

UPDATE PLANNING ENFORCEMENT REVIEW

Overview & Scrutiny Panel	21st July 2022
Report Author	Iain Livingstone
Portfolio Holder	N/A
Classification:	Unrestricted
Key Decision	No
Ward:	Thanet Wide

Executive Summary:

The report provides an update on the delay to the planning enforcement review and provides a reminder of the outline of the review programme to make the process more efficient.

Recommendation:

Members are to note the report

Corporate Implications

Financial and Value for Money

The Enforcement Team consists of two officers. The report does not recommend an amendment or adjustment to the resources allocated to the service at this stage in the process. There are currently no additional resources available for allocation.

As a result of the above there are no financial implications arising directly from this report and as a result, future decisions will need to be reviewed to ensure that any changes are fully costed.

Legal

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.

Corporate

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.

Equality Act 2010 & Public Sector Equality Duty

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.

Protected characteristics: age, gender, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

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

CORPORATE PRIORITIES

This report relates to the following corporate priorities:

- Environment

1.0 Introduction

1.1 This report provides an update on the planning enforcement review, the reasons for the delay and the implications of other work and events moving forward. It provides a list of actions to occur over the next months to incrementally improve the service, whilst recognising the work of the team over the last year.

1.2 A summary of the work carried out by planning enforcement is contained within the previous Overview & Scrutiny Panel held on Tuesday 20th July.

2.0 Planning Enforcement Review

2.1 At the Overview & Scrutiny Panel (OSP) held on the 20th July, Member resolved that the following recommendations be considered in the Planning Enforcement Review:

- Investigations be carried out to determine the potential utility of a planning enforcement portal on the council's website to provide updates to members of the public and elected members on current cases, as well as increasing the availability of information about the Enforcement process for the public;

- A review be conducted to identify how the council could come up with a more effective system of prioritising planning enforcement cases;
- A review be conducted to determine how best to improve communication between the council and complainants regarding planning enforcement cases being handled by the council;
- Investigations be carried out to determine how best the council could include proactive work in the planning enforcement protocol.

2.2 Officers at the meeting discussed how the review was scheduled to occur in the latter half of 2021, with the aim to report the findings back to OSP before the end of the year. The review was scheduled to occur in-house and be conducted by the Planning Applications Manager. Due to unforeseen events, including the preparation of the Council's case and conducting the public Inquiry into the Shottendane Road major planning application, the review has not progressed. Therefore this report provides an updated context for the review and the progress in relation to changes to the planning service provided by the Council.

2.3 The Council is currently beginning the procurement process to update/replace the existing planning database software which hosts all planning application data, including submission documents, plans and decisions. The system is also utilised for recording planning enforcement complaints, actions, documents received etc. As outlined in the previous OSP meeting on this subject, the system can be utilised to publish information on enforcement cases, including the status of investigations and any relevant public document including enforcement notices. Therefore the update/replacement software will be required to provide this functionality, with current expectation for this to go live in April 2023.

2.4 In addition, the Council has launched a Councillor Portal App, allowing members to log questions for officers, with a service timescale for response and google functionality. This system allows members to receive updates on ongoing enforcement cases after they have been initially logged through the Council's website here:<https://www.thanet.gov.uk/info-pages/planning-enforcement/> or through an email being sent to Planning.Enforcement@thanet.gov.uk.

2.5 The recently published Levelling Up and Regeneration bill has significant implications for planning enforcement at Local Authority level. The bill proposes to remove the "four-year rule" after which time operational development (and change of use to dwellinghouses) in breach of planning control is immune from enforcement action, meaning that all enforcement breaches will be subject to the "ten-year rule". Whilst enforcement action is still subject to a test of public interest and assessment against the Council's Local plan policies, this change has the potential to increase the number of complaints requiring investigation by the Council. The bill includes "Enforcement Warning Notices" to be served on breaches of planning control requiring an application be submitted when there is a "reasonable prospect" of planning permission being granted. This is currently carried out through requests for application via letter. In addition, applicants would be required to submit

“Commencement notices” in relation to approved development upon the start of on-site work, with a register kept by the Local Authority, whilst a “Completion notice” would be able to be served on developments not meeting the identified targets in the commencement notice. Prosecution fines are also to be increased to a potentially unlimited fine for breach of planning conditions and failures to comply with Section 215 notices. The bill is currently at Committee stage in the Houses of Parliament, to be reported to the House by 30th September 2022.

2.6 Given the potential implications on the enforcement service from the Levelling Up and Regeneration bill, it is proposed to pause the wider review of the Planning Enforcement service, instead focusing on incremental improvements whilst awaiting the ramifications of legislation changes on service delivery and existing/potential resources. These improvements include:

- Creation of a protocol for joint Enforcement working between Planning Enforcement and Environmental Health with Monthly update meetings between departments to coordinate enforcement action. This follows a number of complaints in relation to noise impacts from development which falls under statutory nuisance and breaches of planning control.
- Investigate introducing a Section 106 monitoring charge to be written into Section 106 agreements based on the number of triggers for contributions/obligations, with income used to fund support/additional resources to assist planning enforcement in securing planning obligations due. This would be subject to a review by the Council’s finance service.

3.0 Update on Planning Enforcement Service

3.1 In 2021 the Planning Enforcement team logged 399 complaints and served 13 Planning Enforcement notices. In 2020 the team logged 330 complaints with 12 notices served. Of the 13 notices served in 2021, 5 have been appealed with 2 notices upheld, 2 notices quashed and one outstanding. The details of each notice are provided at Annex 3.

3.2 The planning enforcement team successfully prosecuted 5 cases in 2021, with an additional recent case at 123 Canterbury Road resulting in a fine of £40,000 for failing to comply with an enforcement notice first served in 2015 for the removal of windows in the Grade II Listed Building. In addition the Council sought to defend the serving of a Tree Replacement notice on land at Park Avenue in Broadstairs at a public hearing in June 2022, with initial agreement at the public hearing for the replacement of 11 trees.

4.0 Recommendation

4.1 Members are requested to comment and note the report.

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

Annex List

Annex 1: Enforcement Notices served 2021

Background Papers

1. National Planning Policy Framework: [NPPF 2019](#)
2. National Planning Practice Guidance: [Planning Practice Guidance](#)
3. Levelling Up and Regeneration Bill: [LURB](#)

Corporate Consultation

Finance: Matthew Sanham, Financial Services Manager

Legal: Estelle Culligan, Director of Law and Democracy