

## Planning Enforcement Update

**Planning Committee – 17th February 2021**

Report Author                                **Iain Livingstone, Planning Applications Manager**

Status    **For Information**

Classification:                                Unrestricted

Ward:    **All wards**

### **Executive Summary:**

This report provides an update on the number and nature of planning enforcement complaints received in the last two calendar years, whilst providing information on the notices served in that period and the current status of those cases.

### **Recommendation:**

Members note the report.

### **CORPORATE IMPLICATIONS**

<b>Financial and Value for Money</b>	The report does not have any direct financial implications.
<b>Legal</b>	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
<b>Corporate</b>	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.
<b>Equalities Act 2010 &amp; Public Sector Equality Duty</b>	<p>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.</p> <p>Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy &amp; maternity. Only aim (i) of the Duty applies to Marriage &amp; civil partnership.</p>

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

- 1.1 This report provides an update of planning enforcement complaints and action for discussion by members of the Planning Committee.
- 1.2 A separate report has been prepared for the Council's Overview and Scrutiny Panel to provide a detailed overview of the operation of planning enforcement, due to be considered on 18th February 2021. Relevant parts of that report are provided below to provide context for the update on complaints and action in 2019-2020.

## 2.0 The Planning Enforcement Process

- 2.1 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.

- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 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.

- 2.6 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.

2.7 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.

2.8 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.

### **3.0 Complaints and Formal action**

3.1 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.

3.2 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 1 including the outcome of the action

### **4.0 Enforcement Review**

4.1 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.

4.2 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.

4.3 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.

## 5.0 Options

- 5.1 Members note the report.
- 5.2 Members propose an alternative motion.

## 6.0 Recommendations

- 6.1 Officers recommend Members of the Planning Committee agree option 5.1.

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

## Annex List

<i>Annex 1</i>	Enforcement Notices served 2019-20
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