

To: Scrutiny Committee

Date: 7 June 2016

Report of: Head of Planning & Regulatory

Title of Report: Review of Planning Enforcement Activity

Summary

Purpose of report: To update the Scrutiny Committee on the current position regarding the Planning Enforcement function and the future plans for the service.

Key Decision: No

Executive lead member: Councillor Alex Hollingsworth, Board Member for Planning and Regulatory Services

Report author: Ian Wright, Environmental Health Service Manager

Policy Framework: Efficient and Effective Council

Appendices to report:

Appendix 1 – Service Request Priority

Appendix 2 – Investigation outcomes

Appendix 3 – Enforcement action by Top 10 district councils in England

Background

1. The Scrutiny Committee requested a report to update them on the planning enforcement function and how the service is delivered.

National position

2. The Government's view is that the integrity of the planning system depends on the readiness of Local Planning Authorities to take effective enforcement action. The main national objectives of the planning enforcement process are 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.
3. However, Planning compliance and enforcement is a very complex area of planning law and carrying out development without planning consent is generally not a criminal offence (unless in relation to making changes to listed buildings, protected trees and advertisements which operate under separate regimes).
 4. Enforcement action is discretionary and this is an important aspect of planning enforcement. Just because something is a breach of planning control is not, in itself, a reason to take enforcement action or to seek to punish the individual concerned. Even when it is technically possible to take action the council is required by policies and legislation set by central Government, to first decide if such formal action would be “expedient”. Expediency is a test of whether the unauthorised activities are causing harm having regard to the Development Plan policies and other material planning considerations such as amenity.
 5. This means that formal enforcement action is discretionary and all the relevant planning circumstances of each case must first be considered. Central Government advice is that ordinarily formal action should be a last resort and that councils are expected to give those responsible the chance to put matters right before serving a formal notice. However, when the breach of planning control is causing unacceptable serious harm or nuisance to public amenity formal action will not be delayed by protracted negotiation. Enforcement action will therefore always be commensurate with the seriousness of the breach of planning control. The enforcement regime also includes the right of appeal where enforcement notices are served and this can add time to the overall period that it can take to resolve even the most serious breaches of planning control.
 6. These factors have resulted in a national planning enforcement regime that is often slower to achieve results with formal action than most other regulatory areas enforced by local authorities.

The position in Oxford

7. There are 2 FTE officers carrying out purely planning enforcement work.
8. Due to the resource levels the planning enforcement service is primarily reactive and the main proactive work in recent years has been with regard to Unlawful Developments, where funding from DCLG resulted in a significant amount of proactive visits taking place and elevated levels of enforcement action.
9. The number of complaints dealt with by the Planning Enforcement Service over the last 6 years is provided in the table below. The 25% drop in complaints in 2015/16 has occurred because there has been a change in the way that cases are recorded.

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Cases	673	659	639	685	610	465

10. Cases reported may or may not require a site inspection and may be referred to other departments or agencies as appropriate. Because of the often lengthy and complex nature of planning investigations and staff resources available, priority is given to those cases where the greatest harm is being caused, such as unauthorised development having a widespread impact in an area or that directly contravenes local planning policies or national guidance.
11. When complaints are first received they are assigned a priority dependent upon the nature of the alleged breach. This initial assessment will be dependent upon the information provided at the time and the harm that is identified, such as possible harm to the environment or public and/or planning significance. Complaints are prioritised as high, medium or low depending on the nature of the issue and the criteria for priorities are contained in appendix 1.

Response times & performance

12. Complaints about planning contraventions are responded to in accordance with their priority. High priority complaints are responded to within 2 days, medium within 2 weeks and low priority within a month. The time taken in 2014/15 to the first action is provided in the table below:

High	Medium	Low
2 days	2.5 weeks	2 weeks

13. Whilst some cases are quick to resolve, the majority are complicated and the timescales involved mean that many cases take a considerable time before an application is approved or formal action is taken. The average time in weeks to resolve all cases by priority for the last 6 years is given below:

	High	Medium	Low
2010-11	18	24	13
2011-12	11	21	10
2012-13	29	22	13
2013-14	22	21	10
2014-15	15	16	10
2015-16	11	9	7

Investigation outcomes and enforcement activity

14. There are a number of potential outcomes following an investigation into an alleged breach of planning legislation, ranging from no action to the service of legal notices. The possible outcomes are contained in appendix 2. The approach taken will depend on the circumstances of each case.
15. All local authorities are required to submit regular data to the government on planning functions and this includes enforcement activity. It is therefore possible to compare the level of enforcement in Oxford with all the other district councils in England. The latest data up to December 2015 showed that Oxford City Council

ranked 7th out of 201 district councils for overall levels of planning enforcement. See appendix 3. When compared with every local planning authority in England, including London Boroughs and Unitary Councils, Oxford was ranked 37th. This indicates that, despite the perceptions, Oxford City Council has one of the strongest enforcement regimes in England based on the numbers of legal notices served.

Restructure of Planning and Regulatory Services and future service delivery

16. The service has recently been restructured and a number of changes have been introduced. Planning Enforcement has been moved out of Development Management and located as part of a new combined enforcement team with the Private Sector Safety team in Environmental Health. The changes will deliver greater resilience through restructuring the activities into a single team approach.
17. This change will enable an improved focus on pro-active work as well as a wider sharing of knowledge, skills and experience amongst members of the team. Environmental Health Officers are often involved in the same cases as Planning Enforcement Officers and so they will be able to provide evidential support to increase capacity. Planning Enforcement Officers will no longer deal with cases once a planning application has been made and the application will transfer to Development Management with all other planning applications.
18. An Internal Audit was carried out in March 2016 on enforcement in regulatory services including planning enforcement. The report gave the enforcement function a moderate rating (the second highest rating) and concluded that, in the main, there are appropriate procedures and controls in place to mitigate the key risks reviewed albeit with some that are not fully effective.
19. The report made the following recommendations which will be used to improve the Planning Enforcement Service 2016/17:

Recommendation	Action
A separate and more detailed Planning Enforcement Policy should be created in line with the guiding principles of the Council's Corporate Enforcement Policy	An enforcement policy will be developed to go to CEB by December 2016
Consideration should be given for each area and how they can become more proactive; subsequent actions then need to be taken to implement such initiatives	A proactive approach will be developed to identify appropriate complex developments that may benefit from proactive compliance work.
Discussion should be had to set out the KPI's for all enforcement areas and these should then be reported and monitored by the Head of Planning and Regulatory Service at agreed intervals	Improve the reporting mechanism for planning enforcement actions: <ul style="list-style-type: none"> • Time take to respond to a complaint/potential breach • Breaches analysed by the type and/or location • Time taken to close a case.

Next steps

20. The Committee is asked to note the report and request an update on progress report in 12 months time.

Name and contact details of author:-

Name Ian Wright

Job title Environmental Health service Manager

Service Area / Department: Planning and Regulatory Services

Tel: 01865 252553 e-mail: iwright@oxford.gov.uk

List of background papers: *None*

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