

<b>AGENDA ITEM NO 14</b>	
<b>PLANNING COMMITTEE</b>	
<b>Date</b>	<b>March 2020</b>
<b>Title</b>	<b>Local Planning Enforcement Plan</b>

**1. PURPOSE/SUMMARY**

The purpose of this report is to ask members to adopt a Local Planning Enforcement Plan

**2. KEY ISSUES**

2.1 The Enforcement Plan will provide greater transparency and accountability about the Planning Enforcement Function.

2.2 Sets out how an allegation will be prioritised and processed, and what the public should expect, both as those with concerns about and those accused of breaches of planning control.

**3. RECOMMENDATION(S)**

It is recommended that Members adopt the Local Planning Enforcement Plan

<b>Wards Affected</b>	All
<b>Forward Plan Reference No.</b> (if applicable)	-
<b>Portfolio Holder(s)</b>	Councillor Mrs D Laws
<b>Report Originator</b>	Lee Walsh (Planning Enforcement Officer).
<b>Contact Officer(s)</b>	Nick Harding (Head of Planning).
<b>Background Paper(s)</b>	Attached Planning Enforcement Local Plan

## 1. BACKGROUND

1.1 The Council has an adopted Corporate Enforcement Policy that covers all aspects of enforcement. This sets out the principles that are used to guide the Council in its application of various aspect of enforcement. The Local Planning Enforcement Plan is consistent with the Council's wider Enforcement Policy and seeks to provide greater transparency and accountability about the Council's Planning Enforcement Function. It sets out how an allegation will be prioritised and what the public should expect, both as those with concerns about and those accused of breaches of planning control. The draft plan is attached as an Appendix to this report for Members information.

1.2 The Planning Policy Guidance (PPG) published by the Government states that it is important for Council's to prepare and adopt a local planning enforcement plan because it:

- *'allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;*
- *sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
- *provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
- *provides greater certainty for all parties engaged in the development process.'*

1.3 The PPG emphasis that effective planning 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;*
- *help ensure that public acceptance of the decision-making process is maintained.'*

1.4 Further guidance is available on the Government website '*Planning Policy Guidance for Enforcement and Post-permission matters,*' via the following link.

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

## 2. CONCLUSION

2.1 Having given consideration to the circumstances of this matter it is recommended that the Local Planning Enforcement Plan is adopted.



# **Local Planning Enforcement Plan**

March 2020

## Introduction

- 1 The Council has an adopted **Corporate Enforcement Policy** which sets the general principle for dealing with investigations. The purpose of the Local Planning Enforcement Plan is to set out how the Council's Planning Compliance Team's deal with specific Planning Enforcement investigations.
- 2 Planning Compliance operates within the legislative framework of the Town and Country Planning Act 1990 (as amended) and all its subordinate and associated legislation. Planning Policy and Guidance contained within Local Plans, the National Planning Policy Framework and the online Planning Policy Guidance ensure decisions are open, consistent and fair.
- 3 The Planning Compliance Team must also comply with the law in the way it conducts its investigations under the Regulation of Investigation Powers Act (RIPA) and the Police and Crime Evidence Act (PACE). The Council has an adopted a **RIPA Policy**.

## Effect Enforcement

- 4 The Planning Policy Guidance for planning enforcement emphasises that:-  
*'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;
  - help ensure that public acceptance of the decision-making process is maintained.'
- 5 An essential part of delivering effective planning enforcement is the adoption of a Local Planning Enforcement Policy. The policy:-
  - allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
  - sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
  - provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
  - provides greater certainty for all parties engaged in the development process.

## **Purpose of the Planning Compliance Team**

- 6 The purpose of the Planning Compliance Team is to protect the public and the environment from development that would cause harm and to ensure that the objectives of the planning system as a whole are not undermined. It is not the case that Planning compliance exists to 'punish' people who are responsible for a breach of planning control, but to prevent and remedy any harm caused. Any action taken by the Council has to be expedient and proportionate to the breach in question.
- 7 Someone who raises concerns about development is referred to as the informant. Their concerns will be investigated and they will either be reassured that what has been done is what the owner/occupier is permitted to do or entitled to do lawfully, or what action will be required to remedy the unauthorised development.
- 8 A person responsible for undertaking development will be known as the responsible person. This could be the developer, owner or occupier of the land and buildings. They will be informed as to whether they have breached planning controls or not, or whether an offence has been committed or not, and what they need to do to put it right. We will use deadlines to monitor the progress towards remedying a breach. If the agreed deadlines are not met without reason or explanation we will consider more formal action.
- 9 Unless the unauthorised development or works are completely unacceptable and the harm caused incapable of being mitigated, we will try to resolve all breaches of planning control through negotiations. We will invite a planning application to regularise the breach, which may take some time to submit, depending on the issues and/or evidence required to support the proper consideration of the application. For example, an application for a conservatory could be submitted within a few weeks where as an application for a business where an acoustic report is required could take a few months.

### **A Breach or a Criminal Offence**

- 10 The following constitute a **breach of planning control**:
  - the carrying out of development (building works or a material change of use) without the required planning permission, or;
  - Development not completed in accordance with approved plans, or;
  - Failure to comply with conditions attached to planning permission.

11 The following works constitute a **criminal offence**.

- unauthorised works to Listed Buildings,
- substantial demolition in a Conservation Area,
- unauthorised works to trees subject to Tree Preservation Orders or tree within a designated Conservation Area, and;
- advertisements displayed without consent,
- Failure to comply with the requirements of an Enforcement Notice, Breach of Condition Notice or S. 215 Amenity Notice
- The Breach of an Injunction

In such circumstances, the seriousness of the offence is likely to dictate the nature of the response. The more serious the more likely the defendant will find themselves facing proceedings in Courts.

### **How we deal with allegations**

12 If you have any concerns about development you should contact the Council:

By Letter

Fenland District Council  
Planning Compliance  
County Road  
March  
Cambridgeshire  
PE15 8NQ

By Telephone,  
(01354) 654321

By Email  
[Planningenforcement@fenland.gov.uk](mailto:Planningenforcement@fenland.gov.uk)

By the Council's website  
[www.fenland.gov.uk](http://www.fenland.gov.uk)

13 All concerns about development must be accompanied by the full name contact details such as address, phone number or email address. The informant's details are kept strictly confidential and will not be disclosed to anyone outside of the Authority and will only be disclosed to officers within the Authority who have the appropriate authorisation.

- 14 We will not deal with anonymous complaints. This is to discourage vexatious complaints and there may be occasions where we need the informant to provide additional information on what they have witnessed, which is especially relevant to alleged changes of use.

For example, where car repair and maintenance takes place we cannot monitor the site 24/7 and will need a log to provide details of the extent of the use such as number of cars, frequency and what works are witnessed.

- 15 Where concerns are received, we will create a file and research will be undertaken which includes checking ownership, the planning history, legislation and contact details of the responsible person.
- (a) The informant will receive an acknowledgement of their concerns within seven days of the date this is received.
- (b) Where the allegation involves development that appears to have serious harm to the environment or to amenity, or a criminal offence, a site visit will take place within five days of the date of the issue being brought to our attention. In all other cases a site visit will take place within fourteen days.
- (c) Officers will determine whether a breach of planning control has taken place.
- i) Where a Breach is found and causes little harm*
- We will invite the responsible person to submit a retrospective application (1<sup>st</sup> Challenge letter). They will be given 21 days to confirm what they will do to remedy the situation and we will then agree deadlines to be met specific objectives, such as submitting an application.
  - If an application is not received by the agreed deadline the Council will decide whether it is expedient to take further action.
- (an appeal against a Planning Enforcement Notice where the responsible person wants retrospective planning permission is **twice** the fee of a planning application).
- ii) Where a breach is found and causes harm that can be controlled or reduced to acceptable levels through conditions or works to remedy the situation.*

- We will invite the owner to submit a retrospective application (1<sup>st</sup> Challenge letter). They will be given 21 days to confirm what they will do and we will agree deadlines for steps to be taken, such as the submission of a planning application.
- If no steps are taken by the agreed deadline, a second reminder letter will be sent giving the responsible person 14 days to explain the delay and to agree further deadlines.

(an appeal against a Planning Enforcement Notice where the responsible person wants retrospective planning permission is **twice** the fee of a planning application).

- If the agreed deadline is not met following the 2<sup>nd</sup> Challenge, a **Planning Contravention Notice (PCN)** will be served as a prelude to more formal action.

(a PCN requires the person who receives it to answer questions about the unauthorised development. It is necessary to establish the facts before the service of a more formal Notice)

*iii) Where a Breach found and is causing significant issues and there is no apparent solution a more robust approach will be taken.*

- The responsible person will be informed of the breach and that it is unlikely to receive planning permission with an explanation as to why. We will then agree a date by which they should cease the unauthorised use and/or remove any unauthorised works.
- We cannot refuse to accept a planning application if one is submitted.
- If they fail to meet the agreed deadline, a **Planning Contravention Notice (PCN)** will be served as a prelude to more formal action.

16 Any retrospective application will be assessed in accordance with the Council's established procedures, as with any planning application. We consult neighbours with shared boundaries in accordance with the Council policies and procedures. If the informant is not a neighbour then they may



not be consulted on the application as this may identify them. Our first objective would be to maintain the confidentiality of the informant unless their written consent is received to do otherwise. The Local Plan Policies and other supplementary Guidance can be found using the following link:

<https://www.fenland.gov.uk/planningpolicy>

- 17 If a retrospective planning application is not received, the Council will have to decide whether it is expedient to take formal action. The online Planning Policy Guidance is clear that:-

*‘Nothing in this guidance should be taken as condoning a wilful breach of planning law. Enforcement action should, however, be proportionate to the breach of planning control to which it relates and taken when it is expedient to do so. Where the balance of public interest lies will vary from case to case.’*

*The guidance goes on to state that Councils should avoid taking action in the following circumstances:-*

- *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;*
- *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](#).*

However, the failure to have the relevant planning permission could result in substantial cost and delay when the property is for sale. Planning Applications and application for Certificate of Lawfulness can take eight weeks or more to determine.

- 18 Those that submit retrospective planning applications or receive Planning Enforcement Notices have a right of appeal to the Secretary of State via the Planning Inspectorate. In such cases the Council has no control over the time taken to deal with the matter and it can take several months for the Appeal to be determined.

19 Where a criminal offence has occurred;

- i) The responsible person will be informed of the offence and what action will be taken against them. Any action will be proportionate to the seriousness of the offence they have committed.
- ii) A responsible person may be invited to the Council offices to do an Interviewed under Caution. The responsible person should seek their own legal advice or representation in the circumstances. The interview will be taped, where such equipment is available.
- ii) Depending on the seriousness of the offence, one of two options will be available to the Council.
  - 1) Minor matter causing minimal harm –  
The offender may be offered a ‘caution’ which will stay on record for two years and may be brought to the courts attention if future offences are committed.
  - 2) Major Offence causing significant harm –  
The offender may be prosecuted in the courts or injunction proceedings taken.

20 Following any conviction or where matters are so serious in their impact, the Council can take Injunction Proceedings or Direct action (where the Council does the works in default).

21 There are a number of Notices that can be served depending on the seriousness of the breach of planning control, which are listed below:-

#### Stop Notice

These are used in the most serious of cases, where harm to amenity and the character of the land are severe.

#### Temporary Stop Notice

These are used to stop the unauthorised use whilst the Council considers the most appropriate course of action. These are used where harm to amenity and the character of the land are substantial.

#### Planning Enforcement Notice (EN)

These are used either on their own, or in serious case, in conjunction with a Stop Notice. The Notice will tell you what you have done wrong and what you need to do to put it right. There is a right of Appeal against the Notice.

### Breach of Condition Notice (BoCN)

Where a planning permission has been given conditionally for development, a BoCN can be used to ensure conditions are complied with. There is no right of appeal against the Notice.

### Injunctions

The Council can use injunction proceeding to retrain a breach of planning control, but only where harm to amenity and the character of the land are severe.

### **Keeping People Informed**

- 22 All reports of planning breaches are taken seriously and we will keep you informed of any key stages in the investigation. We do provide contact details and you can contact officers for an update on progress during normal office hours.
- 23 Please note that some investigations can take some time so you may not hear from the planning compliance team on a regular basis, but as aforementioned, you are able to contact the case officer during normal working hours for an update at any time.

### **Terms**

24 Proportionate

Where the punishment/requirements are balanced against the seriousness of the offences /harm that is being caused.

### Expediency

The reasons for taking action are considered carefully, with an assessment of the effects of the unauthorised development such as the harm caused to individuals or the wider community and/ or against policy objectives weighed against the benefits of the development.

### Informant

The person or persons who have raised their concerns over development with the Council

### The Responsible person

The person or persons responsible for the unauthorised development and/or offence that has/have been committed. This may be the owners, occupiers or developers.

### Development

This is either a material change of use or operational development (buildings and structures), or a mixture of both as defined by Section 55 of the Town & Country Planning Act (1990) (as amended).

### Permitted Development

These are rights given to developer, owner and occupiers to undertake works and changes of use so long as they are in accordance with the criteria as set out in the Town & Country Planning (General Permitted Development) Order 2015 (as amended)

### **Useful Websites**

25 The following site contains useful information and advice.

<https://www.fenland.gov.uk/>

<https://www.gov.uk/government/collections/planning-practice-guidance>

<https://www.gov.uk/guidance/national-planning-policy-framework>

<https://www.gov.uk/government/organisations/planning-inspectorate>

<https://www.legislation.gov.uk/ukpga/1990/8/contents>