

DECISION-MAKER:	OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE		
SUBJECT:	PLANNING ENFORCEMENT		
DATE OF DECISION:	14 DECEMBER 2017		
REPORT OF:	SERVICE LEAD: INFRASTRUCTURE, PLANNING & DEVELOPMENT		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Sam Fox	Tel: 023 802044
	E-mail:	Samuel.Fox@southampton.gov.uk	
Director	Name:	Mike Harris	Tel: 023 802882
	E-mail:	Mike.Harris@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY		
None		
BRIEF SUMMARY		
This report sets out the approach to planning enforcement, including national guidance, how it is undertaken locally within Southampton, and some of the issues that are currently topical. It includes details of caseload and the Southampton City Council Enforcement Policy.		
RECOMMENDATIONS:		
	(i)	To consider and note the contents of the report.
	(ii)	To note and support the external review of Southampton City Council planning enforcement procedures.
REASONS FOR REPORT RECOMMENDATIONS		
1.	To respond to a request from the Chair of Overview and Scrutiny	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
2.	No alternatives have been considered.	
DETAIL (Including consultation carried out)		
	Legislative Background	
3.	The National Planning Policy Framework (NPPF) sets out the Government’s planning polices for England and how these are expected to be applied.	
4.	The NPPF sets out a presumption in favour of sustainable development. Para 187 states that “ <i>Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work pro-actively with applicants to secure developments that improve the economic, social and environmental conditions of the area</i> ”.	

5.	Paragraph 207 states that: <i>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.</i>	
6.	Not all building work requires a planning permission and not all unauthorised development is a criminal offence and therefore cannot be treated as one (unless the property is a listed building). Permitted development does allow some specified building works and changes of use to proceed without the need to submit an application for planning permission. We can take enforcement action to get them to put things back to how they were if need be or more often than not, we can request that the owner of an unauthorised development submits a retrospective application to obtain approval.	
7.	Where breaches of planning control are identified it is normal practice to invite the person responsible for the breach to remedy it by either removing it or regularising it with a planning application. It is important in doing this to balance the needs of the applicant, working pro-actively with them as required by the NPPF, at the same time as ensuring that the development is not harmful to neighbours and the wider population. This is often a difficult balance to achieve, and requires planning enforcement to mediate between different parties with different opinions of whether the development is acceptable and/or harmful.	
8.	Where there are breaches of planning control, which are deemed to be harmful and in need of remedy, those responsible are given an opportunity to remedy the breach voluntarily. If this does not lead to resolution of the issue then there are a series of formal actions that can be taken, using the powers in the Town and Country Planning Act.	
9.	These powers include the following:	
	Planning Contravention Notice	Used to formally establish the exact nature of the breach.
	Enforcement Notice	Served on those parties with an interest in the land, requiring the unauthorised development to either be removed or the unauthorised use to cease.
	Stop Notice	Used alongside an Enforcement Notice to require immediately the unauthorised use or development. Only used in exceptional circumstances to stop an immediate threat of harm.
	Breach of Condition Notice	Used to enforce the requirements of a condition attached to an existing planning permission.

	Section 215 Notice	Used to require the tidying up of land/buildings				
	Injunction	Secured through the Courts, requiring an unauthorised use to cease. Only used in exceptional circumstances.				
	Enforcement Policy					
10.	In accordance with the NPPF, the City Council has published an enforcement policy (see Appendix 1). This provides the framework for a robust planning enforcement service within Southampton city, and sets out the following: <ul style="list-style-type: none">• The purpose of planning enforcement• What is, and is not, a breach of planning control• How the council decides whether to take enforcement action and possible outcomes.• How the planning enforcement team will deliver the service• Clarification on how the Council prioritises complaints and timescales.• What happens if someone complains about you• Customer care					
11.	The Council uses this policy as a basis for dealing with enforcement cases.					
	Enforcement Cases					
12.	The enforcement team have received and investigated the following number of cases over the last 5 years.					
		Total cases	Enforcement Notices	Stop Notices	Breach of Condition Notices	Section 215 Notices
	2013	376	13	0	6	1
	2014	363	17	0	8	4
	2015	345	10	0	7	2
	2016	357	13	0	4	1
	2017 (to end November)	289	14	0	6	3
13.	The number of opened cases do not reflect the number of enforcement enquiries/complaints received, the numbers are higher for each year. There are several complaints/enquiries received where the matter is dealt with without the need to open a case, this is mainly due to there not being a breach or records held to demonstrate that no action is necessary etc.					
	Enforcement Team					
14.	The Enforcement Team is within the Infrastructure, Planning and Development service and has three members of staff. Karl Collymore is the Enforcement Supervisor and Gavin Grayer and Helen Sharp are Enforcement Officers.					

15.	The team work closely with the legal team, planning officers and other specialist advisors such as the arboriculture team, licensing, building control and environmental health. They also work closely with external agencies on multi-agency enforcement initiatives.
16.	The Service Lead has ensured that the team has maintained its full complement of staff during recent restructures, despite the need for the service to make financial savings.
	Current Issues
17.	<u>Difficulty in taking action:</u> Sometimes the Council is asked to take enforcement action against issues that are not breaches of planning control but may be able to be enforced against using different legislation (such as building regulation or statutory noise nuisance). Similarly they may be civic matters which the Council has no jurisdiction over. These can include land ownership and covenants.
18.	<u>Expediency:</u> Often there are cases, especially involving neighbour disputes, where there may be a technical breach of planning control (such as the height of a boundary wall or fence) but the harm being caused by it means that it is not expedient to take formal action to have it remedied. If formal action is taken in such cases then the Council can be at risk of maladministration. However, by not taking action this can lead to reputational risk. Expediency is not a matter that is well understood by the public. It is covered in the Council's Enforcement Policy.
19.	<u>Delays in taking action:</u> The planning system does not allow the Council to take immediate enforcement action to rectify breaches of planning control. There is a requirement to give those responsible for a breach to have the opportunity to rectify the breach voluntarily, either by undertaking works to make the development or use acceptable, or to bring it within permitted development rights. This can take considerable time. Keeping concerned neighbours and residents associated up to date with what can seem to them like a lack of action is a known source of frustration.
20.	It is also not normally reasonable to take formal enforcement action while a planning application or Lawful Development Certificate is being determined. Furthermore, it can also take significant time to gather evidence to prove whether or not there is a breach. This is particularly the case when investigating houses in multiple occupation.
21.	When formal enforcement action is taken there is also a requirement for a period (normally no less than 28 days) of time from when the notice is served before it comes into effect. There is also a need for formal notices to specify a reasonable time period for the breach to be remedied. It is also not uncommon for those responsible to exercise their right of appeal against an enforcement notice simply to get themselves extra time. Whilst this is frustrating, and demonstrates that the tools in the enforcement toolkit are not timely, it is legitimate. These are all matters that can frustrate both the Council and other interested parties and claims that enforcement is being ineffective.
22.	<u>Lawful Development Certificates:</u> Where a landowner believes that there is sufficient evidence to demonstrate that the development is lawful, either due to it being within permitted development, or due to the passage of time, then an application for a Lawful Development Certificate can be made. These are

	not, and cannot be, subject to the same assessment of material planning considerations and the policies within the Development Plan. They are simply an analysis of whether or not the development or the use is lawful. Again these are the subject of dissatisfaction for affected parties.
23.	<u>Powers to decline to determine planning applications:</u> The council has the power to decline to determine planning applications in certain circumstances as set out in Section 70A, 70B and 70C of the Town and Country Planning Act 1990 as amended by Section 123 of the Localism Act 2011.
24.	This is a discretionary power and not a duty which must be complied with, and a power which must be employed sensibly, rationally and proportionally. There is no right of appeal, which means the Council's decision can only be challenged by way of judicial review. Taking such a decision doesn't prevent subsequent applications from being made.
25.	The powers cover three categories of events, which could almost be described as "before, during or after", a precis of which is set out below.
26.	<u>Power to decline to determine subsequent application</u> The Council may decline to determine a planning application if the council think that there has been no significant change in the relevant development plan policies or other material considerations AND
27.	<ul style="list-style-type: none"> I. The SoS has refused a similar called-in application in the last two years; or II. The SoS has dismissed an appeal against the refusal of a similar application in the last two years; or III. The council has refused more than one similar applications in the last two years and there has been no appeal; or IV. The SoS has refused a similar application deemed to have been made as part of an appeal against an enforcement notice in the last two years.
28.	An application is similar to another application if the council thinks the development and the land to which the application relate are the same or substantially the same.
29.	<u>Power to decline to determine overlapping application</u> The Council may decline to determine a planning application, which
30.	<ul style="list-style-type: none"> I. Is made on the same day as a similar application, or II. Is made during the determination period of a similar application; or III. Is made at a time when a similar application is yet to be decided on appeal by the SoS; or IV. Is made during the appeal period for a similar application that has been granted, refused or not determined by the council; or V. Is made at a time when the SoS is yet to decide a similar application or one deemed to have been made as part of an appeal against an enforcement notice.
31.	<u>Power to decline to determine retrospective application</u> The Council may decline to determine a planning application for development which is the subject of a pre-existing enforcement notice.
32.	There has been criticism that the Council has had opportunities to decline to determine a limited number of planning applications using these powers. The

	Council's planning solicitor has provided a briefing note for planning officers so they are aware of these powers. The Service Manager will now pro-actively monitor such applications during the registration process with a view to thoroughly assessing new applications against these power in the future.
33.	<p><u>Enforcing on High Profile Sites:</u></p> <p>Sometimes there are high profile development sites, where there is an exceptionally high level of public interest and scrutiny. Despite the enforcement team, and other officers from the Council, building effective working relations with site owners, operators and contractors, these sites can lead to huge peaks in demand for the enforcement team to monitor and enforce these sites. These can lead to officers attending site visits and meetings multiple times a day (and night), and responding to high levels of correspondence. Sometimes on these sites, despite the high level of public interest, and intense involvement of the Enforcement team, there is not established evidence of breaches of planning control.</p>
	Review of Planning Enforcement Policy & Procedures
34.	Because of the ongoing level of interest in enforcement, and the difficulties of enforcing effectively with the legislation, the Service lead for Infrastructure, Planning and Development has commissioned an independent external enforcement expert to undertake a review of the Enforcement Policy and of the procedures used by the team.
35.	If this review identifies a need to update the Policy, or amend procedures, these recommendations will be considered and implemented where necessary.
	Other Matters
36.	There has been recent concern raised regarding planning decisions made under delegated powers despite the requisite number of objections and Councillor's objection which would trigger the application being determined by the Planning and Rights of Way Panel. Officers were made aware of one decision that residents and members felt had been made under delegated powers, when they felt the case should have been referred to Panel. The case did not receive the required number of resident objections to trigger referral to panel, but a Ward Councillor had submitted an email requesting referral to panel. Unfortunately the email address used was not the correct email address set out in the approval process, and subsequently the case officer did not receive the objection. The application was subsequently approved under delegated powers. The Service Director considered the situation, and having taken legal advice concluded that the decision should stand. Officers are not aware of any other decisions that members or residents feel have been taken at an inappropriate level. The referral process for members is carefully laid out in order to avoid such confusion.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
37.	There are no implications arising from this report
<u>Property/Other</u>	
38.	No implications as a result of this report.

LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
39.	Town and Country Planning Act 1990 alongside other primary and secondary legislations.
<u>Other Legal Implications:</u>	
40.	None
RISK MANAGEMENT IMPLICATIONS	
41.	Effective management of the Development Control process is important to protect the Council's reputation, to guard against challenges on decisions made and to support implementation of development projects.
POLICY FRAMEWORK IMPLICATIONS	
42.	The Council's strategic priorities include 'Strong and Sustainable Economic Growth' and 'Being an Attractive Modern City', both of which the Development Control process can make a significant contribution to.

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	All
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Southampton City Council Planning Enforcement Policy

Documents In Members' Rooms

1.	none
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
Privacy Impact Assessment	
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.	No