is not causing any harm and would be considered to be compliant with the relevant policies in the development plan then the course of action would be not to take any further action and to notify the land/property owner that it would be in their interest to submit an application to regularise the situation in planning terms. However in some cases this would not be enforced in the event the property/land owner elected not to make a retrospective submission (see also page 11 of **Appendix 1**).

2.2 Response from members of the public.

3 responses were received from members of the public which raised the following points :

- Technical terms with exact legal meanings should be capitalised.
- The document is supported.
- Need assurance that MDDC have sufficient resources to enable the policy to be put into practice.

- The loop hole of retrospective planning permission needs closing.

3.0 PROPOSED CHANGES SINCE CONSULTATION.

3.1 The Plan as it was drafted for consultation sets out up to 15 working days for a first site inspection to be completed, depending on the nature of the breach that is alleged as clarified below:

- For high priority cases (where the alleged breach is causing serious harm to the environment or serious disturbance or nuisance) the response time for the first site visit is confirmed as within 3 working days of registration.
- For medium priority cases the response time for the first site visit is confirmed as within 10 working days of registration.
- For low priority cases) the response time for the first site visit is confirmed as within 15 working days of registration.

3.2 Following the consultation undertaken and considering the comments of the members at the Planning Policy Advisory Group meetings (14th September and 13 December) the following revised arrangements for first site inspections are proposed and the draft Local Enforcement Plan updated accordingly. Members will note that a new category has been introduced for those cases of the highest priority as outlined below.

Highest Priority: (NEW CATEGORY)

A breach of planning control which is in the process of causing very serious harm to the environment or to public safety unless an immediate response is made

- The unauthorised works or use of land or buildings that present an immediate and serious danger to the public
- Unauthorised works that are in the process of being seriously detrimental to the character of a Listed Building, Scheduled Ancient Monument, Conservation Area or Site of Specific Scientific Interest.
- Works that are currently taking place to protected trees or hedgerows.

Response time – 80% of first site visits within 2 working days of registration

High Priority: (REVISED)

A breach of planning control which is causing, or is likely to cause serious harm to the environment or to public safety unless an urgent response is made

- The unauthorised works or use of land or buildings that present a danger to the public
- Unauthorised works that could be seriously detrimental to the character of a Listed Building, Scheduled Ancient Monument, Conservation Area or Site of Specific Scientific Interest.
- Unauthorised development that causes serious harm, yet has gone undetected and the statutory time limit for taking enforcement action is imminent

- Works to protected trees or hedgerows.

Response time – first site visit within 3 working days of registration

Medium Priority: (NO CHANGE)

The priority level covers all cases that are not a high or low priority

- Unauthorised developments causing serious disturbance/ nuisance to residents or damage to the environment.
- Work to Listed Buildings which is not considered seriously detrimental to its character.
- Unauthorised advertisements in a conservation area or prominent locations which have the potential to cause serious harm to public safety or amenity.
- Unauthorised development where the statutory time limit for taking enforcement action may expire within the next six months.
- Untidy land which is causing serious harm to the amenity of the area
- Non-compliance with planning conditions which are having a significant adverse impact on the development, amenity or neighbouring properties
- Deviation from approved plans, which is having a significant adverse impact on amenity or neighbouring properties

Response time – first site visit within 10 working days of registration

Low priority: (NO CHANGE)

- This priority level covers breaches of planning control that are causing limited or no harm to the environment or residential amenity e.g.
- Technical breaches of control – for example works that are marginally above permitted development
- Installation of satellite dishes
- Unauthorised advertisements in less sensitive locations
- Minor variations from approved plans which are not having an adverse impact on amenity

Response time – first site visit within 15 working days of registration

3.3 The changes as outlined above have been made to the copy of the Enforcement Plan which is attached at **Appendix 1** and which is proposed for adoption.

4.0 Planning Policy Advisory Group.

4.1 Following consideration at the meeting on the 13th December the Planning Policy Advisory Group (PPAG) resolved to recommend that the local enforcement plan as it has been revised (refer to **Appendix 1**) and as summarised at section 3 be presented to Cabinet recommending that it is approved by the Council.

4.2 At this meeting the member group also raised the issue of out of hours cover in respect of planning enforcement and whether the Authority should be providing more out of hours cover for services on a 24 hour/7 days a week basis. Members requested that a note be added to this Cabinet report. An out of hours messaging service is currently provided through Taunton Deane Borough Council.

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Circulation of the Report:

Cabinet Members

List of Background Papers:

National Planning Policy Framework

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Scrutiny Committee 22nd February 2016,
23rd May 2016, 10th October 2016.
Cabinet 5th January 2017.