

**Decision Session - Executive Member for 19 July 2023**  
**Housing, Planning and Safer**  
**Communities**

Report of the Head of Planning and Development Services

**Planning Enforcement Cases Update**

**Summary**

1. The purpose of this report is to provide the Executive Member with an update on planning enforcement cases and the progress of work within the enforcement team.

**Recommendation**

2. The Executive Member is asked to note the contents of the report.

Reason: To ensure the Executive Member is aware of the work currently being undertaken in Planning Enforcement.

**Background**

3. A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:
  - The carrying out of development without the required planning permission; or
  - Failing to comply with any condition or limitation subject to which planning permission has been granted.
  - Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.

4. The National Planning Policy Framework para 58 deals with planning enforcement and states that “Effective enforcement is important to maintain public confidence in the planning system.”
5. The City of York Council Planning Enforcement team responds to and investigates complaints about breaches of planning control. Planning enforcement complaints can be extremely complex and time consuming. The investigation process can involve Enforcement Officers working alongside both colleagues across the Planning Service and other departments within the Council and externally. This complexity serves to add to the time taken to resolve an issue. Some cases are best resolved quickly through working in partnership with other agencies and departments. The Council’s Enforcement procedures/Policy can be found here [Planning enforcement – City of York Council](#).
6. In order to make most effective use of the Council’s resources, the cases are dealt with in order of priority with the greatest urgency given to cases causing the greatest levels of harm or where such harm would be irreversible.
7. The Council’s planning enforcement powers are discretionary, and action cannot be taken simply because there has been a breach in planning control. Enforcement action should only be taken where the Council is satisfied that it is ‘expedient’ to do so, having regard to the relevant planning policy and to any other material planning considerations. In making this assessment the Council will gather evidence regarding the nature and scale of the breach, and whether it unacceptably affects public amenity and or the built or historic environment.
8. Reasons for not taking further action might include:
  - The age of the breach.
  - The breach is ‘de minimis’.
  - Planning permission would be likely to be given if applied for.
  - The level to which the breach has been evidenced is not sufficient to demonstrate a significant enough degree of harm to warrant further action.

- Benefits outweigh the harm.

9. When considering 'de minimis' sometimes a breach in planning regulations may be either very small in dimension (a building constructed 5cm higher than permitted height for example) and/or its impact is negligible (e.g. children's nursery with permission for 40 places operating 41 places). As long as this does not unacceptably affect public amenity and or the built or historic environment then it would not be reasonable or proportionate for the Council to take action.

10. It should be noted that of the breaches of planning control reported to the Council, a significant number of construction projects and use changes are found to be Permitted Development. Central Government gives householders and businesses Permitted Development rights to undertake certain building operations and changes of use without the need to first seek the consent of the Council. Where this occurs, in the absence of the consultation process associated with a planning application, the first a neighbour may be aware of a proposed development is when building operations commence. An enforcement complaint to the Council often swiftly follows. Investigating these complaints forms a significant element of the Council's enforcement workload.#

11. The Council's Enforcement Team have a number of ways of enforcing planning breaches and these include:

- Enforcement Notice
- Planning Enforcement Order
- Stop Notice
- Temporary Stop Notice
- Breach of Condition Notice
- Section 215 Notice (untidy land)

12. The actions outlined above can be used by the Local Planning Authority (LPA) in order to rectify planning breaches. The report below outlines the number of Enforcement notices and Section 215 notices that have been served.

13. Enforcement notices clearly outline what in the LPA view constitutes the breach of planning control and what steps the local planning authority require to be taken or what activities are required to cease to remedy the breach.

14. Section 215 notices provides a LPA with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out.

### **Current Position**

15. Between 31 May 2022 and 1 June 2023, 984 new planning enforcement investigation cases were received and 679 cases were closed. A total of 722 investigations remain open. There were 7 Enforcement Notices in respect of Houses in Multiple Occupation following the introduction of a new licensing regime for these properties. Further details and discussion are contained in paragraph 27 onwards of this report.

16. By comparison:

In 2021      605 cases opened

645 closed

8 Enforcement Notices were served

In 2020      599 cases opened

467 closed

12 Enforcement Notices were served

In 2019      592 cases opened

712 closed

13 Enforcement Notices were served

In 2018      689 cases opened

759 closed

4 Enforcement Notices were served

In 2017 699 cases opened  
80 closed  
7 Enforcement Notices were served

In 2016 - 501 cases opened  
367 closed  
3 Enforcement Notices were served

In 2015 - 483 cases opened  
352 closed  
2 Enforcement Notices were served

17. Between 31 May 2022 and 1 June 2023 of the cases closed 105 cases were not expedient to pursue, 57 were found to be permitted development, 157 were found to be not in breach of planning control and 145 breaches were rectified following work undertaken by the team, 29 were granted planning permission.

18. Currently the Council has 31 cases awaiting the outcome of a planning application.

19. In this period 7 Enforcement Notices were served. These related to:

- 4 properties that have been changed in their use from a dwellinghouse to a short term holiday let.
- The unauthorised erection of stables.
- The unauthorised erection of an extension.
- The unauthorised creation of a new vehicular access and ground works on grazing land.

20. As outlined above the Council also utilises Section (S) 215 Notices to ensure untidy land which is harmful to amenity is rectified.

- 5 S215 Notices have been served (to date) in 2023
- 0 in 2022
- 0 in 2021
- 2 in 2020

- 0 in 2019
- 1 in 2018
- 4 in 2017
- 3 in 2016
- 1 in 2015

21. A more detailed synopsis of these and other recent Notices served, taken from the Planning Enforcement Register, is contained within Annex 1 of this report. Please note that the Council is required to remove Notices from the register under certain circumstances such as where an appeal is allowed or where the Notice is later withdrawn. These Notices are not included in the Register.
22. The Planning Enforcement Register is published on the Council's website. It was last updated on 28 June 2023. The Register has details of Notices and orders for the last 14 years (2009 onwards) in an Excel spread sheet set out in a yearly basis. Records prior to 2009 remain in the paper file format and are available to view by appointment for members of the public. The online register will be updated every 6 months.
23. Where a breach of planning control has been identified it does not automatically follow that formal enforcement action should be pursued. Where a breach of planning control is found, the Council must first use its discretionary powers to consider whether it is expedient to pursue formal action.
24. The expediency test can be a complex one and relies heavily on Officers' planning judgement. Planning enforcement investigations can be lengthy and complicated. In order to make most effective use of staff resources, it is usually necessary to give priority to those cases where the greatest or irreversible harm is being caused. Typically the highest priority is given to unauthorised demolition, substantial or irreversible alterations to a Listed Building, unauthorised works to protected trees or trees within a Conservation Area and unauthorised demolition within a Conservation Area causing irreparable harm. The plan priorities for investigation and action are set out in the Enforcement Plan which is set out on the Council's website.

25. The complexity and inevitable time taken to resolve planning issues can result in significant frustration for members of the public. This generally occurs as a result of a number of factors including planning applications and subsequent appeals. An Enforcement Notice can also be appealed to the Planning Inspectorate. This process can also add significant delays. Consequently enforcement action must be put on hold. One of the areas of concern raised by members of the public during the enforcement process is communication and updates from Enforcement Officers. The aforementioned complexity can result in an investigation taking a significant amount of time. Not hearing from the Council during this period can give rise to considerable frustration, a poor perception of the service and associated complaints.
26. In the past 12 months enhancements have been made to the back office system to improve processes around customer service and providing progress updates to complainants.

### **Going forward**

27. It is envisaged that the key challenge for the Planning Enforcement Team over the next 12 months will be the investigation of a large number of House in Multiple Occupation cases.
28. As of the 1 April 2023 City of York Council has introduced an additional licensing requirement for any HMOs occupied by three or four people who form more than one household - and where householders share facilities such as the kitchen, bathroom, or toilet. Additional licensing requirements relates to properties in eight wards including Clifton, Fishergate, Fulford and Heslington, Guildhall, Heworth, Hull Road, Micklegate and Osbaldwick and Derwent. These wards are recognised to have the highest densities of HMOs in the city.
29. In order to ensure these properties also benefit from the required planning consents the Licensing Team have supplied the Planning Enforcement Team with details of the properties which have applied for new licenses. An investigation has been opened for each property so that the team can check whether the use of that property is lawful. This would generally mean that it has been in use for the requisite period of time. In the case of a change of use to a HMO that period would be 10 years. Lawful can also mean

that it already benefits from planning permission or that a certificate of lawfulness has been issued. Being lawful would make the use immune from enforcement action.

30. Whilst the Council's enforcement priority will remain those breaches of planning control identified as Category A by the Enforcement Policy. (Generally works which are irrecoverable such as those to Listed Buildings and Protected Trees.) Enforcement Officers have been instructed to prioritise HMO enforcement cases above other breaches not classified as category A so as to deal with them as quickly as possible.
31. To date 379 HMO investigations cases have been opened and 70 have already been closed. Of these 69 were found to already have planning permission / a certificate of lawfulness has been issued or were immune from enforcement. One was found to be not expedient to take enforcement action against as it had been in use for a considerable period of time without giving rise to any significant harm. Given the relative infancy it is difficult yet to offer a detailed analysis of percentages that are lawful. New HMO cases continue to be received in large numbers.
32. Where a property is found not to be in a lawful planning use it will be investigated and enforcement action taken where it is expedient to do so. As part of the investigation, the acceptability of the use will be assessed against Planning Policy and any other material planning concerns. In terms of HMO properties the principal Policy consideration is Local Plan Policy H8. This Policy requires;

#### *Local Plan Policy H8*

33. *Houses in Multiple Occupation Applications for the change of use from dwelling house (Use Class C3) to HMO (Use Class C4 and Sui Generis) will only be permitted where:*
  - i. it is in a neighbourhood area where less than 20% of properties are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning consent or are known to the Council to be HMOs; and*



*ii. less than 10% of properties within 100 metres of street length either side of the application property are exempt from paying council tax because they are entirely occupied by full time students, recorded on the Council's database as a licensed HMO, benefit from C4/Sui Generis HMO planning permission or are known to the Council to be HMOs; and*

*iii. the accommodation provided is of a high standard which does not detrimentally impact upon residential amenity.*

34. In terms of the consideration of unauthorised HMOs the assessment of planning merits is much the same as those had a planning application been received for this use of the property. The HMO use will be assessed in its acceptability against the street and neighbourhood saturation levels and threshold set out in Policy H8 above. Properties which are known to be in use as HMOs are recorded in the Council's HMO data base. Other issues will also be considered in any enforcement decision such as parking and highway safety, impact upon neighbouring amenity and bin storage.

### **Consultation**

35. No formal consultation has taken place.

### **Council Plan**

36. The following Council priorities are relevant:

- Good health and wellbeing
- A greener and cleaner city
- An open and effective council

### **Implications**

37.

- **Financial** There are no financial implications
- **Human Resources (HR)** There are no HR implications
- **Equalities** There are no equalities implications
- **Legal** There are no legal implications
- **Crime and Disorder** There are no crime and disorder implications
- **Information Technology (IT)** There are no IT implications
- **Property** There are no property implications
- **Other** There are no other implications

## Risk Management

38. There are no known risks

### Contact Details

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**Report**  **Date** 11/7/23  
**Approved**

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**All**

**Wards Affected:**

**For further information please contact the author of the report**

**Background Papers:** None

**Annexes:**

Annex 1 - Summary of Enforcement Notices served in 2018, 2019, 2020, 2021, 2022 and 2023 as detailed in the Planning Enforcement Register.