

BRECKLAND DISTRICT COUNCIL

Report of: Rob Walker – Director – Place and Delivery
To: Planning Committee
Author: Simon Wood – Director of Planning and Building Control
Subject: Planning Enforcement
Purpose: To give an overview of the Planning Enforcement process

Recommendation: 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.

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 The vast majority of 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. It is recognised that some complainants may be disadvantaged or

not computer literate and for those rare occasions' complaints will be accepted in hard copy.

- 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 the following grounds:

- Ground (a) – that planning permission ought to be granted for the development (or if the enforcement notice relates to the breach of a condition on a planning permission, that condition should be removed from the permission);

- Ground (b) – that the breach of planning control alleged in the enforcement notice has not occurred;
- Ground (c) – that the alleged breach of planning control does not in fact require planning permission;
- Ground (d) – that it is too late for the authority to serve an enforcement notice, i.e. for building and other operations and for the use of a property or part of one as a single dwelling the breach of planning control occurred more than 4 years ago or for other breaches more than 10 years ago;
- Ground (e) - Copies of the enforcement notice were not properly served on the relevant parties, i.e. the landowner, occupiers and those with an interest in the land;
- Ground (f) – that the steps for compliance required by the notice are excessive; and
- Ground (g) – that the period for compliance with the notice is too short.

2.13 If an enforcement notice is upheld then the period for compliance commences at the time of determination. If the notice is not complied with then the matter goes through the court process and the owner/occupier can be prosecuted.

3 Workloads and Resources

3.1 The current Enforcement Team consists of:

- Enforcement Manager
- Senior Enforcement Officer
- Assistant Enforcement Officer (0.80 FTE)
- Technical Support Officer (0.80 FTE)
- Legal Agreement Compliance Monitoring Officer

3.2 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.

3.3 The following levels of complaints have been received and closed since 2018:

Year	Complaints Received	Complaints closed
2018	332	329
2019	386	388
2020	422	394
2021 (up to 31 May)	194	180

This shows a steady increase in complaints over the last four years, with an anticipated level of complaints in 2021 of 465 if current levels continue.

3.4 The cases closed in 2021 were closed for the following reasons:

- No Breach of planning control established - 83
- Not Expedient to take action - 3
- Notice Issued/Complied with - 1
- Plan Application received and validated - 20
- Permitted Development - 21
- Referred to another service - 21
- Remedied through informal discussion - 27

- Use/Operational Development Lawful – 4

3.5 There are many issues that the Planning Enforcement Service is not able to deal with, either because they are better addressed through other legislation, or the matters are not able to be addressed through the planning acts. In situations such as these officers seek to identify the best body or organisation to address those issues and advise complainants accordingly.

3.6 It is also important to remember that national advice makes it clear that Local Planning Authorities should ensure that responses to breaches of planning control should be pragmatic and proportionate to the breach of controls. Breaches of planning control are not criminal offences, and any breach has to cause significant harm to policy, and not be able to be resolved by any other means, before formal enforcement action is taken.

4 Condition Monitoring:

4.1 Members have specifically requested information on monitoring of planning conditions. Breckland Council is not unusual, like 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 number of those permissions having double figure conditions. It is currently logistically impossible to carry out any proactive 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.

5.0 **Conclusion**

5.1 There is a clear expectation that planning enforcement is able to react immediately and stop any operation where there is a suspected breach of planning control. This is far from the case, and it has to be an extremely serious breach of planning control for such action to be able to be taken. Planning control is centred on negotiation and the informal resolution of cases. It very rarely results in formal action, most breaches can be resolved through a retrospective planning application or informal agreement to remedy and breach of a minor nature.

5.2 Of the 180 cases closed so far in 2021, 125 of them either had no breach of control, were permitted development or were referred to another service area to investigate.

5.3 It is true to say that formal enforcement action is rare, but that is as it should be. Formal action is very much a last resort.

5.4 The Enforcement Service is under increasing pressure, the vast majority of the cases either not being matters the planning enforcement service should investigate or matters that do not constitute a breach of planning control. It has a good record of clearing cases and resolving breaches of control informally, which is the approach advised in national guidance. If the Council wishes to be more proactive in terms of monitoring conditions and enforcement then there will need to

be an increase in resources and budget, both relating to the enforcement team itself and also legal services given that this is very much a legal process.

6.0 **RECOMMENDATION**

That Members note the report

7.0 **WARDS/COMMUNITIES AFFECTED**

7.1 All

8.0 **ACRONYMS**

8.1 LPA – Local Planning Authority

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service