

NORTH EAST DERBYSHIRE DISTRICT COUNCIL



**North East
Derbyshire**
District Council

OVERVIEW AND SCRUTINY

PLANNING/ENVIRONMENTAL ENFORCEMENT

APRIL 2023

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Chair's Foreword

I am pleased to present this report on behalf of the Organisation Scrutiny Committee. These are the findings, conclusions and recommendations from its review into planning/environmental enforcement.

The Committee felt that the review was timely given the investment that the service had received, and that the service was a priority to residents. Members were impressed with how much of a better position the Council was in to take action against those who breached planning control, and how staff worked hard to resolve cases in the public interest.

I would like to take this opportunity to thank the Committee for their input and also the stakeholders who helped inform the review. I would also like to thank the Senior Scrutiny Officer for his support of the Committee's work and democratic services for the help they have provided.

*Councillor Stephen Clough
Chair of Organisation Scrutiny Committee*

Review Panel

The review panel comprised the following members:

Councillor S Clough	-	(Conservative) – Review Panel Chair
Councillor M Emmens	-	(Conservative)
Councillor J Birkin	-	(Labour)
Councillor M Jones	-	(Labour)
Councillor D Ruff	-	(Conservative)
Councillor D Hancock	-	(Liberal Democrat)
Councillor P Wright	-	(Conservative)
Councillor J Funnell	-	(Independent)
Councillor P Kerry	-	(Labour)

1. Recommendations

That the Council:

- 1.1 Provides training to Councillors and Parish Councils on Planning Enforcement, and distributes the Planning Enforcement service progress reports that Planning Committee receives to all Members following training;
- 1.2 Monitors year on year increases in cases to assess whether an additional post in the Planning Enforcement Team is required;
- 1.3 Explores ways of reducing cases being received via email and instead channels complaints through the online 'report it' function with a view to closing down public complaints to the email channel if possible. This was to ensure that there was one point of contact, that complaints were not missed, and that expectations of the service were clearly explained and communicated; and
- 1.4 Reviews the Local Enforcement Plan to remove impracticalities and make it consistent.

2. Introduction

- 2.1 At its meeting on 06 September 2022, the Organisation Scrutiny Committee agreed to undertake a review into Environmental Enforcement in respect of Planning.
- 2.2 The Committee agreed that the Review was timely given that the service was a priority for residents and had recently been given significant investment.

3. Scope of Review

- 3.1 The review aimed:
 - To understand how the Planning Enforcement Team worked with Environmental Enforcement and other teams;
 - To understand how the Planning Enforcement Team functioned and carried out multi-agency working;
 - To establish best practice; and
 - To identify any improvements that could be made.
- 3.2 The Committee noted that whilst enforcement action took place within a number of Council departments, for the purpose of this review, its focus was on cases channelled through Planning Enforcement, and subsequently how work was carried out to resolve those cases.

4. Method of Review

- 4.1 The review panel met on five occasions to consider the scope of the review, key issues they wanted to discuss and key people they wished to interview.
- 4.2 Evidence was gathered in a variety of ways including written sources and interviews with a range of stakeholders.

5. Evidence and Research

- 5.1 A number of documents and evidence were provided to the review panel for consideration. Details are provided below:
- Planning Enforcement Plan
 - Environmental Health Service Enforcement Policy
 - Report of the Assistant Director of Planning on Environmental Enforcement Procedures at NEDDC
 - Stakeholder interviews from NEDDC internal officers in Planning and Environmental Enforcement, and external interviews from officers at Derbyshire County Council
 - Planning Enforcement Service Progress Reports

6. Key Findings

6.1 Observations

- 6.1.1 The Assistant Director of Planning presented a report to the Committee at its meeting on 15 November 2022 which outlined the current situation regarding how the Council carries out multi-agency working on environmental enforcement cases.
- 6.1.2 Members heard that the Planning and Environmental Health Services are the two main areas in the Council where environmental enforcement issues are received and investigated, and where necessary, other Council services and external agencies were brought in to assist. It was stated that sometimes, those agencies had their own environmental or legal issues with the same site and thus multi-agency responses to cases were instigated.
- 6.1.3 The Review Panel noted that Planning took into account a wide and varied range of material considerations which were matters that could lawfully be taken into account when deciding planning applications. As part of that process, the Council sought advice and guidance from a range of internal and external organisations and statutory consultees who help inform the Council whether a development is acceptable or what action was required to make the development acceptable in planning terms.
- 6.1.4 The Committee was informed that when a development was carried out without planning permission, any decision to take, or not to take enforcement

action, was effectively a planning decision. Any party or organisation, therefore, consulted or involved in the determination of a planning application may also be involved in the planning enforcement process. It was stated that the Planning Enforcement Team regularly consults and seeks advice from those agencies to decide whether or not to take enforcement action.

- 6.1.5 The Assistant Director of Planning advised Members that those agencies operated under their own regulations and legislation and had their own enforcement powers. Therefore if the Planning Enforcement Team received a report of a breach of planning relating to a car breakers yard, for instance, it might be that that the Environment Agency, Police and County Council would be interested and that there were breaches of their powers also.
- 6.1.6 The Review Panel heard that all planning applications must be made in accordance with the Development Plan unless material considerations indicated otherwise. The Development Plan in North East Derbyshire comprised of the adopted Local Plan 2014-2034. The protection of the environment and of residential and local amenity was part of that Development Plan. The Council had to prioritise the breaches that caused the most harm. In some cases this could mean that the Council prioritised spatial objectives above localised harm to residential amenities for example.
- 6.1.7 The Committee was informed that when a complaint was received, officers carried out a brief investigation which tended to be a desktop exercise to make a judgement as to whether some or all of the matters fell within the control of Planning or outside of it. Members noted that, for example, a noise complaint could have been made about a lawful industrial premises. Planning Officers may be satisfied that a development was lawful (had planning permission) and no conditions or limitations were being breached, but Environmental Health Officers might investigate and find that enforcement action was needed based on their own remit and functions.
- 6.1.8 If a breach of planning had been identified (either through a report or monitoring) it is researched and the Planning Enforcement Team will decide whether to seek help and guidance from other agencies. It was stated that the agency depended on the circumstances and nature of the breach and differed in every case.
- 6.1.9 It was stated that how the Council worked and consulted with those agencies depended on the process and procedures that each agency had settled on. It generally took place via email for speed and evidence trail purposes. Each agency tended to have their own reporting mechanism.
- 6.1.10 The Committee received an overview of the agencies that had their own powers of enforcement and investigation that the Council worked with. These included internal partners such as Environmental Health and Revenues & Benefits, as well as external partners such as DCC Highways and DCC Lead Local Flood Authority.

Strengths/Observations

- 6.2.1 Members noted that the Planning Enforcement Team was working hard to resolve a high caseload, and that since 2021/22 there had been an 80% increase in the number of reported cases. The pandemic had also caused a backlog in unresolved cases due to officers being unable to conduct investigative work. There were currently 380 open cases (as of 14 March 2023) and these were being managed by staff at 2.6 FTE. The 0.6 FTE staff member was a Support Officer responsible for administrative assistance but also had their own caseload. Members agreed that staff were working exceptionally hard given the high number of cases and small team to resolve them, and that the Council was in a much better position to deliver for the public and take enforcement action against planning breaches following significant investment in the service.
- 6.2.2 The Review Panel discussed best practice amongst other Local Authorities. Members agreed that difficulties to recruit and low staff levels were a common theme amongst partner agencies and other comparable Councils. The Principal Planning Enforcement Officer stated that the staff at NEDDC had been accustomed to making good judgement calls and only seek data and advice from other agencies when the situation warranted it. The Committee noted that by doing this officers were able to build relationships with officers from partner agencies. It was stated that who should be consulted was set out in planning legislation known as 'statutory consultees', and when officers were considering an application for planning permission they were required by law to consult with them. For Planning Enforcement, however, they were not required by law to consult with those agencies but did so anyway. It was explained that it was good practice to ensure that the appropriate advice and guidance was received from other agencies, particularly if the Council was challenged by appeal on an enforcement decision.
- 6.2.3 Members heard about the process for recording cases. It was explained that breaches of planning conditions could be reported either via email or through the website and that they had recently improved the reporting forms and instructed customer services to refer people to it to ensure 'one point of contact' for reporting cases. This was then given a unique reference number and recorded in a log. An audit trail was also kept within this log to ensure that multiple officers were able to pick up cases in the event of any staff annual leave or sickness. The breach was only recorded once regardless of the number of times a complaint had been made against it (although the number of complaints were recorded for audit trail purposes), and that every case would be investigated and actioned.

An automatic response was then forwarded to the complainant pointing them towards the Local Enforcement Plan and advising them as to when they could expect a response. This was usually done once a decision on enforcement had been made and the case closed, but after 8 weeks the complainant was able to contact the Team to enquire as to the status of the investigation. They were also able to contact again to provide further information.

6.2.4 Due to the high number of cases, and relatively small number of staff, the Planning Enforcement Team were constantly having to change their priorities and that the threshold for action always shifted depending on the workload. Some cases were highly complex and took several years to resolve involving a number of different agencies. There were 12 enforcement notices issued last year and this was only done when there was no other route to resolve and when it was expedient to do so.

It was stated that their biggest focus was on irreparable damage (such as through the damage of TPO's or large scale harm caused by a significant development) rather than localised harm, for example to a residential property. Those priorities were outlined in the Local Enforcement Plan which split cases into high priority (where what was being done could cause irreversible harm), medium priority (where there was clear harm but it could be reversed if necessary), and low priority (cases that cause lesser degrees of harm to a neighbourhood). Cabinet considered and endorsed the Plan, and the Planning Committee approved the Plan, in September 2020. Any changes to those priorities would have to be made through the Enforcement Plan. Members noted that having a Local Enforcement Plan was not mandatory but was good practice. The Plan can be viewed at:

<https://www.ne-derbyshire.gov.uk/documents/repository/p/planning-enforcement-plan>

The Review Panel agreed that it would be useful to provide training to Councillors and Parish Councils so that they could understand the difficulties that the service faces and the cases that they have to prioritise in the public interest. This could then help Councillors filter out cases that may not be in the jurisdiction of planning enforcement as well as clarify public expectations of the service. Members noted that regular reports were being provided to Planning Committee on enforcement matters and the Committee encouraged that continues on a bi-annual basis. The Committee also asked that the planning enforcement service progress reports be circulated to all Councillors after being considered by the Planning Committee. Ultimately, all Members received reports from constituents on alleged breaches of planning.

6.2.5 The Principal Planning Enforcement Officer explained that the service was digitalising its publically available records such as Planning Enforcement Notices so that these were more easily accessible to see and share amongst different Council departments, the public and external agencies. The process was, however, administratively intensive and this was being done within the context of increased caseloads. Additional support in this area had already been identified by the AD for Planning as and when there was finance available.

6.2.6 The Committee heard that communications amongst different Council departments generally worked well. There was a Corporate Enforcement Group that met frequently to discuss high priority cases and ensure that enforcement leads at the Council, such as Environmental Health, Planning

and Legal worked well together. These meetings considered new and significant investigations, case progress, agreeing action plans and raising issues with the Portfolio Holder or relevant Member. Regular case review meetings and administrative days within service areas also took place to ensure that cases were kept on top of.

- 6.2.7 The Review Panel heard about a recent draft Ombudsman decision which had agreed with the Council in regards to an enforcement decision and that the Authority had followed due process. The complainant had alleged a breach of planning condition, and the Ombudsman concluded that the Council had properly responded to the complaint, conducted site visits, met with the complainant, and sought information and advice from the relevant consultees to advise that there had been no breach of planning control and explain why it proposed to take no formal action. This case had taken over two years to resolve.

Areas for Improvement/Observations

- 6.3.1 Although the Review Panel agreed that the Planning Enforcement Team were doing excellent work with the resources that they had, they questioned whether it was sustainable in the long term as workloads continued to increase. There was a consensus that as reporting channels should become more accessible and used, it was likely that the number of reported cases would rise year on year. Members noted that the average number of reported cases from April 2018 to March 2021 was 225. For the reporting year from April 2021 to March 2022 this increased to 358 and by October 2022 of the latest reporting year (April 2022-March 2023) the figure was already at 219 suggesting that this increase was continuing. If this rise was to continue, the Review Panel agreed that it would be prudent for the Council to explore options in providing funding for an additional post to manage the increase in cases depending on the resources available. The Committee agreed that ultimately, as reported cases increased, so did the threshold for taking enforcement action.

There was a consensus that those priorities should be more clearly communicated, and welcomed the automatic response given on the reporting channels through the Council's website outlining when a complainant should expect to see a response. Members enquired as to whether officers could investigate the merits of encouraging all complaints to come through the 'report it' function on the Council's website to ensure one point of contact, that emails were not missed, that all cases were given an automatic unique reference number and logged, and that they received an automatic response outlining expectations of the service (which did not happen if a case was reported via email), and that they were pointed towards the Local Enforcement Plan for information. The email could then be used for other purposes.

- 6.3.2 The Committee heard that the process of investigating breaches was often slow and administratively intensive, complex, and involved a number of

different agencies. The Council had to conduct its own initial investigations such as whether what was being reported was actually a permitted development, conducting site visits, and assessing planning history. Then, if appropriate, advice needed to be sought from partner agencies as to whether a breach had taken place. Other complicating factors included whether a criminal offence had occurred, and as such interviews and correspondence had to be carefully recorded as it could be used as evidence in a criminal investigation. Resolving cases could also be slow due how the party who were contravening planning rules engaged with the Council.

The above processes were particularly prevalent with urgent and high priority cases which is why they could take several years to resolve. It was stated that each different agency had their own priorities and their own threshold for action and therefore responses could sometimes take several months, particularly as those agencies were also dealing with high caseloads. The Environment Agency was used as an example as a partner agency that worked on a national basis and thus would have a higher threshold for action so wouldn't be particularly responsive to localised issues.

There was also no prescribed time frame on agencies responding to the Council on enforcement issues (whereas there was when consultation was sought on a planning application). Importantly, Members noted that the agencies that the Council consulted with on enforcement issues were not required to provide a response, and if any response was received it was dependant on their own workload and priorities. For high priority and urgent cases, responses were often of good quality and in a timely manner, however this was not always the case for lower priority issues. Thus, how quickly a complaint was dealt with depended on both how urgent and complex it was.

The National Planning Policy Framework also stated that enforcement action was discretionary, and that the Council should act in a proportionate way when responding to suspected breaches of planning control. Therefore the Council could not automatically justify taking formal enforcement action against minor breaches of planning control.

- 6.3.3 The Review Panel agreed that it was the complex nature of multi-agency working alongside high caseloads and recruitment and retention issues that was having an effect on wider communication and the resolution of cases. This was not just the case at the Council but also at partner agencies. For example Justine Proudler (Development Manager at DCC) and Councillor C Renwick (DCC Cabinet Member – Infrastructure and Highways) explained that cases had increased by 50% during the pandemic, and with only 1.75 FTE staff at DCC dedicated to enforcement this had resulted in a large work load.

Principal Planning Officers informed Members that the Planning Team at NEDDC were also having to employ consultants to fill gaps due to recruitment issues. This was also the case for the statutory consultees within DCC such as Highways, Minerals and Waste Planning Authority, and Lead Local Flood Authority who gave advice on a number of issues relating to applications. The

common theme was that they were all experiencing an increased number of cases and issues surrounding recruitment.

- 6.3.4 A number of stakeholders gave evidence to the Committee suggesting that legal complexities were often an issue when attempting to resolve enforcement cases. It was explained that some agencies who the Council had to contact operated outside of the planning framework and instead operated in private civil framework. Examples were used such as building regulation issues as well as private utility companies.
- 6.3.5 The Principal Planning Enforcement Officer also informed Members that officers had to be mindful of sharing data with other agencies due to GDPR rules and data protection. This generally slowed the process down. There were also grounds of appeal and therefore any enforcement decision had to be backed by evidence and in the public interest. Any appeal that went against the Council would mean it was liable for the costs.
- 6.3.6 Members were concerned that there were no KPI's for the service, however, did note that the Government was currently consulting on introducing a range of planning targets relating to enforcement including the average number of weeks taken to respond to suspected planning breaches, as well as the proportion of open planning enforcement cases that are over six months old.
- 6.3.7 The Review Panel discussed proactive enforcement but agreed that this could only be done if and when case numbers stabilised.
- 6.3.8 Members also agreed that minor changes to the Local Enforcement Plan needed to be made such as taking out impracticalities in regards to meeting Ward Members, and targets contained within the Plan which could not be met.

7. Conclusions

- 7.1 The Review Panel heard from a range of stakeholders during the review process. The review identified a number of strengths including staff resilience and experience, internal officer communication, digitalisation, the approval of a Local Enforcement Plan, recent ombudsman decisions, and the enforcement of large scale planning breaches in the public interest.
- 7.2 There was, however, some areas for improvement which involved communicating with the public, Councillors, and Parish Councils particularly around caseloads and priorities, ensuring one point of contact for customers when reporting alleged breaches, introduction of KPI's and minor changes to the Local Enforcement Plan.

Appendix A

Stakeholders Engaged During the Review

R Purcell	-	Assistant Director of Planning
K Eastwood	-	Joint Assistant Director of Environmental Health
G Cooper	-	Principal Planning Officer
P Slater	-	Principal Planning Officer
J Proudler	-	Development Manager (Derbyshire County Council)
J Hawley	-	Principal Planning Enforcement Officer
Cllr C Cupit	-	Deputy Leader and Portfolio Holder for Environmental Services
Cllr C Renwick	-	DCC Cabinet Member – Infrastructure & Highways