

Executive Member for the Economy and Strategic Planning Decision Session

Report of the Head of Planning and Development Services

Planning enforcement cases update and proposals for the future.

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 on its development and the new Enforcement Plan.

Recommendation

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

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 existing Enforcement procedures 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.

Reasons for not taking further action might include:

- The age of the breach
- The breach is 'de minimus'
- 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

8. When considering 'de minimus' 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 (eg 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.

9. 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)

10. 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.

11. 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.

12. 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

13. During 2020, 499 new planning enforcement investigation cases were received and 467 cases were closed. A total of 580 investigations remain open. 12 Enforcement Notices were served.

14. 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

15. Between 1 January 2020 and the 31st December 2020 of the cases closed, 135 cases were not expedient to pursue, 27 were found to be permitted development, 164 were found to be not in breach of planning control and 52 breaches were rectified following work undertaken by the team. 32 were granted planning permission.

16. Currently the Council has 43 cases awaiting the outcome of a planning application.

17. In 2020, 12 Enforcement Notices were served. These included:

- Failure to comply with noise conditions.
- Failure to clad a development.
- An unauthorised porch.
- An unauthorised access road.

- Conversion of stables to a holiday let.
- Creation of an access track and septic tank in a field within the Greenbelt.
- The erection of a dormer within a Conservation Area.
- Untidy land.

18. A more detailed synopsis of these and other recent Notices served, taken from the Planning Enforcement Register, is contained within the Annex section 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 dismissed or where the Notice is later withdrawn. These Notices are not included in the Register.

19. 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
- 2 in 2020

20. The recently updated Planning Enforcement Register is published on the Council's website. The register has details of Notices and orders for the last 12 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 every 6 months.

It should be noted that since the appointment of a Principal Planning Officer for the Enforcement team in November 2019 a significant period of change has commenced in terms of managing workloads and working on backlogs that exist within the team. Unfortunately this has recently been set back with periods of long term staff sickness and 2 staff have

taken retirement. Efforts are now underway to recruit additional staff to these posts.

Going forward

20. The National Planning Policy Framework para 58 deals with planning enforcement and states that Local Planning Authorities “should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

21. The Planning Enforcement team are finalising the first draft of a new Planning Enforcement Plan to replace the current Enforcement Policy which is set out on the Councils website as a web page. It will be entitled the City of York Council Planning Enforcement Plan. The plan will shortly be made available to the Executive Member for comment and is being discussed with Executive members and the Council Corporate Management team.

22. An Enforcement Plan gives the Council an opportunity to set out:

- How both the wider planning system and the Councils own Planning Enforcement Service operates
- The purpose of planning enforcement
- What the team can investigate
- How decisions will be made,
- Expediency
- Permitted development
- The enforcement register,
- How to report a breach of planning control
- Options available for formal action.

23. By dealing with these issues the Plan will allow engagement in the process of defining objectives and priorities which are tailored to York’s special character and heritage. It will define the priorities for enforcement action, which will inform decisions about when to take enforcement action. This is particularly important as it will provide greater transparency and accountability about how the Local Planning Authority will decide if it is expedient to exercise its discretionary powers. Finally this clearly defined policy will provide greater certainty for all parties engaged in the development process.

24. 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. The Enforcement Plan highlights issues of permitted development to users of the Enforcement Service at the earliest opportunity.

25. 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. The plan provides greater detail and transparency in this area.

26. 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 will set out the priorities for investigation and action. The plan also identifies cases where the Council will not take action in order to make best use of its resources.

27. 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. Highlighting these constraints to members of the public involved in the process is a key element of the Plan.

28. 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. The Enforcement Plan sets out how the Council will manage both public expectations and provide an insight into the process so as to improve the service perception in this area. Officers will improve communication thorough providing more regular updates, even if this is to simply informal a complainant that the case is still open and being investigated. Officers are currently also looking at automated updates generated through the Uniform System for complainants. Regular updates will help to reassure members of the public that their concerns are being addressed despite the apparent delay.

29. Development Services has introduced the Enterprise element of the uniform system. Enterprise allows for more in depth case monitoring of the progress of both planning applications and enforcement cases. The system has helped to ensure the effective management of cases. Through the use of this system it is also intended that communication with complainants is improved with timescales introduced for the Councils Planning Enforcement Officers to regularly communicate with complainants. The operation and targets set by the system is to be informed by the plan. The new software will provide reminders to Officers to update complainants at regular intervals or when the status of a case changes (such as when a case is closed or a Notice served).

30. The new Plan will also be related to and link in to the creation of an online form for the reporting of breaches of planning control. Most breaches of planning control area now brought to the attention of the Council electronically. The use of the form will allow the Council to source as much information relevant to the breach as possible to assist with any investigation. The collection of this information in an electronic format will result in it being able to be transferred to the Councils records in a much simpler and faster manner to speed up the registering process.

31. Throughout the Covid-19 Pandemic the Councils Enforcement Officers have overcome significant challenges to work within the law and government guidance when visiting sites. The often incredibly strict guidelines have made visiting some sites incredibly difficult. However where visits have not been possible during the various lock down restrictions, Officers have utilised the time to catch up and review old cases to keep cases flowing and workloads from building up. The

service has remained effective through the service of Notices and the pursuit of action and visits where possible.

32. Finally the team is currently facing difficulties with staffing due to three Officers taking retirement. During this period the remaining members of the team have responded to the most urgent cases. Recruitment to these post is currently underway. It is however recognised that the team is limited in its ability to respond to effectively respond to all enforcement complaints by virtue of its limited resources, particularly expectations in relation to proactive site monitoring. As part of the recruitment process the number of permanent officers in the team has been increased by 0.8fte.

32. Consultation

No formal consultation has taken place.

33. Council Plan

The following Council priorities are relevant:

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

34. 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

35. Risk Management

There are no known risks

32. Contact Details

Author:

Chief Officer Responsible for the report:

Author's name

Rob Harrison
Principle Development
Management Officer
Tel: 01904 553775

Neil Ferris

Corporate Director of Economy and Place

**Report
Approved**

Date 20/09/2021

Becky Eades
Head of Planning and
Development Services
Tel: 01904 552814

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Summary of Enforcement Notices served in 2015, 2016, 2017, 2018 and 2019 as detailed in the Planning Enforcement Register.