

INFORMATION ITEM

| REPORT OF | MEETING | DATE | ITEM NO |
|------------------------------------|--------------------|--------------|---------|
| DEVELOPMENT SERVICES | PLANNING COMMITTEE | 31 JULY 2019 | 6 |
| PLANNING ENFORCEMENT UPDATE | | | |

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY OF INFORMATION

This report has been provided at the request of the Chairman of the Planning Committee to provide the committee with an indication of the number and nature of cases that the Planning Enforcement Team handle in a typical year, and how those cases are resolved. It also provides an update on those cases where it has been necessary to resort to formal action and where an appeal has been lodged.

It is intended that this will be the first of a series of more regular reports, proposed to be on 6 monthly basis, which provide a similar update on the performance of the team and the key cases.

SOURCE OF INFORMATION

The information used to generate this report has been taken from the National Planning Policy Framework and Planning Practice Guide, along with the council's own statistics collated on the Acolaid system used to maintain the enforcement register. A [House of Commons briefing paper](#) has recently been published and has provided some of the source for this report, but provides additional reading for members on the subject.

WHY IS THIS INFORMATION BEING GIVEN TO THE COMMITTEE?

Members of the Planning Committee have requested that an update on Planning Enforcement matters be provided to the committee on a regular basis.

FURTHER INFORMATION

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1. The Role of the Planning Enforcement Team

- 1.1. The council has a statutory duty to undertake investigations into allegations of breaches of planning control, and also undertakes monitoring of developments that are in progress. This duty is undertaken by officers within the Development Management Team in the Development Services Directorate, although they liaise with colleagues across the council and other agencies as part of the function.
- 1.2. The legislative basis for planning enforcement is contained within the Town and Country Planning Act of 1990, with the most recent guidance on this in the National Planning Policy Framework (NPPF) of 2019 where para 58 says:

“Effective enforcement is important to maintain 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. They 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 appropriate.”

- 1.3. The key elements of this are that the council as local planning authority should undertake a planning enforcement function to ensure that public confidence is retained in the planning system, but should undertake any actions that arise from this enforcement service in a proportionate matter. Fylde has a Planning Enforcement protocol which is effectively the local enforcement plan that is referred to and is due for review in the coming 12 months.
- 1.4. To build on the guidance in the NPPF the government includes a section in the Planning Practice Guidance entitled ‘Ensuring Effective Enforcement which is available at the link here and explains the powers available to the council and where they should be used. This para explains 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.
- 1.5. This section reiterates that: *“There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way. Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations.”*
- 1.6. The options available to the council in responding to allegations of breaches of planning control are set out in section 4 of this report.

2. Staffing Levels

- 2.1. The Planning Enforcement Team forms part of the Development Management function of the Development Directorate’s Planning Service. Since 2009 there have been 2 full time officers in the team who have each dealt with the monitoring and enforcement work over an area extending to half of the borough. In recognition of a greater political and community priority being placed on the monitoring and enforcing of planning control this team was expanded to add a third officer in late 2018, with that additional post serving as a Senior Officer to coordinate the work of the two enforcement officers and to lead on any formal action and associated appeals, as well as providing an increased capacity to respond to enforcement queries.

- 2.2. The team operate in both a reactive and a proactive way and so are out of the office almost every day. At the time of writing this report one of the enforcement officer posts is vacant but recruitment is in progress and so will hopefully be filled within the coming month or so.
- 2.3. The team are managed by the Development Manager and can be contacted via 01253 658435 planningenforcement@fylde.gov.uk.

3. Nature of Enquiries

- 3.1. In 2018 the team resolved 578 cases across the whole spectrum of work, with these including allegations of works taking place without planning permission, that planning permissions are not being implemented correctly, unauthorised advertisements, works to trees without consent and works to listed buildings.
- 3.2. The team were also heavily involved in the A-board project during that time and have identified 70 unauthorised advertisements of that nature across the borough and so focused efforts on securing their removal through persuasion, and then through formal notices, with a series of Community Protection Warnings and 5 Community Protection Notices served to date. A separate report will be presented to review the success of this project in due course.

4. Likely solutions

- 4.1. Undertaking development without planning permission is not an offence unless it relates to a listed building or involves the display of advertisements without the necessary consent. Should the enforcement case require resolution by formal action, and that action is not complied with, then an offence does occur. This is prosecutable via the Magistrates Court and the council's approach is that this should be a last resort in dealing with enforcement queries.
- 4.2. The legislation requires that the council undertakes enforcement action where it is expedient to do so, with the council using a variety of legislative tools and other methods to ensure that the harm to public amenity that is caused by breaches of planning control is addressed by the most appropriate means possible. However, it must also be highlighted that there are many occasions where development occurs that the council remains unable to address either as a result of it being permitted development, or as a consequence of the harmful elements being outside of the local planning authority's control.
- 4.3. The most frequent outcomes to a query over planning enforcement are:
- 4.3.1. No development taken place - The council receives complaints over various issues that are not related to planning matters, or where development has not taken place. These are responded to as appropriately or passed on to the relevant council team (such as environmental protection) or other body (such as the local highway authority).
 - 4.3.2. Permitted development – A number of complaints relate to works taking place that when they are investigated prove to be permitted development. These complaints tend to arise as this legislation does not involve any neighbour notification process and so residents are often unaware that their neighbours intend to undertake building works before they commence. These complaints are all investigated by a site visit to ensure that the works actually comply with the permitted development regulations prior to the customer being provided with a response. .
 - 4.3.3. Authorised works – These complaints relate to cases where a development has planning permission and residents raise concerns over the way it is being implemented, or were unaware it was being constructed. This can be from extensions that residents query the dimensions of, to major housing schemes where dust/noise/hours type complaints are received. These sites are investigated through a visit before a response is provided
 - 4.3.4. Development where an application is required – In some cases the officer visit establish that works that a developer believed to be permitted development actually isn't, or that works are taking place that need planning permission. In these cases there are a range of outcomes, and making an application for

retrospective planning permission (sometimes with modifications to the works, and sometimes without) is a frequent outcome.

- 4.3.5. Development where further action is not required – In some cases the investigations will reveal works that require planning permission, but the enforcement team's conclusion is that it would not be expedient to proceed further as the works comply with local planning policy and the level of harm is so minor that it would not be in the public interest to progress action. These cases tend to relate to minor breaches of legislation and are not progressed to enable the council's resources to be directed to the cases that matter. .
- 4.3.6. Development where further action is not possible – The legislation relating to planning enforcement imposes time limits on the council within which that action must be taken, which is 4 years for the majority of built development or a change of use to a single family dwelling house, and 10 years where the breach relates to any other change of use or breach of a planning condition. In some cases the development will be 'out of time' for the council to take action.
- 4.3.7. Development that is not acceptable – In some cases the officer visit and investigation establishes that planning permission is required for the development, and that there is no realistic possibility of it being granted if an application is made. In these cases the officers will enter into discussions with the developer in an attempt to amicably address the harm that is being caused by the development. .
- 4.3.8. Formal Action – In a minority of cases these negotiations are not successful, or the harm is so great that there is no possibility of the developer remedying the harm that is being caused and so formal action is taken. This is a last resort and can take a variety of methods which are explained in the next section of this report.
- 4.3.9. In deciding the most appropriate form of enforcement action to take, the intention is to remedy any harm that a breach may be causing, rather than to punish the developer for carrying out works in breach.

5. Nature of Formal Actions

- 5.1. The options for formal enforcement action are set out in the Town and Country Planning Act of 1990 and cover a range of options. The most frequently used ones are set out below.
 - 5.1.1. Planning Contravention Notice – This is typically the starting point for more serious actions as it requires the recipient to provide responses to a series of formally posed questions about their activities, and often serves as a 'shot across the bows' as well as enabling the more serious actions to be taken with a legally sound knowledge over the facts of the site
 - 5.1.2. Enforcement Notice – This is the most common form of formal notice and will set out the breach of planning control and the steps that are to be taken to remedy that breach. This can include the demolition of buildings, the ceasing of particular uses, or the implementation of works that are prescribed in the notice. An Enforcement notice should only be issued where the local planning authority is satisfied that it appears to them that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.
 - 5.1.3. Breach of Condition Notice – this is an alternative to an enforcement notice, and is used where the issue relates to the implementation of a planning permission. It enables the council to specify a timescale whereby a condition which is being breached must be complied with, and any failure to do so is prosecutable via the magistrate's court.
 - 5.1.4. Stop Notice – This is the most serious form of enforcement action and is served alongside an Enforcement Notice. Its purpose is to require that works cease in advance of the deadline that can be imposed through an Enforcement Notice, although it cannot impose a timescale of less than 3 days. The PPG advises that these should only be served in the most serious as compensation is potentially liable in the event that the stop notice is subsequently quashed on appeal.
 - 5.1.5. Temporary Stop Notice - These can be imposed immediately and become effective on serving, but have a temporary lifespan of 28 days. These are used where harmful works are taking place and have the effect of making it immediately an offence for work to continue. The 28 day timescale then allows negotiations to be undertaken with the developer or for an enforcement notice to be served.

- 5.1.6. Section 215 Notice – This legislation allows the council to serve notices in regard to land and/or buildings that are in an unreasonably untidy condition and so are having an adverse impact on the amenity of the area. These complement powers available to the council's Environmental Protection team as such land is often causing odour and vermin nuisances.
- 5.1.7. Community Protection Notice – This legislation is not part of the Planning Act, but is under the Anti-Social Behaviour, Crime and Policing Act 2014. They are used by local authorities as a relatively simple alternative to planning and other enforcement tools, with the planning team at Fylde using them in an effort to combat unauthorised 'A' boards. The Environmental Protection team also use them for more minor nuisances where the evidence test for a Statutory Nuisance is less appropriate. They allow a fine to be levied 'on the spot' as an alternative to the magistrates court route to prosecution.
- 5.2. As with decisions on planning applications, those in receipt of an enforcement notice have a right of appeal. This appeal must be made within 28 days of the Notice being served, and is then determined by the Planning Inspectorate in the same way as a planning appeal.
- 5.3. Unfortunately the enforcement appeal process is considerably slower than the planning appeal one, and as the lodging of an appeal 'stops the clock' on the need to comply with a Notice the council is effectively unable to take action to progress the enforcement notice for many months after the appeal is lodged awaiting the decision on it.
- 5.4. Even when the council is successful at defending appeals and so the enforcement notice is upheld it is usual for that decision to allow a further timescale for compliance with the Notice, causing a further delay before the breach has to be remedied or a prosecution for breach of the notice can commence.

6. Formal Action

- 6.1. The approach taken at Fylde, in line with government guidance, is to seek to resolve issues by negotiation wherever possible. This is reflected nationally with around 1 in 10 local authorities not serving any enforcement notices in 2018. In Fylde eight formal notices were served in 2018 for a range of breaches of planning control where it proved impossible to negotiate a solution. To give a flavour of the scope of the enforcement work the cases in question were:
- 6.1.1. The siting of a static caravan on land in Freckleton and its unauthorised residential use. This was subject to an appeal which was dismissed and is currently in its compliance period.
- 6.1.2. The use of land as a camp site in Greenhalgh. This Notice was the subject of an appeal which was allowed and so planning permission granted subject to a series of planning conditions and a management plan.
- 6.1.3. The erection of canopies and glazed extensions to four restaurant / bars in Lytham. All have been subject of appeals with two of these dismissed and the other two still in the appeal process. Where the appeals have been dismissed, Officers have been taking steps to ensure compliance with the Notices prior to the expiry of the compliance period. In the event that this is not successful, the next step would be to seek prosecution of the failure to comply with the notice through the magistrate's court.
- 6.1.4. The erection of a close boarded fence to enclose the side garden of a property in Newton. This was not appealed and has been complied with.
- 6.1.5. The siting of a caravan on land at Kirkham and its unlawful residential use. This has not been the subject of an appeal and is currently in its compliance period.
- 6.1.6. A Breach of Condition Notice was served on a developer of residential properties in Warton as they have failed to adequately implement the landscaping scheme that was part of that development. There is no appeal process against this form of Notice, and it is currently in its compliance period.
- 6.2. At present there are a number of cases where it seems highly likely that the negotiations undertaken to date are going to prove unsuccessful in adequately addressing the breach of control and so further formal notices will be required. It is not appropriate to prejudice the continuation of those discussions by listing those sites in this report, but it is the intention to use future reports of this nature to highlight the cases where formal enforcement action has been necessary.

7. Monitoring Work

- 7.1. This is an on-going role and takes place at numerous sites throughout the borough both through the travels of the enforcement officers around the borough, and with specifically targeted visits. These visits are principally directed at the major residential sites with the current sites including those at Dowbridge in Kirkham / Newton, Church Road in Warton, Tarnbrick Farm in Kirkham, Woodlands Close in Newton and Sunnydale Nurseries in Little Eccleston.
- 7.2. These visits are undertaken to ensure compliance with the requirements of the planning permission including that the development is correctly implemented, that the works are not undertaken outside of the permitted hours, that roads are swept, that protected trees are appropriately fenced, etc. This proactive work involves the enforcement officers managing relationships with the site managers to ensure that they are aware of the controls that apply to their sites, and so they know that the council is monitoring them. The liaison with Parish Councils and ward councillors who receive complaints about this activity is an important aspect of this element of the enforcement team's work.

8. Future Reporting

- 8.1. This report has been prepared at the request of the Chairman of the Committee following a request by the committee itself. It is intended that a regular reporting schedule will be established so that members are kept informed of the volume of cases that are being received and the outcomes of those cases.