

**Decision Session - Executive Member for
Economy and Strategic Planning**

28 June 2022

Report of the Head 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 current issues facing 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.

6. In order to make most effective use of the Councils 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 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)

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

9. 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.

10. 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

11. During 2021, 606 new planning enforcement investigation cases were received and 648 cases were closed. A total of 496 investigations remain open. 7 Enforcement Notices were served.

12. By comparison:

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

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

In 2017- 699 cases opened
880 closed
7 Enforcement Notices were served

In 2018 - 689 cases opened
759 closed
4 Enforcement Notices were served

In 2019 - 592 cases opened
712 closed
13 Enforcement Notices were served

In 2020 - 526 cases opened

504 closed

2 Enforcement Notices were served

13. In 2021, of the cases closed, 137 cases were not expedient to pursue, 28 were found to be permitted development, 169 were found to be not in breach of planning control and 68 breaches were rectified following work undertaken by the team. 7 were granted planning permission.

14. Currently the Council has 35 enforcement cases awaiting the outcome of a planning application.

15. In 2021, 7 Enforcement Notices were served. These included:

- The service of 3 Listed Building Enforcement Notices in relation to unauthorised adverts.
- The service of an Enforcement Notice in relation to 8 unauthorised greenhouses to be used as outdoor dining shelters.
- The service of an Enforcement Notice in relation units being occupied as workshops not storage only.
- The service of an Enforcement Notice in relation to the unauthorised change of use of agricultural land to domestic curtilage.
- The service of an Enforcement Notice in relation to air conditioning unit in new dormer not in compliance with the approved plans.

16. It should be noted that the Council is required to remove Notices from the Enforcement Register under certain circumstances such as where an appeal is dismissed or where the Notice is later withdrawn. These Notices are not included in the Register.

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

- 1 S215 Notice was served in 2015
- 3 in 2016
- 4 in 2017
- 1 in 2018
- 0 in 2019.
- 1 in 2020
- 0 in 2021

18. The Planning Enforcement Register is published on the Council's website. The register has details of Notices and orders for the last twelve years (2009 onwards) in an excel spreadsheet set out on 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 approximately every 6 months.

19. The last 12 months has been a very difficult period for the team with a significant number of new enforcement cases having been received and the retirement of 3 long serving and experienced enforcement officers within a short period of time. This resulted in a number of months where the team was extremely short staffed. 3 of the 4 full time enforcement posts within the team were left vacant. Following a recruitment drive 3 new enforcement officers have now been recruited and are being trained up. Cases are beginning to be progressed swiftly and caught up.

20. Of the breaches of planning control reported to the Council, a significant number of developments 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 work load.

21. 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. The expediency test can be a complex one and relies heavily on Officers' planning judgement.

22. 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.

23. 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.

24. 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. As part of ongoing management of the service the Acknowledgement letter received by complainants has been changed to take into account feedback from the Councils complaints. This has been done to improve the service perception in this area. Officers will improve communication thorough providing more regular updates, even if this is to simply inform a complainant that the case is still open and being investigated. Regular updates will help to reassure members of the public that their concerns are being addressed despite the apparent delay. Processes are currently being developed within the computer system that will prompt enforcement officers to update complainants throughout the process.

25. The Councils computer system will now provide 3 monthly reminders to Enforcement Officers to update complainants.

Consultation

26. This report is for the Executive Member therefore no consultation has taken place regarding the contents of the report.

Council Plan

27. The following Council priorities are relevant:

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

28. Implications

- **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

29. There are no known risks.

Contact Details

Author:

Rob Harrison
Principal Development
Management Officer
Tel: 01904 553775
rob.harrison@york.gov.uk

Becky Eades
Head of Development Services
Tel: 01904 551627
becky.eades@york.gov.uk

Chief Officer Responsible for the report:

James Gilchrist
Director of Transport, Environment and
Planning

Report **Date:** 17 June 2022
Approved

All

Wards Affected:

For further information please contact the author of the report

Background Papers: None