

## **BRECKLAND DISTRICT COUNCIL**

**Report of:** Rob Walker – Executive Member Place  
**To:** Overview and Scrutiny Commission 14 January 2021  
**Author:** Chris Curtis – Planning Enforcement Manager  
**Subject:** Planning Enforcement  
**Purpose:** To give an overview of the Planning Enforcement process

### **Recommendation:**

1. That Members note the contents of the report.

## **1 BACKGROUND**

- 1.1 Parliament has given Local Planning Authorities (LPA's) the primary responsibility for taking whatever enforcement action they consider necessary in the public interest in their area.
- 1.2 Enforcement action is discretionary, however a LPA's duty to investigate an alleged breach of planning control is not. Enforcement action is intended to be remedial rather than punitive and should always be commensurate with the breach of planning control to which it relates.
- 1.3 All enforcement cases should be investigated properly, and the following key questions answered: Is there development? Is there a breach? Can the breach be resolved through negotiation? Is the breach causing harm? Is enforcement expedient.
- 1.4 Negotiation is a key skill of any enforcement officer and in most cases, breaches can be resolved through this process. However, as soon as it becomes clear that a breach cannot be resolved amicably, and that there is ongoing planning related harm that is contrary to the public interest, enforcement officers should not be afraid to use their enforcement powers to remedy the breach.
- 1.5 The Planning Enforcement Service in Breckland has been provided by Capita since June 2009. At that time, the team consisted of a single Enforcement Officer and a single Assistant Enforcement Officer. The Team was increased in 2013 with the appointment of the current Manager and Technical Officer with no additional service charge to the Council.
- 1.6 Since 2013 the service has been extensively overhauled by implementing new fully electronic recording systems and adopting dynamic working practices. In 2018, again at no cost to the Council, the Team was furthered strengthened with the addition of an Assistant Enforcement Officer.
- 1.7 In 2019 the position of Legal Agreement Monitoring Officer was also brought under the supervision of the Enforcement Manager. This area of the service is currently undergoing a major overhaul.

## 2 The Enforcement Process

- 2.1 Planning Enforcement is a formal legal process and has to be carried out as such. If the LPA is to take enforcement action such action can be appealed to the Planning Inspectorate and can end up in court. It is possible for enforcement notices to be dismissed on legal technicalities such as not having been served properly.
- 2.2 Given the legal nature of the work, the reporting and investigation of enforcement complaints is very much process driven.
- 2.3 All complaints are received via the Council's online complaints form accessed through the planning pages on the website. This enable an audit trail to be completed, the complaint can also be pulled over onto the Councils back office database.
- 2.4 Once a complaint is received then it is assessed by the Enforcement Manager. He will take a view as to whether or not it is a genuine complaint and a likely breach of planning control. Some complaints will not go beyond this point if it is considered they can be better addressed by other legislation i.e. Environmental Health or Highways. It can also be apparent from an initial investigation that there is no actual breach of planning control. We will advise complainants and endeavour to pass the complaint onto the relevant body.
- 2.5 If it is decided a complaint needs investigating it is allocated to an enforcement officer. In a normal situation a site would generally be visited by the officer to determine the facts on the ground. If the matter is more complex then it is possible to serve a Planning Contravention Notice (PCN) to get more details and evidence about the alleged breach of control. A PCN is a legal document and it is an offence not to comply with it and answer the questions asked.
- 2.6 If the investigation has got to this stage then the enforcement officer will be working with a legal advisor to ensure that the PCN and the actions around it, such as service, are properly constructed and carried out.
- 2.7 Once the evidence gathering exercise has concluded then the enforcement officer will discuss with the manager the most appropriate way to proceed. National advice is to use formal action as a last resort.
- 2.8 There are several options when considering breaches of planning control:
  - No breach established – case closed
  - Invite an application to remedy the breach – decision reached in discussion with a planning officer
  - No further action – it is not expedient to take action. Taking formal action must be in the public interest. If a breach is minor, then this may be the conclusion.
  - Formal enforcement action.
- 2.9 It should be noted that it is possible to “under enforce”. That means using an Enforcement Notice to require the owner to carry out certain actions that make a development acceptable.
- 2.10 Serving an enforcement notice is always a last resort. National advice 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.*

*In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:*

- *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.*

2.11 It should also be noted that if there is a possibility that people may have to leave a residence then the enforcement team work closely with the housing service and give long periods of compliance within a notice to ensure enough time to find alternative accommodation.

2.12 Once an enforcement notice is served there is a right of appeal to the Planning Inspectorate. An appeal can be made on several grounds such as:

- Planning permission should be granted
- The notice was incorrectly served
- The time period for compliance is too short
- There is no breach of control
- The time for taking action against the breach has elapsed.

In relation to the last point the time periods after which action can't be taken are;

- Four years for a building operation or use of a building as a dwelling
- Ten years for all other matters

2.13 If an enforcement notice is upheld then the period for compliance kicks in. If the notice is not complied with then the matter goes through the court process and the owner/occupier can be prosecuted. It is open to the Council to take direct action or injunctive action to ensure compliance with a notice. That course of action can be expensive to the Council.

### **3 Performance:**

3.1 The Council has set Key Performance Indicators. These are:

- KPI-21 – Enforcement Cases resolved within 12 months of receipt unless agreed with client - >90%/quarter.
- KPI-22 – Number of High Priority/Urgent planning enforcement cases visited within 1 working day of registration - >90%/quarter
- KPI-23 – Number of other planning enforcement cases visited within 10 working days of registration - >80%/quarter.

As of 30<sup>th</sup> November 2020 the indicators were:

- KPI21 – 97%
- KPI22 – 100%
- KPI23 – 100%
  
- Cases received in 2020: 422 (increase of 36 on 2019)
- Cases closed in 2020: 394 (increase of 14 on 2019)
- Income generated through retrospective planning applications in 2020 £44,565.

3.2 The current Enforcement Team consists of:

- Chris Curtis – Enforcement Manager
- Gary Collins – Senior Enforcement Officer
- Ana-Maria Nash – Assistant Enforcement Officer
- Laura Steward – Technical Support Officer (0.6 FTE)
- Charlotte Brennan – Legal Agreement Compliance Monitoring Officer

3.3 The team carry out the following activities on behalf of the Council:

- Inspection of the site.
- Encourage resolution by negotiation, giving the appropriate advice depending on the circumstances.
- Identify and advise about lawful uses and if appropriate invite application for lawful use/development.
- Advise about planning permission and where appropriate invite retrospective applications to retain the development.
- Require cessation of unauthorised uses or developments.
- Bring unauthorised development under control. Where necessary issue notices.
- Deal with appeals against enforcement notices.
- Where appropriate prosecute and give evidence at criminal and civil court and public enquiries.
- Take remedial direct action when necessary to rectify breaches and return land to its proper condition.
- Pursue the Council's legitimate costs in all cases taken to any court or where remedial action has been necessary.

3.4 Legislation:

Although this list is far from exhaustive, all enforcement work must be undertaken within the framework provided by the following legislation:

- [Town and Country Planning Act 1990](#), subsequent and secondary legislation including The Town and Country Planning General Permitted Development Orders, Use Classes Orders, Development Management Order and Advertisement Regulations
- [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#)
- [Planning \(Hazardous Substances\) Act 1990](#)
- [Planning and Compensation Act 1991](#)
- [Planning and Compulsory Purchase Act 2004](#)
- [Localism Act 2011](#)
- [Infrastructure Act 2015](#)
- [Planning Act 2008](#)
- [Equality Act 2010](#), section 149
- [Human Rights Act 1998](#)

- [Planning & Energy Act 2008](#)
- [Local Government Act 1972](#)
- [Local Government \(Miscellaneous Provisions\) Act 1976](#)
- [Anti-Social Behaviour Act 2003](#)
- [Caravan Sites & Control of Development Act 1960](#)
- [Clean Neighbourhoods & Environment Act 2005](#)
- [Countryside & Rights of Way Act 2000](#)
- [Environment Act 1995](#)
- [Environmental Protection Act 1990](#)
- [Police & Criminal Evidence Act 1984](#)
- [Enterprise and Regulatory Reform Act 2013](#)
- [Growth and Infrastructure Act 2013](#)
- [Housing Act 2004](#)
- [Pollution Prevention and Control Act 1999](#)
- [Hedgerow Regulations 1997](#)

3.4 This highlights the complexity of the enforcement service. It also requires the enforcement team to work closely with services within the Council as well as outside agencies such as the Environment Agency and the County Council.

#### **4 Condition Monitoring:**

4.1 Members have specifically requested information on monitoring of planning conditions. Breckland Council is not unusual, in comparison with most other Councils, in that there is no capacity to proactively monitor conditions, and there is a reliance on reactive investigation to complaints of non-compliance.

4.2 It must be said that many conditions are imposed at the request of other agencies such as County Council Highways, Environmental Protection, and the Lead Local Flood Authority. None of these agencies actively monitor the conditions they have requested, and in fact are at times reluctant to provide expert evidence that conditions have been breached. Without such evidence it would be impossible to evidence a breach and to withstand rebuttal at any formal proceedings, and furthermore would put the Council at risk of costs from failed proceedings.

4.3 It is also of note that there are occasions that a breach of condition will constitute an offence under other legislation which should be the primary way of dealing with such matters, again there is a reluctance seen from other agencies to use their legislative powers, some of which are far more expedient than using planning legislation.

4.4 In an average year Breckland Council grants more than 2000 planning permissions, with a good majority of those permission having double figure conditions. It is currently

logistically impossible to carry out any proactive on monitoring of those conditions without an increase in staff dedicated solely to that task. Even with an increase in staff some degree of risk management would have to be employed in deciding which permissions to monitor.

2.0 **REASONS FOR RECOMMENDATION(S)**

2.1 To give an understanding of the Enforcement Service

3.0 **WARDS/COMMUNITIES AFFECTED**

3.1 All

4 **ACRONYMS**

4.1 LPA – Local Planning Authority

**Lead Contact Officer**

Name and Post: Simon Wood – Director of Planning and Building Control  
Telephone Number: 07775036582  
Email: simon.wood@breckland.gov.uk

**Key Decision:** No

**Exempt Decision:** No

**This report refers to a Mandatory Service**