

SCRUTINY COMMITTEE

Thursday 13 September 2018

PLANNING ENFORCEMENT AT SUFFOLK COASTAL DISTRICT COUNCIL (SCR 06/18)

EXECUTIVE SUMMARY

1. This report is written on the basis of the following request from an earlier meeting of the Scrutiny Committee. The report seeks to appraise Members on these matters.
2. *“In reviewing its Forward Work Programme, the Scrutiny Committee agreed that at its meeting in September 2018 it would review the full range of planning enforcement actions undertaken by Officers of the Council. This would include, for example, the processes to investigate alleged contraventions of planning control, the monitoring of approved development during construction phases and the use of powers given to local authorities under Section 215, Town and Country Planning Act 1990 in relation to untidy sites etc. With regard to the powers available under Section 215 of the above Act, the Scrutiny Committee would be seeking a clear explanation of the trigger points for such powers.”*

Is the report Open or Exempt?	Open
Wards Affected	All
Cabinet Member	Councillor Tony Fryatt, Cabinet Member with responsibility for Planning
Supporting Officer	Philip Ridley, Head of Planning and Coastal Management Philip.ridley@eastsoffolk.gov.uk (01394 444432)

1. PURPOSE OF REPORT

To provide Councillors with an overview of the current enforcement service and the legislation around which the enforcement service functions, with a specific reference to Section 215 (S215) legislation and case studies.

2. BACKGROUND

- 2.1 The Council's Enforcement Policy was adopted in August 2008. Since 2012, there have been two significant changes to the way that the Planning Enforcement service has been delivered.
- 2.2 Between 2012 and August 2016, the enforcement function was delivered by Planning Officers with technical expertise delivered by the Planning Enforcement Officer.
- 2.3 Since August 2016, two new Assistant Planning Enforcement Officers have been appointed and a new Enforcement Protocol (attached at Appendix A) was put in place to deal with incoming enforcement complaints for Suffolk Coastal District Council and Waveney District Council.
- 2.4 We aspire to visit all enforcement complaints in line with the timescales in the Enforcement Policy (attached at Appendix B) before being triaged and either passed to the relevant Area Planning and Enforcement Officer for the area concerned, or kept by the Enforcement Team to be closed or take further action.
- 2.5 It should be noted that in some instances the deadlines mentioned in this Policy in relation to Council responses cannot be met, due to other priorities and/or staffing levels available at the time to consider the issues.
- 2.6 As part of the creation of the new east Suffolk Council a new Enforcement Policy will be put in place. This is expected to be in place for April 2019.

3. THE PURPOSE AND STRUCTURE OF THE TEAM

- 3.1 Planning enforcement is a discretionary power local authorities have to remedy breaches of planning control. Members should note that paragraph 58 of the revised National Planning Policy Framework (NPPF) states "Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. They 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 and they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."

- 3.2 Although it is discretionary, it is a vital part of the development management service – without it, much of the remainder of the service would be rendered ineffective and public confidence in the planning process would be undermined.
- 3.3 The key concept in relation to effective planning enforcement is “proportionality”. In deciding whether enforcement action is taken, SCDC has to have regard to the potential impact on those affected by the breach of planning control and the health, housing needs and welfare of those affected by the proposed action. In practice, this means that SCDC seeks in the first instance to speak to all relevant parties in an attempt to resolve any issues without recourse to formal action. Nevertheless there are occasions when formal enforcement action has to be taken.
- 3.4 The Enforcement Team at Suffolk Coastal currently consists of one Senior Planning and Enforcement Officer who deals with more complex enforcement cases at both SCDC and WDC, enforcement case admin, appeals, court work, retrospective planning applications and high hedge applications, and two Assistant Planning and Enforcement Officers who deal with the inception of most enforcement enquiries, undertake initial case site visits, enforcement case administration, a working caseload, appeal and court work and deal with retrospective planning applications.

4. WORKING PRACTICES

- 4.1 Currently the team works reactively and receives enquiries from a variety of sources
- The Council’s website’s enquiry form
 - Telephone calls
 - Internal referrals from other departments, planning colleagues and Councillors
 - Letters
 - Emails into the enforcement inbox.
- 4.2 We endeavour to keep interested parties informed during the investigation. However the timing and frequency differs depending on the complexity of the case.
- 4.3 The enquiries are acknowledged in writing and interested parties are informed of the outcome of the investigation when it is closed.
- 4.4 The Enforcement Policy for Suffolk Coastal District Council was published in 2008, and procedures and processes are used in line with the enforcement protocol for day-to-day working and in line with the NPPF and any other national policy.
- 4.5 We deal with between 285 and 320 new enforcement cases a year. All of which will be visited by the Council’s Assistant Planning and Enforcement Officers in line with the Council’s Enforcement Policy.
- 4.6 The cases that are reported can range from:-
- breach of conditions

- unauthorised development
- permitted development enquiries
- changes of use
- untidy sites
- high hedge complaints

4.7 In the past year (August 2017 to July 2018) the Council served five Enforcement Notices and two S215 Notices. The Enforcement Notices served were in relation to changes of use of land.

5. LOCAL PLANNING ENFORCEMENT GUIDANCE

5.1 The Council's Planning Enforcement Policy is a comprehensive document that identifies the local priorities for enforcement action so that SCDC's enforcement resources are put to best use.

5.2 Ideally, the Enforcement Policy should be reviewed every five years to accord with new legislation and capacities.

5.3 All new enforcement cases are initially visited by the Council's Assistant Planning and Enforcement Officer in line with the Council's Enforcement Policy before being 'triaged' in line with the Enforcement Protocol. All new cases are then assessed in terms of priority.

5.4 Once all new cases are triaged, they will then either be re-assigned to the Planning Officer for the geographical area or kept by the Enforcement Team to carry forward.

5.5 The Enforcement Protocol is a departmental system that was introduced in August 2016 to help manage the flow of enforcement cases through the department and ensure that cases were prioritised appropriately and moved forward ensuring cases are effectively measured in terms of expediency and harm.

5.6 Expediency and proportionality are important factors to take into account when deciding upon enforcement action. The Council's Enforcement Policy is clear in relation to expediency and proportionality and the limited resources should be used appropriately where any formal enforcement action is appropriate and in the public interest to pursue.

6. NATIONAL PLANNING PRACTICE GUIDANCE

6.1 National Planning Practice Guidance (NPPG) – Ensuring Effective Enforcement was updated in February 2018 (see Appendix C). This document replaces previous national guidance on planning enforcement. It is a useful document which provides a comprehensive overview of the planning enforcement process, the powers

available to local authorities, and the circumstances under which it is appropriate to use them.

- 6.2 The NPPF contains brief information in relation to the enforcement of planning control, however, main guidance comes from local policies and the NPPG.

7. ENFORCEMENT TOOLKIT

- 7.1 After the Enforcement Team has received a complaint and undertaken an investigation and established that there is a breach of planning control, it has a number of formal options available to assist in resolving the breach. Not all options will be suitable in each case.

7.2 Breach of Conditions Notice (BCN)

We can serve a BCN on the developer or occupier when they do not comply with conditions imposed on a planning permission. If they do not comply with the requirements of the BCN we can take legal action. It can only be used to secure complete compliance. It does not apply to breaches of control related to listed building, advertisement or protected trees. We will use this procedure in preference to the service of Enforcement Notices where appropriate. It is a criminal offence to fail to comply with a BCN within the period for compliance specified.

7.3 Enforcement Notice

We will serve this when we are satisfied that there has been a breach of planning control and that it is appropriate to take action. With an enforcement notice the recipient(s) must take the specified steps within a set time period. Failure to comply with a notice is a criminal offence. The recipient(s) of a notice have a right of appeal to the Secretary of State through the Planning Inspectorate. An appeal suspends the effect of the notice until it is determined. If the recipient(s) lodge an appeal, we will tell all requesters and neighbours of the appeal and how they can make representations to the Planning Inspectorate. Any representations are available for public inspection.

7.4 Injunction

We can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown.

We can seek an injunction whether or not other enforcement action(s) have been taken. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

7.5 **Planning Contravention Notice**

This is the main method for local Councils to obtain information on a suspected unauthorised development. It will usually set out a list of questions about the site/development. We can offer a formal meeting to allow additional oral information to be given. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

7.6 **Section 16 Local Government (Miscellaneous Provisions) Act 1976**

This is primarily intended to establish information about the ownership and other interests in the land. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

7.7 **Section 330 Town and Country Planning Act 1990**

We use this power to get information, usually at an early stage of the enforcement process. It involves serving a Notice on occupiers of premises and/or person receiving rent. It is an offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

7.8 **Stop Notice**

We can serve these with an Enforcement Notice, or after we have served an Enforcement Notice if we consider that continuing unauthorised development is causing irreparable and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not usually come into effect until three days after we have served it, although we can reduce this period if necessary. Work must stop immediately the Notice comes into effect. There are compensation liabilities if the Enforcement Notice is quashed, but these are not related to the planning merits of the case. There is no right of appeal; failure to comply with the notice is an offence.

7.9 **Temporary Stop Notice**

We can serve these where we consider that there has been a breach of planning control, and it is necessary to stop the activity or development in question immediately to safeguard the amenity of the area. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice. In addition it is temporary and only lasts for 28 days. There is no right of appeal to the Secretary of State. A judicial review can challenge the validity and propriety of our decision.

7.10 Prosecution

We can commence Court proceedings where you have breached a formal notice. In addition, in some instances we can commence legal proceedings for unauthorised works without the need to serve any formal Notices, e.g. unauthorised works to a listed building or a protected tree, or an unauthorised advertisement.

These proceedings can include:

- a prosecution; and
- a formal caution - this is a formal process where you formally admit the offence. It may be referred to at the sentencing stage if you are ever found guilty of a subsequent offence. We may also take it into consideration when we decide whether or not to prosecute at a later stage for another similar offence.

In order to bring a successful prosecution, we must be able to prove that:

- the building or tree was protected;
- you have breached a formal notice (Listed Buildings);
- you have carried out, caused, or permitted the works (Listed Buildings or Protected Trees);
- the works were carried out without our consent (Listed Buildings or Protected Trees); or
- the works were not exempt works (Listed Buildings or Protected Trees).

We will apply two tests in cases where a prosecution appears likely, consideration of which will be done in consultation with our legal advisors:

■ **The evidential test.** We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.

■ **The public interest test.** We will only bring a prosecution where this is in the public interest.

We may apply cautioning in cases where a prosecution can properly be brought, but where we do not consider such action is appropriate in the circumstances of the case. We will use cautions in accordance with Home Office guidance. People who have previously received a formal caution will normally be dealt with by prosecution.

7.11 Direct Action

We do have the power, in special circumstances and as a last resort, to make sure an enforcement notice is complied with by carrying out the required steps ourselves in default of the owner or occupier's action. We can recover all the costs incurred from the owner. Where we cannot immediately recover costs we will register a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest.

7.12. Proceeds of Crime Act 2002

Confiscation orders under the Proceeds of Crime Act 2002 (POCA) can be used by local authorities to obtain confiscation orders against people who commit planning

crimes, to deprive them of the financial benefit they have gained as a result of committing planning crimes.

8. SECTION 215 NOTICES

- 8.1 The Act states that the Council can take action under S215 (1) : *If it appears to the local planning authority that the amenity of a part of their area, or of an adjoining area, is adversely affected by the condition of land in their area, they may serve on the owner and occupier of the land a notice under this section.*
- 8.2 Determining whether a S215 Notice is applicable, is a matter of fact and degree, and whilst the ODPM Best Practice Guidance to Section 215 is a good starting point to determining fact and degree, it is not a definitive guide and each case must be considered on a case by case basis and against relevant case law.
- 8.3 The main points to consider when deciding if the serving of a S215 Notice is applicable are:-
- Is amenity being **adversely** impacted by the condition of the land?
 - Is it in the public interest to take action?
 - Is it expedient to take action?
 - Human Rights
 - Who owns the land?
 - Cost implications if the work is not done
- 8.4 All decisions relating to S215 cases are discussed with Area Planning Team Leaders/ the Planning Development Manager and/or the Council's Legal Team.
- 8.5 In the last five years the Council has served three S215 Notices.
- 8.6 The Planning Department works closely with the Council's Private Sector Housing Department (PSH) to bring empty properties back into use and has already served one S215 Notice this year in association with PSH.
- 8.7 PSH report properties to the Enforcement Team, which may be eligible for S215 action. The Enforcement Team then liaise with Planning Team Leaders and PSH to assess the site using the criteria in 8.3 above to decide whether the site should be served with a S215 Notice.
- 8.8 If eligible for a S215 Notice, once served, PSH will either liaise with the owners to assist in helping them to arrange for work to be carried out or arrange for estimates to be carried out so that work can be carried out in default.
- 8.9 PSH will then arrange for the work to be done and any money owing to the Council by undertaking default works will be recouped through a charge on the land. The Council may also consider using powers to force sale under The Law of Property Act 1925.
- ## **9. S215 – CASE STUDIES (attached at Appendix D)**

9.1 Larksway, Felixstowe

An alleged overgrown site. Assessed to be no significant loss of amenity and therefore not S215 compatible.

9.2 Grange Road, Felixstowe

This site has been brought to the Council's attention on and off for the past 15 years, however, when the Council has considered serving a S215 Notice the site has been cleared sufficiently or enough that a S215 has not been expedient at that time. Subsequently, personal circumstances of the owner have worsened and S215 action is currently being considered by the Council's Planning Enforcement Team in association with PSH.

9.3 Haven Close, Felixstowe

Front and back gardens overgrown by brambles. Case reported by PSH. Assessed to be eligible for a S215 Notice. Notice served in January 2018. Compliance date with this Notice is 12 May 2018. The Notice was not complied with so, in discussions with PSH, direct action is being pursued.

9.4 Hillcrest, Knodishall

Front garden and front door inaccessible due to overgrown trees and bushes. Rear garden containing rubbish. Reported by PSH. Assessed to be eligible for S215 action. Notice served in April 2018. Compliance date with the Notice is 28 August 2018.

10. CONCLUSION

10.1 The Enforcement Service has improved greatly since the incorporation of the Enforcement Protocol. The implementation of further improvements over the next 12 months will bring the Service into line with the latest national policies, technical guidance and best practice. These improvements will consist of:-

- Review of the Enforcement Policy for the new East Suffolk District Council

This will enable the Council to best manage customer expectations and improve their experience of the service in an increasingly demanding area of work.

Recommendation

That the Scrutiny Committee comments upon and notes the overview of the current Enforcement Service

Appendices

Appendix A - Enforcement Protocol

Appendix B – Enforcement Policy

Appendix C – National Planning Policy Guidance

Appendix D – Case Studies

Background Papers – None