

Chichester District Council

OVERVIEW AND SCRUTINY COMMITTEE

22 March 2022

Planning Enforcement Decision Making Process

1.0 Contacts

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2.0 Recommendation:

2.1 That the committee notes the operation of the planning enforcement process and makes any comments.

3.0 Background

3.1 Chichester District Council (CDC) as the Local Planning Authority has powers under the Town and Country Planning Acts to control unauthorised development. Planning Enforcement is undertaken by a team within the Development Management Division. CDC has an agreement with the South Downs National Park Authority (SDNPA) to act on their behalf in the provision of Development Management services within the park, and this includes planning enforcement work.

3.2 This report details:

- i. How the enforcement process works and the Council's Enforcement Strategy
- ii. The investigation process
- iii. Powers available to the Council in respect of planning enforcement, including appeals and powers if an enforcement notice is breached
- iv. How decisions on whether to enforce are made; what matters are material considerations and what circumstances and issues influence whether formal action is taken
- v. Current workloads and the impact of Covid on planning enforcement

- vi. Investigation and enforcement in respect of alleged breaches of planning control on gypsy and traveller sites
- vii. Resident perceptions of the enforcement process

i. How the enforcement process works and the Council's Enforcement Strategy

- 3.3 Local planning authorities (LPA) have responsibility for taking enforcement action that may be necessary, in the public interest, in their administrative areas. As stated in paragraph 3.1 CDC has an arrangement to deliver planning enforcement within its administrative area of the SDNP. The purpose of the planning enforcement service is to investigate alleged breaches of planning control, taking enforcement action where appropriate. The aim of the service is to remedy planning harm being caused by breaches of planning control.
- 3.4 The National Planning Policy Framework (NPPF) encourages the creation of a plan to deliver proactive enforcement in a manner that is appropriate to the area. CDC adopted its Planning Enforcement Strategy in 2014 and to date it has not been revised. The strategy explains the approach the council will follow to investigate and remedy alleged breaches of planning control. The SDNPA has however adopted its own Enforcement Guide for matters affecting the National Park.
- 3.5 The Council's Enforcement Strategy explains the planning enforcement function. It clarifies the various breaches of planning control and criminal offences that planning enforcement can address and details the powers given to the Council and how and when these powers may be employed. The strategy gives clear guidance on what we can do as a local planning authority and how enforcement complaints which allege a breach of planning control are prioritized as High, Medium or Low. It explains how enforcement complaints can be made and sets out what can reasonably be expected from the Council once a complaint has been received. The document accords with advice contained in the NPPF which 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 they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.'
- 3.6 The Council has a range of enforcement powers available, which are detailed below, however it is important to note the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are clear that Councils should act proportionately in using their enforcement powers. In addition, to undertake works without first obtaining planning permission is not a criminal offence and the planning legislation specifically allows for the submission of planning applications for development already undertaken. In this respect, the enforcement of planning control does not therefore seek to

punish people for undertaking works without first obtaining planning permission.

- 3.7 The exception to this is that it is an offence to carry out works that require listed building consent without a consent being obtained. It is also an offence to carry out works to trees within a conservation area and those with a Tree Preservation Order without first obtaining consent.

ii. The investigation process

- 3.8 Upon receipt of a report of an alleged breach of planning control an informal triage process is undertaken to ascertain if the report is a planning matter and/or if the matter requires further investigation. The triage process may include:

- determining if it is a planning matter
- identifying if it is permitted development (i.e. already granted planning permission by the Town and Country Planning (General Permitted Development) Order 2015, as amended)
- researching the planning history of the site
- identifying any special designations or constraints, for example, listed buildings, sites designated for their environmental or ecological importance
- searching other council data or publicly held information
- contacting the person responsible for the alleged breach to discuss the works being undertaken

- 3.9 If the matter reported is not a council issue or if no alleged breach of planning control is identified, then the complainant will be notified accordingly, and the planning enforcement service will take no further action.

- 3.10 Where the matter being raised falls within another council service area, for example it may be a noise disturbance or similar issue, the complainant will be advised accordingly. Their concerns and details will be forwarded on as appropriate for further investigation. Alternatively, the complainant will be signposted to the relevant service area to pursue the matter directly.

- 3.11 If the scenario's above do not apply the council will investigate the alleged breach of planning control to establish whether a breach of planning control has occurred. The investigation process will be dependent on the nature of the alleged breach of planning control, however it will in most cases involve a site visit at the start of the process to observe the alleged breach of planning control and to gather evidence. Several visits may be necessary to establish the occupation or use of the site or to identify if a planning condition is being breached.

- 3.12 Where a breach of planning control is identified, officers will consider the planning merits of the development being undertaken and any harm arising from the breach, taking into account national and local planning policies. This assessment will help determine the most appropriate course of action.

However, when making that decision it is necessary to take into consideration the public interest and the expediency of formal enforcement action. A key consideration in deciding whether to take formal enforcement action is, if a planning application had been submitted, whether that application would have been refused permission or only granted subject to conditions.

3.13 Once the investigation is concluded it could result in a number of different outcomes. These are outlined below:

- No breach established because the reported matter has not occurred, has ceased, or is outside of planning control.
- The breach of planning control has been remedied.
- The development is immune from enforcement action.
- A breach of planning control has occurred but causes no planning harm and no further action is necessary.
- A breach of planning control has occurred and harm has been identified such that it needs to be resolved through negotiation or formal action.

3.14 A remedy to a breach of planning control can occur because of one or more of the other outcomes listed above. For example, planning permission may have been granted, or the offending development has been removed. Nevertheless, in most cases, upon the remedy of a breach of planning control the council will close the enforcement case and notify the relevant interested parties accordingly. In some case it may be that formal action (i.e. prosecution or other legal action) may continue beyond the point of the breach being remedied. The decision to continue with this action will be made on a case-by-case basis and will be in line with the council's enforcement strategy.

3.15 Breaches of planning control become immune from enforcement action if they have existed for a certain period of time. In most cases, development becomes immune from enforcement if no action is taken:

- within 4 years of substantial completion for a breach of planning control consisting of operational development;
- within 4 years for an unauthorised change of use to a single dwellinghouse;
- within 10 years for any other breach of planning control (essentially other changes of use).

These time limits are set out in [section 171B of the Town and Country Planning Act 1990](#).

Note: There is no period of immunity for unlawful works to a Listed Building.

3.16 The fact that a breach of planning control has occurred does not automatically mean that formal action will be taken. Some breaches of planning control are minor and therefore cause limited or no planning harm (i.e. if an application

were to be submitted for the Council's consideration, it is likely that it would be unconditionally approved). In these instances, the council will use its discretion not to take further action as it would not serve a useful purpose or be a good use of our resources to do so. The developer would however be advised that planning permission is required for the works undertaken and of their right to regularise the development retrospectively under Section 73A of the Town and Country Planning Act 1990.

- 3.17 A decision to take no further action constitutes a formal decision of the authority which is displayed on the Council's website under the planning enforcement reference.
- 3.18 Resolving breaches of planning control can take a long time, particularly when taking formal enforcement action. The amount of time it takes to resolve a breach of planning control very much depends on the severity of the breach combined with the actions and/or reactions of the landowner(s)/occupier(s). Negotiations can often lead to a quicker resolution and to a better overall outcome. Where appropriate officers will negotiate with the owner/occupier and will consider options to address the planning harm resulting from the breach. The negotiation process may involve works being undertaken to remedy breaches of planning control to bring a development in line with permitted development rights or involve the submission of a retrospective planning application.
- 3.19 Where appropriate, the submission of a planning application will be invited to regularise the breach of planning control. In determining the application, the council could impose conditions on the planning permission to address the harm being caused by the unauthorised development and/or for the council to retain control of the development. This approach allows the planning merits of the development to be fully and openly considered. Applications for retrospective planning permission are considered objectively on their planning merits in the same way as those for proposed development. The council may, where it is appropriate and reasonable to do so, suspend any formal enforcement action whilst a retrospective planning application is being considered. However, where appropriate, the council will not allow the application process to unreasonably delay enforcement proceedings.
- 3.20 If it is not possible to remedy an identified harmful breach of planning control formal action will be undertaken to resolve the issue.

iii. Powers available to the Council in respect of planning enforcement, including appeals and powers if an enforcement notice is breached

- 3.21 Formal enforcement action is based on an assessment of the planning merits of the unauthorised development and can therefore only be taken where the development fails to meet the requirements of national and local plan policies. Formal enforcement action will be taken where it is reasonable and justified to do so, for example where negotiation has failed to resolve the breach of planning control occurring, or where a breach of planning control has a serious harmful impact that requires formal action.

3.22 Formal enforcement action may include:

- Planning contravention notice (PCN) – this is a tool to formally request information about an alleged breach of planning control (such as who is occupying a site, what uses are taking place and for how long). It may be served on the owner/occupiers of a site and it is an offence to not complete and return the information requested.
- Temporary Stop Notice (TSN) or Stop Notice (SN) – these are tools to stop a development/use taking place either temporarily or permanently.
- Enforcement notice (EN) – the notice will state the breach of planning control, identify the harm it causes, how it conflicts with national and local planning policies, the steps required to remedy the breach identified and a time frame by which the steps required [to remedy the breach] must be carried out.
- Prosecution for breach of condition(s) – court action may be taken against a failure to comply with the requirements of a breach of condition notice issued by the Council.
- Prosecution of the offence of failing to comply with an enforcement notice.
- An untidy land notice [issued under s.215 of the Planning Act] to remedy harm to the amenities of an area arising from unkempt land or premises.
- A Tree Replacement Notice to require planting following the unlawful removal of protected trees.

3.23 Serious breaches of control will be strictly enforced, but particularly where those breaches have a significant detrimental impact on living conditions, the local area, or where the breach has the potential to cause irreversible harm. In such cases, the council will use all the tools available to remedy the harm being caused. In some instances, the council may decide that the breach of planning control is so serious that it warrants immediate cessation. The council may therefore issue a temporary stop notice, or an enforcement notice accompanied by a stop notice.

3.24 Most formal notices have a right of appeal either to the Planning Inspectorate or through the courts. If an enforcement notice is subject to an appeal, the requirements of the notice will be held in abeyance until the appeal has been decided.

3.25 The failure to comply with the requirements of a formal notice is a criminal offence. Where such an offence is committed, the council will gather information about the offence, assess that information and decide the best course of action. This may be by seeking prosecution proceedings, applying for a high court injunction, undertaking works in default (take direct action) or continue to work with the offender to seek a suitable resolution. When deciding on the best course of action, the council will assess whether there is sufficient evidence to pursue the matter, whether such action is in the public interest and the expediency of pursuing the action.

iv. How decisions on whether to enforce are made; what matters are material considerations and what circumstances and issues influence whether formal action is taken

3.26 Decisions are made based on an assessment of the level of harm the unauthorised development has in respect of a range of matters including, but not limited to:

- Amenity of neighbouring properties
- Highway safety
- Noise and disturbance
- Landscape impacts
- Impacts upon the significance of a heritage asset
- Drainage and flood risk issues
- Ecological impacts

3.27 The assessment is based on the policies and guidance within national and local planning policies, including neighbourhood plans and other material considerations such as Supplementary Planning Documents, Conservation Area Character Appraisals, Village Design Statements and CDC guidance documents. In addition, the provisions of the Conservation of Habitat and Species Regulations 2017 and other legislation to protect wildlife may be a relevant consideration. Matters that are not material to any decision as to whether to take enforcement action or not, include land ownership, boundary disputes, or number of complaints received.

v. Impact of Covid on the team and enforcement action.

3.28 The team consists of a manager, principal planning officer, three planning officer posts and an administrative/technical support officer. Although officers were required to work from home at times during the Covid-19 pandemic, the work of the Planning Enforcement team did not significantly change or cease. The team continued to investigate reports of a breach of planning control and issue formal notices where it was deemed necessary, proportionate, and expedient to do so. The only change was that at the height of the pandemic, site visits were only carried out when it considered strictly necessary. Although, the team is currently fully resourced, one planning officer post was vacant between 8 November 2021 and 28 February 2022.

3.29 During the pandemic planning enforcement received an increased number of complaints. It is considered this was likely to be as a result of people spending more time at home to undertake works, and of course more people to observe what was taking place. In some cases, the work undertaken was to construct home offices. Table 1 contained within Appendix 1 provides details of the number of cases managed for the years 2018 to 2021 and they demonstrate

that the number of complaints received was highest in 2019, and the numbers are now falling. There was a reduction in the number of enforcement notices served in 2019, however the number increased in 2020 and 2021 as shown by the information contained within Table 2 of Appendix 1. The figures demonstrate that whilst covid impacted on working practices to a degree, the planning enforcement service continued to investigate breaches of planning control and pursued formal action where it was necessary.

- 3.30 The information provided shows that as a result of an increase in cases the number of on hand cases also increased in 2020. The number remain higher than in 2018 and 2019, however this is now reducing which is positive and it is anticipated with the vacant post now filled this downward trend will continue. Importantly, the information contained in Table 3 of Appendix 1 shows that performance, in respect of visits being undertaken and contact with complainants, dipped only very slightly in 2020 from the previous year, and in 2021 the planning enforcement team achieved 100% for all targets.
- 3.31 Therefore, whilst the pandemic brought challenges to the way the planning enforcement team operated it did not significantly affect performance against targets set out in the Enforcement Strategy, and performance continued at a high level.

V. Enforcement on traveller sites

- 3.32 The government's stated overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Hence, whilst the enforcement of breaches of planning control on travellers sites follows the principles and actions set out above, officers must also take into consideration government guidance contained in 'Planning Policy for Traveller Sites' (PPTS) which is read in conjunction with the National Planning Policy Framework. The identified need for sites in the district is also a material consideration.
- 3.33 In addition to considering the human rights of those affected in accordance with the Human Rights Act 1998, it is also necessary to consider whether there are any specific impacts upon the protected characteristics of persons identifying as a Gypsy in accordance with The Equality Act 2010, and the best interests of the child under Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), arising from a proposed action. These matters must be assessed when considering whether to issue formal enforcement proceedings.

vi. Resident perceptions of the enforcement process

- 3.34 There are common misconceptions around what a planning enforcement service can achieve and the timescales in which it operates. It is therefore important that customer expectations are managed through compliance with the Enforcement Strategy and consistency, where possible, in the approach that is taken to investigating breaches of planning control.

3.35 It remains however that there are a few common perceptions around what can be enforced:

- Where communities report concerns about unauthorised development, that the Council can automatically take formal action – the Council would be challenged at appeal and in court if it proceeded to formal action without first engaging with a developer/transgressor, to do so may also lead to an award of costs against the Council, as the possibility of voluntary compliance should be explored in the first instance.
- Where land is taken into a development site that residents consider to be owned by someone else - land ownership is not a ground for taking formal action unless a material change in the use of the land takes place. For example, from a field to garden amenity land.
- Where unauthorised development affects a right of way, residents may expect that we can address the right of way – permission is required to divert a public right of way [PROW] but interference with a PROW, obstructing it or destroying its surface is a matter for WSCC as the PROW authority.
- Where a person has been issued with a Stop Notice that the Council can restrain them from continuing – undertaking any form of formal action relies on the recipient complying with the notice or court order served upon them as such actions do not physically restrain individuals from proceeding. By continuing with the breach identified, the person takes a calculated risk regarding future actions and costs in relation to the formal proceedings undertaken.
- Where a breach of a controlling planning condition takes place that a Breach of Condition Notice [BCN] can be issued to rectify the breach – a BCN can only require compliance with the wording of the controlling condition and cannot exceed the requirements of the planning permission to correct a perceived weakness in the approved scheme. For example, if the developer has provided 66 parking spaces [including 6 spaces for visitors] as required by condition, the LPA cannot then dictate where the visitor parking should be located if that is not specified within the permission issued.

4.0 Outcomes to be achieved

- 4.1 To raise awareness of the planning enforcement process.
- 4.2 To ensure that the decisions of Planning Enforcement are consistent with the Enforcement Strategy, relevant National and Local Planning Policies and other material considerations to enable the expectations of those engaged in the planning enforcement process to be managed.

5.0 Proposal

- 5.1 That the committee notes the operation of the planning enforcement process and makes any comments.

6.0 Resource and legal implications

6.1 There are no direct financial or budgetary implications arising from this matter. Working in accordance with the Council's adopted Enforcement Strategy, the South Downs National Park Enforcement Guide and Government guidance has resulted in few complaints having been received about the service. This has enabled it to focus on the core function of enforcement investigation and complaint resolution.

6.2 Paragraph 59 of The National Planning Policy Framework 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 they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate"

The Enforcement Strategy meets the objectives of the NPPF.

7.0 Consultation

7.1 None

8.0 Community impact and corporate risks

8.1 Within the enforcement process there is a risk that an aggrieved party may make a formal complaint or seek financial compensation for any harm arising from a failure to enforce. These risks can be managed through the regular monitoring of cases by both officers and members as set out above.

9.0 Other Implications

Are there any implications for the following?	Yes	No
Crime & Disorder: The Council has a duty "to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area". Do the proposals in the report have any implications for increasing or reducing crime and disorder?		No
Climate Change: Are there any implications for the mitigation of or adaptation to climate change? If in doubt, seek advice from the Environmental Strategy Unit (ESU).		No
Human Rights and Equality Impact: You should complete an Equality Impact Assessment when developing new services, policies or projects or significantly changing existing ones. For more information, see Equalities FAQs and guidance on the intranet or contact Corporate Policy.		No
Safeguarding: The Council has a duty to cooperate with others to safeguard children and adults at risk. Do these proposals have any		No

implication for either increasing or reducing the levels of risk to children or adults at risk?		
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10.0 Background Papers

10.1 NPPF
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf

10.2 NPPG
[Enforcement and post-permission matters - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPG_July_2021.pdf)

10.3 The Enforcement Strategy
https://www.chichester.gov.uk/media/27975/Enforcement-Strategy-2017/pdf/Enforcement_Strategy_2017.pdf

11.0 Appendices

11.1 Appendix 1 – Planning Enforcement Performance