

MEETING

Date of Meeting	Wednesday 11 th May 2016
Report Subject	Planning Enforcement
Cabinet Member	Cabinet Member for Environment
Report Author	Chief Officer Planning and Environment
Type of Report	Operational

EXECUTIVE SUMMARY

A report was presented to the April meeting of the Planning Strategy Group (PSG) advising of the intention to review the Council's Planning Enforcement Policy for reasons relating to recent changes in legislation, the proposed restructuring of the Development Management service and changes in the way the performance of planning enforcement is reported. This intention was supported by PSG and is presented again in the report below by way of a context for the performance of the service for the period 2015/2016. A list of cases dealt with will be presented at the Committee.

The current Planning Enforcement Policy (Appendix 1) sets out the nature of the service, the tools available to deal with breaches of control and the commitments over how the service will operate; what can be done (and can't be done) and the expectations which service users will hold. It is proposed to adopt a less formal approach in revising the policy and to review the priorities over the response to certain breaches in order to provide a more realistic picture of what can be achieved within the resources available. An example of this alternative approach, Brighton and Hove's Enforcement policy, is included in Appendix 2.

Current performance against the recognised performance indicators (PIs) is reported, along with an explanation of how the indicators are interpreted. It is accepted that the figures may not give the full picture of how the enforcement service is performing, or indeed how it is sometimes perceived, but Members are asked to recognise the need for a structured approach through the Policy, which allows resources to be applied appropriately and consistently throughout the County.

RECOMMENDATIONS

1	That the Authority's Planning Enforcement Policy be reviewed and updated along the lines suggested below and that a draft of the new policy be reported to the committee for further endorsement, to allow it to be taken forward for adoption.
2	That the performance of the planning enforcement service against the published indicators for the year 2015/2016 be noted.

REPORT DETAILS

1.00	EXPLAINING THE PROPOSED CHANGES TO PLANNING ENFORCEMENT POLICY AND PROCEDURE AND REPORTING ON CURRENT PERFORMANCE
1.01	The current 'Policy for the operation of the Planning Enforcement Service' was approved by the Council's Executive in December 2005 and it continues to be relevant and applicable in most cases, reflecting the general principles behind effective planning enforcement. Most Local Planning Authorities have a similar policy, although the size of enforcement teams and the management structure will obviously vary. Under the proposed structure for the Development Management Service (which includes Planning Enforcement) the enforcement role will be assimilated into the two new Area Development Control teams (which themselves replace the existing 'Major Applications' and 'Other Applications' teams).
1.02	Other significant changes affecting planning enforcement result from recent legislative changes which follow the Planning Act (Wales), introducing certain new powers (such as the Temporary Stop Notice and Enforcement Warning Notice (EWN)). Finally, there has recently been a review of the way in which an Authority's enforcement performance is measured, with a new set of performance indicators (PIs) against which we submit quarterly returns to Welsh Government(WG)
1.03	<p>The Enforcement Policy essentially sets out the approach we will take in relation to breaches of planning control in Flintshire. Ideally, there would be no breaches but when and where they do occur they can impact on people's lives in a very direct way as well as having a more general impact on the environment. There are also legal repercussions in a failure to adhere to the terms of a planning permission and in addressing breaches of planning control there are certain legal requirements which have to be followed. Enforcement controls seek to balance the concerns of local people, and the rights and amenity of landowners and householders against the need to encourage and allow appropriate development under proper planning control.</p> <p>It is intended that the revised policy should take a less formal and less</p>

1.04	<p>detailed approach in some parts, in line with the approach taken in some other authorities (See Appendix 3). This proposed approach is reflected to some extent in the way in which we currently display information on Enforcement on our Planning website, as illustrated in the extract below:</p>
1.05	<p><i>“Flintshire Planning Enforcement</i></p> <p><i>Some people fail to ask for the necessary permission before carrying out works or starting an activity. Others may receive planning permission but fail to act in compliance with the permission or some conditions that may have been imposed. The Planning Enforcement Service deals with these breaches.</i></p> <p><i>Investigating alleged breaches of planning control</i></p> <p><i>It is not a criminal offence to carry out development, which should have first been the subject of planning permission, but it will become a criminal offence if an Enforcement Notice is not complied with. Enforcement action is normally taken as a last resort but there may be cases where formal action is necessary from the outset. Investigations are carried out in accordance with the Police and Criminal Investigations Act and in some cases may result in prosecutions. All reported breaches of planning control will be investigated. For each individual case, we will:</i></p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Register all written complaints.</i> <input type="checkbox"/> <i>Treat all complaints as confidential within the Council.</i> <input type="checkbox"/> <i>Acknowledge complaints within 3 working days (providing contact names and addresses are provided).</i> <input type="checkbox"/> <i>Carry out site visits and investigations on a priority basis.</i> <input type="checkbox"/> <i>Request the submission of a retrospective application where there is a likelihood of permission being granted.</i> <input type="checkbox"/> <i>Inform the complainant by letter when a retrospective application has been received.</i> <input type="checkbox"/> <i>Where necessary, we will take enforcement action by serving the appropriate legal notice specifying what needs to be done and by when.</i> <input type="checkbox"/> <i>Inform the complainant when enforcement action has been taken and when the Enforcement Notice takes effect.</i> <input type="checkbox"/> <i>Handle enforcement appeals and keep the complainant aware of the proceedings.</i> <input type="checkbox"/> <i>Notify all complainants when the investigations have been completed (providing contact names and addresses are provided).</i> <input type="checkbox"/> <i>Take Enforcement Action as appropriate when necessary.”</i>
1.06	<p>Recent changes in legislation (including new enforcement powers) will also require changes to the way in which we undertake the enforcement role. The most significant changes following the recent raft of secondary legislation from an enforcement perspective are :</p> <ul style="list-style-type: none"> <input type="checkbox"/> The requirement for a ‘major’ developer to give notice of the commencement of development, aimed at avoiding the uncertainty over this on occasions. It will, however, involve the Authority’s officers visiting the development site to ascertain whether the works referred to are sufficient to constitute a commencement of development for the purposes of the legislation <input type="checkbox"/> The requirement for a ‘major’ developer to display a copy of the decision notice and plan (which must be updated each time a change occurs, a condition is discharged, etc.) at the site, where it can be viewed from a public place. This recognises the interest local people

	<p>will have in a development and effectively encourages them to monitor the development. In theory, this might assist the enforcement service in having “eyes and ears on the ground”, but it is suspected that the service will get a significant increase in the number of callers who believe that a planning permission or certain conditions are not being complied with and it will be down to the officers to check whether or not this is the case</p> <ul style="list-style-type: none"> <input type="checkbox"/> The introduction of the new House in Multiple Occupation (HMO) class places an obligation on local planning authorities to regulate those properties which are being occupied in breach of the new definition <input type="checkbox"/> The introduction of the Enforcement Warning Notice (EWN) to be served where an unauthorised development could potentially be made acceptable through the imposition of conditions if a planning application were to be made. 									
1.07	<p>Since the original Enforcement Policy was drafted there have been changes in the way Welsh Government collects performance data for publication and comparison. As well as introducing the new Sustainable Development Indicators (SDI) the enforcement performance is now measured against two indicators :</p>									
	<table border="1"> <thead> <tr> <th data-bbox="320 929 676 1003">PERFORMANCE INDICATOR (No.)</th> <th data-bbox="676 929 1032 1003">FLINTSHIRE 2015/2016</th> <th data-bbox="1032 929 1385 1003">WELSH AVERAGE 2015/2016</th> </tr> </thead> <tbody> <tr> <td data-bbox="320 1003 676 1151">(15). Percentage of enforcement cases investigated within 84 days</td> <td data-bbox="676 1003 1032 1151">77.4%</td> <td data-bbox="1032 1003 1385 1151">Not published</td> </tr> <tr> <td data-bbox="320 1151 676 1299">(17). Percentage of enforcement cases resolved within 180 days</td> <td data-bbox="676 1151 1032 1299">83.3%</td> <td data-bbox="1032 1151 1385 1299">Not published</td> </tr> </tbody> </table>	PERFORMANCE INDICATOR (No.)	FLINTSHIRE 2015/2016	WELSH AVERAGE 2015/2016	(15). Percentage of enforcement cases investigated within 84 days	77.4%	Not published	(17). Percentage of enforcement cases resolved within 180 days	83.3%	Not published
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1.08	<p>There has been some confusion over the way in which these indicators are to be interpreted and there is clearly a need for a consistent approach to allow comparison with other Authorities’ performance.</p> <p>The latest WG guidance defines “investigated” (PI 15) as the LPA having received an enforcement complaint “by whatever means of communication” and having concluded and notified the complainant that:</p> <ul style="list-style-type: none"> <input type="checkbox"/> No breach of planning control has occurred <input type="checkbox"/> A breach has occurred but planning enforcement action is not expedient <input type="checkbox"/> A breach has occurred and planning enforcement action will need to be pursued 									
1.09	<p>Performance Indicator 17 identifies the end to end response to confirmed breaches of planning control, following their initial investigation as defined in Indicator 15, to their final resolution. “Resolved” is therefore one of the following positions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> planning permission is subsequently granted through a planning application or enforcement appeal <input type="checkbox"/> an enforcement notice or breach of condition notice is complied with by the developer 									

1.10

- the breach of control is ceased by the developer
- direct action by the authority removes the breach of control.

The final aspect of the review which needs to be addressed here is the priority to be afforded to the types of complaint. The current practice is identified in Appendix 1 of the existing policy (which is appended to this report). It is proposed that this would be revised, possibly along the lines shown in the table below:

Priority	Type of Breach	Action
1	<ul style="list-style-type: none"> <input type="checkbox"/> Breaches that cause serious harm to the local environment because of noise, smell, visual impact etc. <input type="checkbox"/> Breaches that are contrary to well established planning policies and in designated areas, such as SSSI, AONB. Protected species, etc. <input type="checkbox"/> Breaches that seriously compromise the integrity of a Listed Building, Scheduled Monument, TPO, etc. <input type="checkbox"/> Development that may result in a threat to public and highway safety 	Site visit within 3 working days
2	<ul style="list-style-type: none"> <input type="checkbox"/> Breaches that are not causing serious harm but would nonetheless be unlikely to receive planning permission <input type="checkbox"/> Use of land and/or buildings adversely impacting on residential amenity by reason of noise and disturbance <input type="checkbox"/> Non-compliance with pre-commencement Conditions and other restrictive conditions imposed on planning permissions <input type="checkbox"/> Unauthorised advertisements which are detrimental to highway safety or visual amenity 	Site visit within 5 working days
3	<ul style="list-style-type: none"> <input type="checkbox"/> Breaches which would be likely to receive planning permission if an application was to be submitted 	Site visit within 15 working days

1.11

There are a number of reasons for revisiting the priorities, not least the fact that the Enforcement Team has reduced in size and will under the new structure be assimilated into the two Area Development Control Teams. At this stage it is envisaged that the compliance aspect of enforcement will very much become part of the application case officer's responsibilities within the concept of seeing the development through from inception to completion.

1.12

Those enforcement cases which arise from unauthorised development and are not followed by a retrospective planning application, will be allocated to a case officer and receive a high priority if applicable, but this will be in the context of the need also to prioritise the positive aspects of the Development Management Service – facilitating speedy planning permissions for sustainable development, employment creation, etc.

1.13	<p>A comparison with other Authorities shows that, in some, the highest priority commands a response only within the first week. Clearly, each Authority must set its own targets in accordance with its resource levels, but it is felt that revised time scales will present a more realistic picture of what can be expected and what can be achieved. In this respect it is important that elected members continue to acknowledge the provisions of the policy so that they can advise their constituents of what response they can expect following receipt of a complaint. The policy will make it clear that certain issues are not covered by planning enforcement and although it is difficult for some members of the public to understand and accept this, unless it is made clear at the outset the resources will not necessarily be available to address those cases that are of a higher priority.</p>
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2.00	RESOURCE IMPLICATIONS
2.01	No direct resource implications from the recommendations of this report.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	<p>As the Planning Enforcement Policy is essentially a statement of how we will address infringements of planning and other legislation based largely on factors which are beyond its remit, there can be no requirement for external consultation. Officers of various services affected by the policy will be consulted along with their relevant Cabinet Members where appropriate. The intention is to report the draft policy through Planning Strategy Group and this Committee before taking it forward for adoption.</p>

4.00	RISK MANAGEMENT
4.01	<p>The risk to the environment, the amenities of residents and the reputation of Flintshire County Council through not having an effective enforcement service and clear policies which control this.</p> <p>This is addressed through updating the Planning Enforcement Policy to take account of the proposed structure and resources in setting realistic commitments over the operation of the service.</p>

5.00	APPENDICES
5.01	<p>Appendix 1 – Current ‘Policy for the Operation of the Planning Enforcement Service’</p> <p>Appendix 2 – Example of an alternative approach to an enforcement policy – Brighton and Hove Council</p>

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	<p>Contact Officer: Glyn P. Jones – Planning Development Manager Telephone: 01352 703248 E-mail: glyn.p.jones@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	<p>Council Executive – The governance body which preceded the current Cabinet structure</p> <p>Local Planning Authorities – the 22 Unitary Authorities and 3 National Park Authorities within Wales which have the statutory duty to undertake the land use planning function.</p> <p>Temporary Stop Notice – an enforcement power which can require the immediate cessation of an unauthorised development where significant harm is being caused</p> <p>Enforcement Warning Notice – an enforcement power which seeks to avoid the need for a formal Enforcement Notice where the unauthorised development might be acceptable subject to the grant of conditional planning permission</p> <p>‘Major’ development – In terms of residential development 10 dwellings or more and development of similar scale in other categories</p> <p>House in Multiple Occupation – a dwelling which is being occupied by three or more people who are living independently but sharing some facilities</p> <p>SSSI – an area designated as a Site of Special Scientific Interest because of a particular feature of natural or ecological significance</p> <p>AONB – An area designated as an Area of Outstanding Natural Beauty, which carries additional planning controls</p> <p>Listed Building – A building of architectural or historic interest which is protected by legislation</p> <p>Scheduled Monument – An ancient monument (castle, dyke, etc.) which is protected by legislation</p> <p>TPO – A tree or group of trees which is significant in visual or amenity terms and is protected by a Tree Preservation Order</p>