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**Economy and Place Policy and Scrutiny  
Committee**

**11<sup>th</sup> March 2020**

Report of the Assistant Director for Planning and Public Protection

**Planning Enforcement**

**Summary**

1. This report provides Members with an update on the planning enforcement section in terms of cases being dealt with and a vision for the planning enforcement section into the future.
2. Members of the Area Planning Sub-committee requested that Planning Enforcement be reviewed by Customer and Corporate Services Scrutiny Committee, which referred the matter to the Economy and Place Policy and Scrutiny Committee.

**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. There are various options available to Local Planning Authorities to tackle possible breaches of planning control in a proportionate way these include:
  - No formal action
  - Retrospective planning application
  - Planning contravention notice
  - Enforcement Notice
  - Planning Enforcement Order
  - Stop Notice
  - Temporary Stop Notice
  - Breach of Condition Notice
7. The Enforcement team will assess each case to consider the level of action required and this will depend on the harm the breach causes. It should be noted that there are often cases reported that aren't a breach of planning control which will result in the case being closed and this may be contrary to the opinion of the person who has reported the case.
8. Government Guidance is clear that addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore in some instances formal enforcement action may not be appropriate.

9. Enforcement action should always be proportionate to the breach in which it relates to and action taken when it is expedient to do so.
10. 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.
11. 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.
12. Once the Council's Enforcement Team have concluded that formal action is required the following are 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)
13. 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.

14. Enforcement notices clearly outline what in the LPA's 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.
15. 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
16. In terms of enforcement cases received by the service Members receive updates on the number of outstanding enforcement cases on a quarterly basis through a report which is referred to the Planning Sub Committee. This has occurred since July 1998.
17. A list of enforcement cases for their Ward are also sent to each Councillor by email as agreed by the Chair of the Planning Committee. This list also contains a synopsis of progress made on each case.

### **Current Position**

18. During 2019, 592 new planning enforcement investigation cases were received and 712 cases were closed. A total of 467 investigations remain open. 13 Enforcement Notices were served.
19. 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

20. Since April 2019, of the cases closed, 121 cases were not expedient to pursue, 37 were found to be permitted development, 184 were found to be not in breach of planning control and 70 breaches were rectified following work undertaken by the team. 41 were granted planning permission.
21. Currently the Council has 37 cases awaiting the outcome of a planning application.
22. In 2019, 13 Enforcement Notices were served. These included:
  - The failure of a development to be completed in matching materials
  - Failure to provide obscure glazing as shown on approved plans
  - The replacement of timber windows with uPVC windows within a Conservation Area,
  - Unauthorised siting of caravans
  - Display of unauthorised signs
  - Erection of an extension and the unauthorised use of a building for car repairs
23. 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.
24. 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.

25. The recently updated Planning Enforcement Register is now published on the Councils website. The register has details of Notices and orders for the last ten 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.

### **Resourcing**

26. It should be noted that since the appointment of a Principal Planning Officer for the Enforcement team in November 2017 a significant period of change has commenced in terms of managing workloads and working on backlogs that exist within the team.
27. The team currently has one Principal Planning Officer along with 3.8fte enforcement officers. As can be seen above progress is being made and more cases are being closed than are being opened. There is a significant amount of work in the team which results in the need to prioritise work as outlined above in para 7.

### **Going forward**

28. 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.”
29. The Planning Enforcement team are currently scoping the work to progress a 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.
30. 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.

31. 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.
32. 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 will highlight issues of permitted development to users of the Enforcement Service at the earliest opportunity.
33. 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 will provide greater detail and transparency in this area.
34. 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.

35. 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 will be a key element of the Plan.
36. 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 will set 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. Regular updates will help to reassure members of the public that their concerns are being addressed despite the apparent delay.
37. Development Services has recently introduced a new IT system (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 will 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 will 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). Given the unpredictable nature and complexity of the Enforcement process it would however be impossible to set targets for the serving of Notices or the overall resolution of the breach.
38. 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.

39. It is envisaged that the first draft of the Plan will be completed by the summer of 2020.

### **Council Plan**

40. The following Council priorities are relevant:
- Good health and wellbeing
  - A greener and cleaner city
  - An open and effective council

### **Options**

41. Members can choose to:
- i. Note the information received in this report
  - ii. Note the information received in this report and request further updates
  - iii. Take another course of action

### **Implications**

42. There are no direct implications associated with the recommendations of this report in relation to any of the following implications:
- **Financial**
  - **Human Resources**
  - **Equalities**
  - **Legal**
  - **Crime and Disorder**
  - **Information Technology (IT)**

- **Property**
- **Other**

### **Risk Management**

43. There are no known direct risk management implications associated with the recommendations in this report.

### **Recommendation**

44. Members are asked to:

- i.* Note the information contained in this report

Reason: To ensure members are aware of the work currently being undertaken in Planning Enforcement.

### **Contact Details**

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**Report Approved**  **Date**

**Wards Affected:**

**All**

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

**Background Papers:** None

**Annexes:**

Annex A - Enforcement Register