



## SCRUTINY COMMITTEE

Thursday, 16 June 2022

<b>Subject</b>	Review of the Planning Enforcement Process
<b>Report by</b>	Councillor David Ritchie – Cabinet Member with responsibility for Planning and Coastal Management
<b>Supporting Officers</b>	<p>Philip Ridley Head of Planning and Coastal Management <a href="mailto:philip.ridley@eastsuffolk.gov.uk">philip.ridley@eastsuffolk.gov.uk</a></p> <p>Ben Woolnough Planning Manager (Development Management, Major Sites and Infrastructure) <a href="mailto:ben.woolnough@eastsuffolk.gov.uk">ben.woolnough@eastsuffolk.gov.uk</a></p> <p>Katherine Scott Principal Planner (Technical Lead, Development Management) <a href="mailto:katherine.scott@eastsuffolk.gov.uk">katherine.scott@eastsuffolk.gov.uk</a></p>

Is the report Open or Exempt?	OPEN
-------------------------------	------

Category of Exempt Information and reason why it is <b>NOT</b> in the public interest to disclose the exempt information.	Not applicable
<b>Wards Affected:</b>	All Wards

## Purpose and high-level overview

**Purpose of Report:**

Review of the Planning Enforcement Process

**Options:**

None

**Recommendation:**

That the Scrutiny Committee, having considered the report, makes any recommendations as required.

It is recommended that the Scrutiny Committee revisit Planning Enforcement in early 2023 when ongoing actions have been implemented.

## Corporate Impact Assessment

**Governance:**

The Scrutiny Committee has a role to scrutinise and review actions taken by the Council and has requested a review of the Planning Enforcement Process.

**ESC policies and strategies that directly apply to the proposal:**

East Suffolk Planning Enforcement Policy - [East-Suffolk-Planning-Enforcement-Policy.pdf \(eastsuffolk.gov.uk\)](#)

East Suffolk Compliance and Enforcement Policy - [Suffolk Coastal and Waveney DC Compliance and Enforcement Policy \(eastsuffolk.gov.uk\)](#)

**Environmental:**

The power to correct breaches of planning control allows us to protect the quality of life for the people who live, work and visit East Suffolk and the quality of the district's built and natural environment.

**Equalities and Diversity:**

The enforcement services covered by the East Suffolk Council Compliance and Enforcement Policy aim to effectively support and promote access to our enforcement services recognising the diversity of the communities we serve and ensure that residents and businesses are treated equally and fairly through the delivery of our services.

**Financial:**

There are no financial effects of this report at this current time.

**Human Resources:**

There are no Human Resource effects of this report at this current time.

**ICT:**

Recommendations within the current internal Audit Report on Performance Monitoring of Planning Enforcement 2021/22 will affect ICT but this report does not make recommendations in that respect.

**Legal:**

This report affects the legal service who provide an important function in the Planning Enforcement Service.

**Risk:**

There are no risks associated with this report but there are risks that any recommendations from the Committee may affect the progress of the Planning Enforcement Service Action Plan to be reported to Strategic Planning Committee in September 2022.

<b>External Consultees:</b>	None
-----------------------------	------

## Strategic Plan Priorities

Select the priorities of the <a href="#">Strategic Plan</a> which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
<b>T01</b>	<b>Growing our Economy</b>		
P01	Build the right environment for East Suffolk	<input checked="" type="checkbox"/>	<input type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P05	Support and deliver infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
<b>T02</b>	<b>Enabling our Communities</b>		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P08	Maximising health, well-being and safety in our District	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input type="checkbox"/>
<b>T03</b>	<b>Maintaining Financial Sustainability</b>		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input type="checkbox"/>
P11	Making best use of and investing in our assets	<input type="checkbox"/>	<input type="checkbox"/>
P12	Being commercially astute	<input type="checkbox"/>	<input type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input type="checkbox"/>
<b>T04</b>	<b>Delivering Digital Transformation</b>		
P15	Digital by default	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input type="checkbox"/>
P19	District-wide digital infrastructure	<input type="checkbox"/>	<input type="checkbox"/>

<b>T05</b>	<b>Caring for our Environment</b>		
P20	Lead by example	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education and influence	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>XXX</b>	<b>Governance</b>		
XXX	How ESC governs itself as an authority	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>How does this proposal support the priorities selected?</b>  We have the responsibility and power to enforce breaches of planning control. The decision to enforce in each case is at our discretion; there is no legal requirement for us to provide a planning enforcement service at all. However, we take planning enforcement very seriously. The power to correct breaches of planning control allows us to protect the quality of life for the people who live, work and visit East Suffolk and the quality of the district's built and natural environment.			

## Background and Justification for Recommendation

<b>1</b>	<b>Background facts</b>		
1.1	This report is presented at a time when Planning Enforcement is receiving considerable officer time and attention within the Planning Service. As a result of management changes and additional Development Management Team resource in January 2022 the Planning Service is able to focus on delivering improvements to the services over the whole of 2022. This review and report is therefore somewhat premature and limited in its ability to set out the focus of improvements. It is recommended that the Scrutiny Committee revisit Planning Enforcement in early 2023 when ongoing actions have been implemented.		
1.2	Primarily the scrutiny of the Planning Enforcement Service is through the Strategic Planning Committee, which is held quarterly and an Enforcement Performance report features on every agenda. The Strategic Planning Committee is made up of 18 members from the combined North and South Planning Committees. In addition, an Enforcement Case update report is presented twice a month to the North and South Planning Committees.		
1.3	The June 2022 Enforcement Performance report to Strategic Planning Committee is provided as Appendix A. Some content of that is repeated in the following section below.		
1.4	The East Suffolk Local Planning Enforcement Plan <a href="#">East-Suffolk-Planning-Enforcement-Policy.pdf (eastsuffolk.gov.uk)</a> was produced in 2019 in response to The National Planning Policy Framework and outlines how the Council will approach Enforcement to ensure public confidence in the Planning system. Planning Enforcement within ESC is undertaken in accordance with the Council's joint Compliance and Enforcement Policy adopted in April 2019 <a href="#">Suffolk Coastal and Waveney DC Compliance and Enforcement Policy (eastsuffolk.gov.uk)</a>		

1.5	<p>East Suffolk Council is a local planning authority. We have the responsibility and power to enforce breaches of planning control. The decision to enforce in each case is at our discretion; there is no legal requirement for us to provide a planning enforcement service at all. However, we take planning enforcement very seriously. The power to correct breaches of planning control allows us to protect the quality of life for the people who live, work and visit East Suffolk and the quality of the district's built and natural environment. The Local Enforcement Plan sets out how we will run the planning enforcement service and what you can expect from it. Specifically it covers:</p> <ul style="list-style-type: none"> <li>• what is a breach of planning control?</li> <li>• how you can request an investigation;</li> <li>• how we prioritise investigations;</li> <li>• how we will carry out an investigation, how we will keep you informed and the service standards;</li> <li>• what you can do if a request for an investigation is made about your development;</li> <li>• a list of enforcement actions we can consider; and</li> <li>• a list of contacts for further information.</li> </ul>
1.6	<p>The Planning Enforcement Service is managed by the Planning Manager (Development Management, Major Sites and Infrastructure) with leadership and line management of its officers by the Principal Planner (Technical Lead). The Enforcement Officers comprise of a Senior Enforcement Officer and two Enforcement Assistants. Development Management Planners also contribute to the enforcement service by taking responsibility and engaging on some enforcement cases.</p>

## 2 Current position

2.1	<p>The following information was presented to the Strategic Planning Committee on 6<sup>th</sup> June 2022 as an update on progress in reviewing the Planning Enforcement service. It was officers' intention to instead present a more comprehensive report to that Committee but that could not happen as at the time of drafting the report the Internal Audit Report Performance Monitoring of Planning Enforcement was still being produced.</p>
2.2	<p>The objective of the internal audit was to ensure the systems and controls in place for monitoring planning enforcement are effective so that the service can demonstrate its achievement against its core objective: to ensure public confidence in the Planning system, protect the quality of life for the people who live, work and visit East Suffolk and the quality of the district's built and natural environment. The scope of the review has been on monitoring systems only, comprising performance reporting and underlying data quality and system use. An overarching action for improvement in this area was agreed in 2018/19 and this review reassessed the controls in place relating to the findings previously identified.</p>
2.3	<p>As this has only recently been produced, officers in planning enforcement are currently working through it to ensure that it is incorporated in the Planning</p>

	Enforcement Action Plan which we will publish in September 2022 for the Strategic Planning Committee.
2.4	<p>Below is an extract of the 6<sup>th</sup> June Strategic Planning Committee report:</p> <p><i>1.1 Following the adoption of the new Local Enforcement Plan in March 2019 and the formation of the new East Suffolk Council section it was decided that a report be presented on a quarterly basis from August 2019.</i></p> <p><i>1.2 Between January and March, two Enforcement Notices, one S215 Untidy Site Notice and one Listed Building Enforcement Notice were served.</i></p> <p><i>1.3 Since January 2022 a new structure to the Development Management team has been in place. Previously all Enforcement Officers reported directly to the Planning Manager and there was no standalone team identity. In January Katherine Scott took on the responsibility of Principal Planner (Technical Lead) which includes line management of the three Enforcement Officers (two Assistants and one Senior). Along with two other Planners in that team, this has created a third team in the Development Management Team (the other two being the North and South Teams) and an ability to focus on the role that planning enforcement plays in Development Management.</i></p> <p><i>1.4 It has been recognised for a couple of years that the Planning Enforcement service has required some review and improvement. That is no reflection of the three officers responsible for planning enforcement, who work incredibly hard and with great due diligence in their responsibilities. Nor does it reflect the quality of enforcement decision making. But the process and systems they have been operating to have been overdue a review and methods of monitoring and reporting do need to be improved. Furthermore, enforcement complaints remain high and caseloads are very demanding for officers to process. This has been highlighted by Audit previously and it was not until this team had dedicated management in place that the resource and time could be given to this process.</i></p> <p><i>1.5 Therefore, Internal Audit have recently commenced an assessment of the current enforcement systems and records. This is seen as a valuable exercise which will influence an enforcement service improvement action plan which we intend to update on at the September Strategic Planning Committee and which should also be underway at that point. It is anticipated that this will include improvements to recording of cases and their processing, some redistribution of administrative responsibilities to enable efficiencies and focus on case work and some improvement to the reviewing and decision making of enforcement complaints.</i></p> <p><i>1.6 A further necessary improvement to be addressed is the way in which enforcement reports are presented to North and South Planning Committees. Presently the table setting out live enforcement cases is lengthy and difficult to interrogate. We will review the way this is presented including a focus on priority cases and those with more recent updates to them. It will also include greater detail on what any delays are and their causes – much of the time this being outside of the Council's control.</i></p>

	<p><i>1.7 In terms of delays on enforcement action, recent concerns from members have been focussed on the speed of the legal process in taking enforcement action. We need to be able to explain this clearly and to also show where this is due to court processes or appeal delays. At the September Strategic Planning Committee, we plan to include some guidance in this respect with support from our legal team who are also now much better resourced to provide their important assistance to planning.</i></p> <p><i>1.8 The new format for North and South Planning Committee enforcement update reports will be trialled at the July committee meetings. We will receive feedback from members at that time to further improve the reporting method and we will conclude on that in the September Strategic Planning Committee enforcement performance report.</i></p>
2.5	As this sets out, and from the data shared with the Strategic Planning Committee quarterly and the enforcement case update reports monthly to North and South Planning Committee, members and the public have a good overview of the service.
2.6	To answer all requested questions in this Scrutiny item would not be effective or efficient whilst officers progress through an Action Plan for the service at this time and in advance of the report on that to Strategic Planning Committee in September 2022. Therefore, verbal answers will be provided in the Scrutiny Committee meeting.
2.7	There are elements of Planning Enforcement which rely upon the Council's Legal Services and they have therefore contributed to this report.
2.8	<p><u>Legal Services</u></p> <p>Legal Services provides legal advisory and litigation services to all the Council's service areas (Housing, Licensing, Operations (including Asset Management and Procurement), Environmental Services and Port Health, Finance, Internal Audit, Communities, Economic Development, Digital, Customer Experience and Planning and Coastal Management). Legal Services is headed up by the Legal and Licensing Services Manager. There are 5 Lead Lawyers (one for Planning, Property, Housing, Commercial and Litigation), 1 Assistant Lawyer, 1 Trainee Solicitor and 1 paralegal/admin support officer.</p> <p>Planning Enforcement is principally supported by Legal Services' Planning Lead Lawyer and Litigation Lead Lawyer. The Litigation Lead Lawyer post is currently vacant. The post has been recruited to but the appointed candidate is yet to start. In the interim, the Litigation Lead Lawyer role is being covered by the Housing Lead Lawyer, who is an experienced litigator with higher rights of audience in civil proceedings. The Housing Lead Lawyer is being supported by a locum lawyer until the Litigation Lead Lawyer starts. It is hoped the new Lead Litigation Lawyer will be in post by September 2022.</p> <p>Planning Enforcement can instruct Legal Services to advise on the drafting of Notices and to take court action, namely prosecutions in the Magistrates' Court and Crown Court and applying for injunctions in the High Court.</p>

A summary of the instructions Legal Services has received on Planning Enforcement matters since the creation of East Suffolk Council on 1 April 2019, is tabulated below.

Planning enforcement instruction	Inhouse Legal Services instructed	Counsel instructed by inhouse Legal Services
Enforcement Notices	36	0
High Hedge Notices	4	0
S215 Untidy Land Notices	4	0
Temporary Stop Notices	2	0
Enforcement Appeals to Planning Inspectorate	4	4
Prosecutions	3	3
Injunctions	3	3

The Head of Legal and Democratic Services holds the delegations to instruct counsel and to initiate and defend legal proceedings, and he has onward authorised the Legal and Licensing Services Manager and Lead Lawyers to exercise these delegations. In deciding whether to prosecute, the inhouse lawyer must apply the 2 part Code for Crown Prosecutors ((1) Is there sufficient evidence for their to be a realistic prospect of conviction? and (2) Is it in the public interest to prosecute?). The inhouse lawyer can only lay an information for a defendant to be summonsed to Court to enter a plea to the offence with which they are accused, if both parts of this 2 part test are satisfied. All three prosecutions have resulted in conviction.

Counsel is generally instructed by Legal Services in Planning Enforcement matters which are assessed as being especially complex and litigated, or where it is simply more cost effective to instruct counsel. When counsel is instructed, the inhouse instructing lawyer still has a crucial role to play in being the link between the Planning Enforcement Officer and counsel, convening conferences with counsel, drafting witness statements, reviewing pleadings and position statements, completing court forms, attending case management hearings, ensuring filing deadlines are met, drafting cost schedules, preparing hearing bundles for court, assisting counsel in Court and liaising with the other side's legal representatives. The Planning Enforcement Officer, the inhouse lawyer and instructed counsel must work together as a team to maximise the prospects of success in securing the desired outcome.

Counsels are charged out by their Chambers at an hourly rate depending on their 'call' (years of post-qualification experience). Junior barristers are currently charged out between around £200-£400 an hour plus VAT. Queens Counsel (QCs) are currently charged out between around £400-£650 an hour plus VAT. Legal Services asks the Court to make an Order for costs against unsuccessful litigants, in circumstances where costs recovery is permitted. Legal Services also asks the Inspector to award costs on enforcement appeals in circumstances where the appellant has acted unreasonably.



	<p>There are time limits for bringing legal proceedings. What are referred to as 'summary only' offences, which can be heard at the Magistrates' Court, have to have been brought (an information laid) within 6 months of the commission of the offence. What are referred to as 'either way' or 'indictable' offences (which can be heard at the Magistrates or the Crown Court) can be brought at any time after their commission. There is no time restriction. Once an information is laid the parties are in the hands of the Court as to when the case is heard. Most cases are heard within 6 months, but it can take over a year depending on Court listing backlogs, the availability of Magistrates/Judges and whether parties apply for cases to be adjourned to comply with case management directions or in view of defendant or witnesses' health/availability to attend Court. There is a first hearing for the defendant to enter a plea. If the defendant pleads guilty, they are usually sentenced at that first hearing although the Courts sometimes adjourn sentencing for a probation report to be prepared. If a defendant pleads not guilty, case management directions (for example, when evidence is to be filed and served by the parties) and a trial date are set. For a period during the Covid 19 global pandemic, all cases were adjourned off indefinitely save for the most serious and urgent of cases which were prioritised.</p>
--	--

### 3 How to address current situation

3.1	The Planning Enforcement service is already under review through the commitment to provide an Action Plan for implementation to the September 2022 Strategic Planning Committee and through the recent Audit review.
-----	--

### 4 Reason/s for recommendation

4.1	<p>This report is intended to provide an overview of the Council's Planning Enforcement Service and it is recommended that the Scrutiny Committee accepts the advice of this report and provided in the Scrutiny Committee meeting whilst also accepting that ongoing work is taking place to present an Action Plan to the Strategic Planning Committee. If members of the Scrutiny Committee wish, a future report could be presented in March 2023 on the implementation of the Action Plan and its findings.</p>
-----	--

## Appendices

### Appendices:

<b>Appendix A</b>	Strategic Planning Committee June 2022 Enforcement Performance Report – January to March 2022 <a href="https://cmis.uk.com">Document.ashx (cmis.uk.com)</a>
-------------------	---

### Background reference papers:

None.
-------