

London Borough of Enfield

Portfolio Report

Report of: [Sarah Cary]

Subject: [Approval of the Planning Enforcement Policy]

Cabinet Member: [Cllr George Savva]

Executive Director: [Sarah Cary]

Ward: [Boroughwide]

Key Decision: [KD 5386]

Purpose of Report

1. This report seeks the approval of the Planning Enforcement Policy for the investigation and enforcement of breaches of planning control.
2. The Planning Enforcement Policy details the proposed approach to dealing with breaches of planning regulations. It provides information and guidance to residents, developers and those with other interests, about how the Council could deal with any development that does not accord with national and local policies or where there is non-compliance with enforcement action already taken.
3. In exercising the Council's statutory obligations under the Town and Country Planning Act 1990 (as amended), the Town and Country Planning General Permitted Development Order 2015 and other associated planning legislation, the Planning Enforcement Policy is intended to provide guidance on the principles and processes that will be expected to be applied by officers to secure effective compliance and improvement of the built environment as well as promoting consistency and transparency in the use of the Council's enforcement powers.

Proposal(s)

4. To approve the Planning Enforcement Policy at Appendix 1, which details the proposed approach to dealing with breaches of planning regulations and promotes consistency and transparency in the use of the Council's enforcement powers.

5. To delegate to the Executive Director of Place and in consultation with the Lead Cabinet Member for Licensing and Regulatory Services to make any minor amendments to the Planning Enforcement Policy.

Reason for Proposal(s)

6. It is considered best practice to have an agreed and published Planning Enforcement Policy, which has regard to good practice advice contained in the National Planning Policy Framework.

Relevance to the Council Plan

7. The Planning Enforcement Policy contributes to the Council Plan as follows:
 - Good homes in well-connected neighbourhoods:
8. One of the Council's key objectives in the Council plan is about strengthening the connection between people and the places they live in. The Enforcement Policy will help the Council deliver its vision of good homes in well-connected neighbourhoods by making sure any breach of planning regulations / policy is dealt with appropriately to improve the Borough and local neighbourhoods. This supports a robust planning function safeguarding resident amenity and environmental quality to ensure Enfield remains an attractive place to live and work. Planning enforcement also tackles unlawful residential conversion to maintain the availability of quality residential accommodation.
 - Safe, healthy and confident communities:
9. Unlawful residential conversions can often result in poor quality and badly maintained properties. Such properties can also detract from the look and feel of neighbourhoods while also creating an adverse impression of neighbourhoods leading to anti-social behaviour.
10. A robust Planning Enforcement Policy supports the health and wellbeing of residents by tackling and addressing breaches of planning control swiftly and effectively, consistent with the Council Plan's aim to "Build measures into all our strategies and projects that will help improve public health and people's wellbeing."
 - An economy that works for everyone:
11. The Planning Enforcement Policy will support the work of enforcement officers to tackle poor standards of housing or cases where a breach of planning control is harming the quality of residential and commercial environment.
12. An improvement in property and environment conditions also has an inevitable positive effect on the residents enjoyment of their environment

and street scene facilitating initiatives to ensure “our high streets and town centres thrive and attract people to live, work and visit.”

Background

13. Effective enforcement is important to maintain public confidence in the planning system.
14. The Royal Town Planning Institute (National Association of Planning Enforcement Officers – NAPE) highlight the importance of enforcement commenting that:

“To achieve great development, planning relies on the energy and imagination of planners, decision-makers, developers, designers and investors. Each of these contributes to bringing ideas through the system to delivery - but without enforcement, our places, our environment and our quality of life would all be the poorer. At its heart, the planning system relies on trust and our enforcers provide the backbone of this trust - trust that those who flout our planning laws (and often other laws at the same time) will be brought to account; trust that those who strive for high quality will not be undermined by those who would deliver ill-planned and ill-designed development; and trust that the high quality schemes that achieve planning permission will be delivered with that same quality - that planning will deliver what is promised.”
15. The National Planning Policy Framework also states that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. It also advises that local planning authorities should consider publishing a local enforcement policy 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.
16. The preparation and adoption of a local enforcement policy is important because it:
 - allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
 - sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
 - provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
 - provides greater certainty for all parties engaged in the development process.
17. In accordance with the National Planning Policy Framework therefore, the Planning Enforcement Policy sets out our approach to dealing with breaches of planning regulations. It provides information and guidance to residents, developers and those with other interests, about how the Council could deal

with any development that does not accord with national and local policies or where there is non-compliance with enforcement action already taken and will support the enforcement work of the team to build on recent successes.

Examples of Recent Successful Outcomes

18 Number of Notices served over the last 5 years:

- Notices served (includes Planning Enforcement Notices, Stop Notices, Temporary Stop Notices, Breach of Condition Notices, Breach of Condition Enforcement Notices) between 1st January 2016 and 15th November 2021 was 207. Of these, 13 were Section 215 Notices. In addition to these Enforcement Notices, 266 Planning Contravention Notices were served.

19 Number of Prosecutions over the last 5 years

- Prosecutions taken to court was 25
(Note: During Pandemic, Courts were closed to all Local Authority cases except for those involving children and adult social care issues).

20 Kingswood – Clay-Hill

- Prosecution resulting in the owner pleading guilty to the unlawful removal of approx. 270 trees that were protected by an area TPO or by the fact they were located within a conservation area. The matter is now at the Crown court where sentencing will be handed down after an application made under the Proceeds of Crime act is dealt with.

21 151 Church Street

- Following non-compliance with an enforcement notice and appeal, our prosecution led to a guilty plea from the owner who had unlawfully converted a property on Church Street in Edmonton into eight separate studio units without planning permission. The Enforcement team then applied for a confiscation order under the Proceeds of Crime Act regarding the rent payments received for the five unauthorised flats. The owner contested the application and also lodged a number of appeals regarding the initial conviction (despite the fact the owner had pleaded guilty to the charge of failing to comply with the enforcement notice served). The owner's appeals were eventually dismissed and a substantial Proceeds of Crime Payment was made.

22. North Lodge – Whitewebbs Road.

- Following damage to a Grade II listed building and a large amount of fly tipped taking place, a Temporary Stop Notice was served and a hoarding was erected around the property to prevent further fly tipping. Direct action then taken to safeguard the heritage asset

from further harm by the erection of a scaffold structure covered in sheeting to reduce the ingress of water to the building. Costs incurred by the Council recovered from owner.

23 178 Bounces Rd

- A successful prosecution against the owner who had unlawfully converted the property into two flats without planning permission and failed to comply with the enforcement notice served. The owner was found guilty and a successful application under the Proceeds of Crime Act was made to recover the income gained from the illegal unit created.

24 303 Green Lanes

- This was a successful joint prosecution with Licensing regarding the property being used as a Shisha bar and the construction of a covered area over the rear delivery yard for the use of customers to smoke shisha. Owner pleaded guilty and works undertaken to regularise the situation.

25 88 Beaconsfield Rd

- Two prosecutions, once for failing to comply with the Enforcement Notice and then again for failing to pay the POCA award. On both occasions the property owner was found guilty. For failing to pay the POCA award the owner received a custodial sentence

Main Considerations for the Council

26. Although planning enforcement is discretionary, there is a potential risk in not taking enforcement action. The Planning Enforcement Policy will set out those circumstances and our approach to the completion of an investigation and whether it will lead to a notice being served. This will improve both transparency and consistency thereby minimising this risk.
27. Where it is considered necessary to deviate from the approach in the Policy, this will only be done where it is justifiable, proportionate and the reasons are outside the scope of the policy. In addition, officers will receive necessary training and will be guided by procedures that will be regularly reviewed and updated. This risk is further mitigated by taking expert legal advice upon any decisions to be taken.

Safeguarding Implications

- 28 Planning Enforcement officers are able to enter land specifically for enforcement purposes (Sec 196a,196b Sec 196C of the Town and Country Planning Act 1990). The Act specifies the purposes for which entry to land may be authorised namely:
 - to ascertain whether there is or has been any breach of planning control on the land or any other land;

- to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
 - to determine how any such power should be exercised; and
 - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.
29. Planning enforcement officers are trained and aware of potential safeguarding concerns for both children and adults, should situations arise in the course of their investigation.
30. Where officers identify safeguarding concerns during inspections, visits and enforcement these are referred to the appropriate safeguarding hub.

Public Health Implications

31. An improvement in residential amenity or the condition of the environment can have indirect public health benefits in terms of how residents interact and experience their surroundings. A robust Planning Enforcement Policy supports this.

Equalities Impact of the Proposal

32. The EQIA is attached. The Planning Enforcement Policy aims to ensure consistent and appropriate enforcement action is taken, where breaches of planning control are identified.
33. The Policy provides a clear and transparent framework for tackling breaches of planning control ensuring decisions and actions are consistent and fair to all.

Environmental and Climate Change Considerations

34. These are the considerations:

| Consideration | Impact of Proposals |
|------------------------------|---|
| Adaptation and resilience | This policy does not deal with matters which directly impact on climate change adaptation and resilience. |
| Energy consumption | Delivery of the policy should not in itself lead to any increase in energy consumption |
| Carbon emissions and offsets | Delivery of the policy should not in itself lead to any increase in emissions and no offsets are proposed |
| Environmental | Delivery of the policy should have positive environmental impacts in respect of the street scene and quality of life for residents |
| Procurement | No additional procurement of goods or services is proposed. Risks that may arise if the proposed decision and related work is not taken |

Risks that may arise if the proposed decision and related work is not taken

35. If the Planning Enforcement Policy is not approved there is a risk that any legal or prosecution proceedings might be challenged on the basis that good practice guidance about having a policy in place is not being followed and might lead to unnecessary legal challenge

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

36. There are no risks in approving this enforcement policy. It is good practice to have an enforcement policy providing the framework in which to make enforcement decisions.
37. There is a risk of not taking enforcement action in accordance with the Planning Enforcement Policy. Where it is considered necessary to deviate from the approach in the Policy, it will only be done where it is justifiable, proportionate and the reasons are outside of the scope of the Policy. In addition, officers will receive necessary training and will be guided by procedures that will be regularly reviewed and updated. This risk is further mitigated by taking expert legal advice upon any decisions to be taken.

Financial Implications

38. None other than failure to have in place a Planning Enforcement Policy may be grounds for challenge giving rise to potential costs award depending on the outcome of the enforcement action.
39. The Planning Enforcement Policy sets out what services provided by the team will be subject to a charge. These include:
 - Providing a copy of an enforcement notice
 - Removing an enforcement notice from the enforcement register
 - Request for compliance check (compliance with planning permission or conditions)
 - Enforcement notice compliance certificate

Legal Implications

40. Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas. Powers are derived from the Town and Country Planning Act 1990.
41. Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement policy, where it is not part of the development plan.

Workforce Implications

42. The Planning Enforcement Policy will be followed by existing officers as a framework to carry out their enforcement activities and will support the broadening of their housing enforcement capability.
43. The Policy will also act as a guide for new officers as part of their induction / training.

Property Implications

44. There are no property implications

Other Implications

45. None

Options Considered

46. There are no viable alternative options. To not have a specific Planning Enforcement Policy in place could potentially lead to an inconsistent approach in the exercising of the Council's enforcement duties and approach to enforcement decisions which could leave the Council open to legal challenge.

Conclusions

47. Approval of the Planning Enforcement Policy details the proposed approach to dealing with breaches of planning regulations. It provides information and guidance to residents, developers and those with other interests, about how the Council could deal with any development that does not accord with national and local policies or where there is non-compliance with enforcement action already taken.

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Date of report

Appendices

Planning Enforcement Policy
Consultation Response Matrix.

Background Papers

The following documents have been relied on in the preparation of this report:

None