

SCRUTINY
14TH SEPTEMBER 2020

PLANNING ENFORCEMENT

Cabinet Member Cllr Richard Chesterton
Responsible Officer Head of Planning, Economy and Regeneration

Reason for Report: To respond to Scrutiny Committee's request for a report on the enforcement of planning control, levels of activity, time taken and comparison with other local Councils (where information is available).

RECOMMENDATIONS:

- i) **That the report be noted and Scrutiny Committee identify any issues to inform service improvement**

Financial Implications: Certain types of planning enforcement action such as the issue of an enforcement notice have a right of appeal whilst others have an opportunity for compensation to be claimed. Both may have financial implications for the Council. In terms of appeals, there is a risk of a cost award against the authority at appeal if it is found to have acted unreasonably. Financial implications may also arise if the Council has to pay compensation for example for loss or damage attributable to a stop notice.

Legal Implications: Formal enforcement action may take a variety of forms with a wide range of legal tools available. Enforcement must be undertaken in accordance with Government guidance and must be in the public interest.

Risk Assessment: The enforcement of planning control is by its nature often high profile and may lead to taking formal measures that involve legal processes on behalf of the Council. Risk in connection with action is considered on a case by case basis in close liaison with the Legal Service.

Budget and Policy Framework: None directly in terms of the Council's policy framework. Budget implications may arise as a result of certain types of enforcement activity and through the cost of defending an appeal.

Equalities Assessment: None identified arising directly from this report.

Relationship to Corporate Plan: Priorities within the Corporate Plan are economy, homes, community and environment. The enforcement of planning controls through investigation and where appropriate the taking of action in the public interest by the Council will assist in upholding these priorities.

Impact on climate change: None arising directly from this report.

1.0 PLANNING ENFORCEMENT – INTRODUCTION

1.1 Planning enforcement is a statutory function of local government although the power to take formal action is discretionary. The Council as the 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.

- 1.2 The basis for the planning system is to protect amenity, whether it is the quality of the environment in general, or the quality of life of people living close to development. Powers have been granted to the Council to ensure that action can be taken against unauthorised development or a breach of planning control which is causing harm to the amenity of the area.
- 1.3 A breach of planning control is:
 - The carrying out of development without the required planning permission;
 - Failing to comply with any condition or limitation subject to which planning permission has been granted.
- 1.4 Planning enforcement also investigates other breaches such as unauthorised works to listed buildings, the illegal display of advertisements on land or buildings and the failure to properly maintain land.
- 1.5 Councils are advised to take formal enforcement action only in cases of obvious harm or nuisance and/or where persuasion and negotiation have failed. It is a discretionary power based upon proportionality. Action should only be taken where it is expedient to do so.
- 1.6 In deciding whether it is expedient to take enforcement action, the Local Planning Authority must consider:
 - Whether it is in the public interest to do so;
 - Whether the breach would unacceptably affect public amenity or the existing use of land or buildings (would planning permission be granted if applied for and considered against development plan policies).
 - Whether the proposed action is commensurate with the breach (proportionate).
- 1.7 The decision on whether action is proportionate and, if so, which action to take will need to take into account all the circumstances of each individual case. In practical terms consideration will need to be given to:
 - the impact of the unauthorised development;
 - the potential for damage to the environment;
 - the benefit of taking action.

It will not always be proportionate to take formal enforcement action having considered the circumstances of the case. Enforcement powers are to be used in a reasonable manner, to remedy adverse impacts on the environment or on neighbours and should not be used solely to regularise a situation where no planning permission exists. Such situations should be dealt with by negotiation. Enforcement action should not be used as a punishment, but

instead is a tool to rectify unacceptable breaches of planning control. The fact that development has gone ahead without planning permission should not prejudice the consideration of a subsequent, retrospective planning application if it is a reasonable use of land and in cases in which no criminal offence has been committed, planning permission is likely to be granted. Retrospective applications must be considered in the same way as any other – they should not be penalised because they are retrospective.

- 1.8 Undertaking development without planning permission is not a criminal offence. In such instances it is only when an enforcement notice has not been complied with that a criminal offence has occurred. However unauthorised works to listed buildings, unauthorised works to protected trees or the display of advertisements without consent are criminal offences.
- 1.9 In many cases, the ability to take formal enforcement action is time limited as development may become immune from enforcement if no action is taken:
- Within 4 years of the substantial completion of a breach of planning control (operational development).
 - Within 4 years for an unauthorised change of use to a single dwelling house.
 - Within 10 years for any other breach of planning control such as other changes of use or other breaches of conditions.

Exceptions include the taking of further enforcement action within 4 years of earlier action over the same breach or where the breach was fully or partly concealed. No such immunity period exists for unauthorised works to a listed building.

2.0 RELEVANT POLICIES AND GUIDANCE.

- 2.1 Paragraph 58 ,of the National Planning Policy Framework (2019) relates to the enforcement of planning control and states:

‘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.’

- 2.2 Policy DM29 of the Mid Devon Local Plan Review reflects this and states:

‘The Council will investigate unauthorised development, acting proportionately to the scale of the suspected breach of planning control. Enforcement action will be taken where it is appropriate to do so and in the public interest.’

Text accompanying this policy also makes it clear that when undertaking investigations, the Council will act in proportion to the scale of the suspected

breach to which it relates. The Council will then take enforcement action where it deems such action to be appropriate, having regard to the scale of the breach and the impact upon public amenity.

2.3 The Council published a Local Enforcement Plan (2018) to ensure enforcement is managed proactively and in a way that is appropriate to Mid Devon. It sets out the Council's approach to enforcement, including timescales for action and states how the Council will respond to suspected breaches of planning control. The prioritisation of planning enforcement resources in terms of planning breaches also forms part of the document. A copy of the Local Enforcement Plan is at **Appendix 1** to this report.

2.4 National planning practice guidance is also relevant. It provides guidance on a range of enforcement related matters, much of which are covered within this report. Planning practice guidance on enforcement is available here <https://www.gov.uk/guidance/ensuring-effective-enforcement>

3.0 **ENFORCEMENT POWERS AND TOOLS AVAILABLE**

3.1 Summarised information on the range of enforcement powers and tools available is to be found within the Local Enforcement Plan at **Appendix 1**. This is intended to be for general guidance only as the circumstances of each case will dictate the action to be taken. They may broadly be divided into 5 different types:

- i) For information gathering.
- ii) Where conditions imposed on a planning permission are not being complied with.
- iii) Where there is a continuing breach of planning control.
- iv) Where a breach of control is causing serious harm or has the potential to cause serious or irrevocable harm to amenity.
- v) Other

4.0 **NO FORMAL ACTION**

4.1 No further action will be taken by the Council where it is established that there has not been a breach of planning control.

4.2 National planning practice guidance advises that addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Additionally in some instances formal enforcement action may not be appropriate.

4.3 On a case by case basis, Local Planning Authorities are advised that formal enforcement action should be avoided where:

- There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development (That planning permission would be granted if applied for. A retrospective application to remedy the breach of planning will be sought);
- In their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

5.0 SCHEME OF DELEGATION ON PLANNING ENFORCEMENT MATTERS

5.1 The scheme of delegation to the Head of Planning and Regeneration by Planning Committee extends to formal enforcement action, with the exception of the following:

1. The proposed enforcement action raises matters of significant public interest and / or significant costs to the Council for which there is no budget and / or would prevent a person from residing or continuing to reside on land within the district;
2. The action relates to land in which the Council, a Member or an Officer has an interest;
3. The action is the issue of an enforcement notice, stop notice, temporary stop notice or legal proceedings, in which case the notice or proceedings will be issued by the Head of Legal (Monitoring Officer) or a solicitor employed by the Council, in consultation with the Head of Planning, Economy and Regeneration or the Group Manager for Development.

For information, formal enforcement action does not include the service of a Planning Contravention Notice or a section 330 requisition for information.

6.0 THE PLANNING ENFORCEMENT TEAM AT MID DEVON

6.1 The planning enforcement team at Mid Devon comprises 2 full time officers who each cover an area of the district, together with administration support. The team is managed by an Area Team Leader, that latter post being currently vacant with recruitment underway.

6.2 Information on activity and performance within the enforcement service is reported to Planning Committee, with a further report proposed for the October meeting. At the time of writing, 171 new cases have been received and 155 cases closed this calendar year to date and there are currently 222 cases under investigation with officers dealing with 146 and 76 respectively.

6.3 Comparison information has recently been sought from other Councils in the area. Information received indicates:

	Number of enforcement officers (FTE)	Total cases on hand	Number of cases per officer	Notes
Mid Devon	2	222	76 to 146	
Cornwall	14.3 plus two Group Leaders managing the team	1120	22 to 87	
Dartmoor NP Authority	1	156	78	Remaining cases divided between planning officers
East Devon	3	266	75 to 101	
Mendip	2 plus 1 contract senior officer	172	15 to 82	
North Somerset	1 plus 1 compliance monitoring officer	372	33 to 150	Also deal with planning applications (mostly retrospective), lawful development certificates and associated appeals.
Plymouth	3 (due to reduce shortly to 2.5)	376	52 to 178	Also deal with a small number of retrospective applications
Somerset West & Taunton	1.75	178	Cases split between 2 officers	
Teignbridge	2	Not given	Not given	

7.0 INVESTIGATION OF BREACHES

7.1 The Local Enforcement Plan sets out how the implementation of planning permission is monitored and how alleged cases of unauthorised development are investigated. The extent to which the implementation of planning permission is pro-actively monitored is tempered by the resources available. The main source of knowledge of alleged breaches of planning control arises from the receipt of complaints which may come from the public, Parish or Town Councils, elected members or other groups. Planning and other officers may also become aware of breaches through their work and while on site

visits. Enforcement Officers also check on sites of known enforcement risk periodically as resources allow. Enforcement complaints are prioritised according to the seriousness of the alleged breach. Pro-active enforcement of all planning conditions would require significantly greater resources than currently available. Instead a primarily reactive service is targeted at reported breaches. Other Local Planning Authorities in the region act in a similar manner.

- 7.2 Applicants are advised on grant of planning permission of the need to comply with the attached conditions. Applicants are also asked to advise the Council in advance, via the return of a form, of their intention to start work together with the date. This allows checking that pre-commencement conditions have been complied with. Planning conditions need to meet a series of tests. These include precision and that they are capable of being enforced. The drafting of conditions so that they capable of being enforced and include the necessary triggers and safeguards is important.

8.0 PERFORMANCE

- 8.1 The Local Enforcement Plan sets out a prioritisation of complaint investigation together with a response time for the initial investigation site visit (under normal non COVID19 circumstances) as follows:

Highest –

- A breach of planning control which is in the process of causing 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 –

- 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 –

- This priority level covers all cases that are not a high or low priority.
- Unauthorised developments causing 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 -

- This priority level covers breaches of planning control that are causing limited or no harm to the environment or residential amenity.
- 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**

8.2 There are no national performance indicators for planning enforcement unlike planning application determination. Instead the Local Enforcement Plan sets a series of local targets, the performance against which is monitored:

ACTION	TARGET TIME
Register and acknowledge all written complaints	3 working days
Carry out initial site visit – Highest priority	80% of first site visits within 2 working days

cases	of registration
Carry out initial site visit – High priority cases	3 working days
Carry out initial site visit – Medium priority cases	10 working days
Carry out initial site visit – Low priority cases	15 working days
Initial response to complainant setting out progress or informing about a decision in cases where there is no breach	Within 5 working days of the date of the initial site visit
Notify complainant that Enforcement Notice has been served or decision that ‘no action’ will be taken	Within 5 working days of the issue of the notice or decision to take no further action.

8.3 **Appendix 2** sets out performance against these local indicators for 19/20 by quarter. **Appendix 2a** reports of performance for quarter 1 20/21.

9.0 BENCHMARKING

9.1 The level of activity in opening and closing cases and the issue of various notices are normally reported to Planning Committee, although the frequency of this has dropped off and needs to resume on a quarterly basis. Information on enforcement activity by way of formal action type is collated nationally and this data set is able to be interrogated via [planning application statistics](#) where enforcement activity may be found.

9.2 As part of the generation of this report, comparator information from other Councils in the local area was sought, but does not take place on a regular basis. The establishment of common reporting on enforcement between Councils would assist in the management and monitoring of the service and provide greater transparency over the level of service provision.

9.3 In addition to staff and case information referred to in 6.3 above, the following information was sought:

- Number of complaints by quarter / financial year for 19/20 and 20/21 Qu 1
- Any local performance indicators, associated targets and performance information on enforcement investigations, over the same period
- Whether there is an up to local enforcement plan
- Whether any information on enforcement cases is routinely:
Published on the website or reported to a Committee
Reports on cases issued to Parish or Town Councils
Reports on cases issued to Members

The information has recently been received from some of the Councils contacted and has been collated into a table at **Appendix 3**.

10.0 SUMMARY AND CONCLUSIONS

- 10.1 The enforcement of breaches of planning control is often complex with opportunity for those contravening to submit planning applications to regularise the breach and to appeal at different stages. This often results in delay. Enforcement action is not appropriate in all cases, particularly where it is a technical breach of planning control with little impact or where planning permission would be approved if applied for. Furthermore, there is also clear Government advice that enforcement action should not be used as a punishment, but as a tool to address harm where it is the public interest to do so. This often leads to misunderstanding of the purpose of enforcement action and timescales within which it operates. Public expectation is often of enforcement action as a punishment for a breach or in cases where the breach causes little or no harm and planning permission would be granted if applied for.
- 10.2 Nevertheless there will be cases where it is clearly in the public interest to seek to swiftly resolve breaches that are causing harm to amenity. Councils have a range of enforcement tools available to them to do this. There is a duty to investigate breaches, although taking action itself is discretionary and based upon the merits of the case.
- 10.3 This report seeks to provide the context for the planning enforcement system, how it is resourced within Mid Devon and, where available, comparator information from other Councils. The service operates within finite resources and seeks to deliver an effective service within a challenging environment where expectations are high.

Contact for more Information: Jenny Clifford, Head of Planning, Economy and Regeneration
jclifford@middevon.gov.uk

Eileen Paterson, Group Manager for Development
epaterson@middevon.gov.uk

Circulation of the Report: Cllr Richard Chesterton

List of Background Papers:

Mid Devon Local Enforcement Plan

<https://www.middevon.gov.uk/media/345259/local-enforcement-plan-final-280318.pdf>

National Planning Policy Framework

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

Planning Practice Guidance

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

Mid Devon Local Plan Review