

Report to: Cabinet

Date: 2 June 2021

Title: Planning Enforcement Policy

Report of: Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration and Planning

Cabinet member: Councillor Swansborough, Cabinet Member for Place & Special Projects

Ward(s): All wards

Purpose of report: To seek Cabinet approval for the adoption and publication of the Council Enforcement Policy document and to use it for managing/processing planning enforcement related matters.

Decision type: Key

Officer recommendation(s):

- (1) To agree the publication and use of the Planning Enforcement Policy contained in Appendix 1.
- (2) To provide delegated authority to the Director of Regeneration and Planning, in consultation with the Portfolio Holder for Planning and Infrastructure, to make minor or technical amendments to the Planning Enforcement Policy prior to their publication or as otherwise required following publication.

Reasons for recommendations:

- (1) To publicise the Council's expectations for the delivery of the planning enforcement function.
- (2) To make minor amendments to address technical or drafting issues.

Contact Officer(s): Name: Leigh Palmer
Post title: Head of Planning
E-mail: leigh.palmer@lewes-eastbourne.gov.uk
Telephone number 07939 57 82 35

1 Introduction

- 1.1 Attached is the proposed Council's Planning First Enforcement Policy
- 1.2 This issue has been reported to Eastbourne Planning Committee on the 23rd of March where they were in support of the proposals with two modest revisions. These revisions are attached as Appendix 2.
- 1.3 Following the establishment of Planning First it has given the opportunity to set out the Council's approach to planning enforcement. The purpose of this policy document is to ensure that Councillors and officers, external agencies and the public are aware of the Council's proactive approach to its planning enforcement responsibilities.
- 1.4 The planning system operates to regulate the development and use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of residents, visitors, and businesses of the Borough from the harmful effects of unauthorised development.
- 1.5 The National Planning Policy Framework states '...effective enforcement is important as a means of maintaining public confidence in the planning system...' The need for effective enforcement is very important as it assists in-
- Tackling breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area;
 - Maintaining the integrity of the decision making process;
 - Helping to ensure that the public acceptance of the decision making process is maintained.
- 1.6 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means.
- 1.7 Breaches of planning control are viewed very seriously and it is our policy to exercise these powers appropriately, proportionately and rigorously so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission.
- 1.8 The integrity of the development management process depends on the Council's readiness to take effective enforcement action when it is justifiable.
- 1.9 This report outlines the importance of delivering enforcement investigations and subsequent actions in a prompt and efficient manner.

2 General Approach to Enforcement

2.1 The decision to take enforcement action is discretionary and the Council will always act in a proportionate manner.

2.2 In considering whether to pursue action, the Council will have regard to:

- whether the breach of planning control unacceptably harms public amenity, or the authorised use of land and buildings merits protection in the public interest.
- ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to cause no harm to amenity.
- ensuring that, if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds.
- statutory time limits for taking enforcement action.
- relevant planning policies and other material considerations

3 Complaint Priorities

3.1 The Policy document outlines that to make the most effective use of resources, all reports of suspected breaches of planning control will be investigated and progressed in accordance with a priority rating of '1', '2' or '3' depending on the nature of the breach and the degree of harm caused. Individual cases may be reprioritised as the investigation progresses

4 Where no further action is proposed.

4.1 When it is proposed to take no further action, either because no breach has occurred, a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter, the person reporting the suspected breach of control will be notified preferably in writing within 15 working days of the initial site visit that no further action will be taken and an explanation provided of the Council's reason(s).

5 Where a breach of planning control is established

5.1 Where a breach of control is established, the person reporting the suspected breach will be notified which course of action the Councils intend to take to secure regularisation of the breach of planning control. In most instances this will involve one of the three following options:

- Attempt to negotiate a solution.
- Invite the submission of retrospective application for planning permission to allow the Councils to consider whether planning permission should be granted, and the development regularised.
- Consider formal enforcement action.

6 The Councils Policies for Enforcing Planning Control

6.1 The policy document lists a range of policies that cover the key themes and common material breaches of planning control.

7 Corporate plan and council policies

7.1 Effective operation of this policy will support both the Council's priorities in the Council Plan and Departmental Service Plan to protect and enhance the quality of the local environment.

8 Financial appraisal

8.1 The Enforcement Policy Document will be used by the existing staffing structure and therefore there are no financial implications of this report.

9 Legal implications

9.1 The Town and Country Planning Act 1990 and the other legislation which empowers the Council to take enforcement action are cited in the Policy Statement.

9.2 The Council's scheme of delegation requires consultation with the Council's senior legal officer before serving injunctions or taking proceedings for the recovery of CIL. However, it is also common practice for all statutory notices to be issued in consultation with the appropriate legal officers and this is a safeguard that is secured by the Head of Planning in the terms of his sub-delegation to the officers responsible for planning enforcement.

Legal implications provided by JCS 10.02.21 IKEN ref TBC.

10 Risk management implications

10.1 The following risk will arise if the recommendations are not implemented and the following mitigation is proposed:

Risk: if not implemented, the advice, policies and procedures within the enforcement policy would potentially result in delay and ad-hoc processing of complaints. This would result in an inconsistent service.

Mitigation: That the recommendations of this report are approved, allowing the publication of the enforcement policy to present the Council's expectations for how planning enforcement complaints should be addressed.

11 Equality analysis

11.1 An Equality Screen has been completed in conjunction with this report. Although the proposals are unlikely to impact on protected groups, taking steps to promote equal access to the enforcement complaints process may improve the health and wellbeing of communities as well as the character and amenity of the area.

12 Environmental sustainability implications

12.1 By seeking to influence how planning enforcement is undertaken and to ensure that planning permissions are monitored and adhered to will ensure that where appropriate actions will help to meet the target of zero carbon by 2030.

13 Appendices

- Appendix 1 – Planning Enforcement Policy
- Appendix 2 – Minute of Eastbourne Planning Committee