

Report to Planning Scrutiny Standing Panel

Date of meeting: 10 September 2013

Portfolio: Planning and Economic Development

Subject: Local Enforcement Plan

Officer contact for further information: Jerry Godden (4498)

Committee Secretary: Mark Jenkins (4607)



Recommendations/Decisions Required:

That the Committee formally adopts the attached Local Enforcement Plan in conformity with the suggestion for such a plan as contained within the National Planning Policy Framework.

Report:

As part of the new localism agenda the Government has introduced the National Planning Policy Framework as planning guidance.

Regarding the planning enforcement function, Section 207 of the Framework states, "*Local planning authorities 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 it is appropriate to do so*".

This would fit in with the stance this Council adopts in enforcement investigation and action. Epping Forest District Council supports sustainable development in the right locations but also wants to take tough action to deal with inappropriate and harmful development. Whilst the production of a LEP is not compulsory, it is recognized as an action target in the Planning and Economic Development Business Plan 2013-14 and the Panel are being presented with a draft Local Enforcement Plan (LEP) to meet this requirement. The adoption of such a LEP would help to safeguard against enforcement actions being open to challenge from parties enforced against on the basis that the Council has not formally adopted such a such a plan.

A number of Councils around the country have already introduced such a document and this is expected to gather momentum over the next 12 months. Epping Forest will be in the forefront of adopting a LEP.

This LEP firstly sets out first all our vision for planning enforcement. Whilst it is a discretionary power of the Council to take enforcement action, the LEP states our vision of readiness to take effective enforcement action when it is justifiable. The community's confidence of the planning process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the Council to intervene. It sets out the principles of good enforcement and investigation, explaining what will be investigated and what will not, and outlines the council's general discretionary powers with regard to planning enforcement. As far as the law allows, we will take account of the circumstances of the case and the

attitude of the operator when considering the expediency of taking action.

The Plan in the second section, sets out the priorities for responses to complaints and clarifies the timescales for response by enforcement officers. This document also sets out the council's approach to handling other planning related enforcement matters, as well as make clear those powers available to us in legislation and how we will use them.

The Planning Enforcement Team receives a high number of allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to the maximum effect. Therefore the LEP makes clear what is and what is not a breach of planning control and where it is clearly a breach, then each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused; the priority is determined by the Principal Planning Officer (Enforcement) and subsequently reviewed after the initial site visit. A category A is a most serious breach that requires urgent attention and is defined as such in paragraph 2.8 of the LEP.

The third section explains the investigation process and that in fact whilst we will investigate all complaints, many will not involve development or uses that require planning permission. On the other hand, where a breach of planning control is established then a decision has to be taken on whether it is or is not expedient to take enforcement action. Our enforcement officers will only encourage an owner or developer to make a retrospective application if they consider that they may be granted planning permission for the development. It is generally regarded by the Courts as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control. Retrospective planning application should therefore be judged on its planning merits, taking account of all material planning considerations.

The powers to take formal enforcement action are detailed in section four. Briefly the options are as follows:

a) Enforcement Notice:

This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence.

b) Breach of Condition Notice:

The notice can be used where conditions imposed on a planning permission have not been complied with.

c) Stop Notice:

The notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. Where Stop Notices are issued, the council may be liable to pay compensation if it is later decided that such a notice was not appropriate.

d) Temporary Stop Notice:

These take effect immediately from the moment they are issued, and last for up to 28 days. A temporary Stop Notice would be only be issued where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area.

e) Section 215 Notice:

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area.

f) Direct Action:

The council may enter land and take the necessary action to secure compliance when enforcement notices are in effect. The council will seek to recover all cost associated with carrying out works. This is only used in extreme cases where resources allow.

g) Injunction:

This involves seeking an order from the court preventing an activity or operation taking place.

Sections 5 and 6 of the LEP outline other special powers available to the Council in respect of adverts, trees and hedgerows and right of entry onto land and buildings.

Please note this process is **NOT** linked in any way with the proposed new Local Plan and is a stand alone document which can be adopted separately.

Reason for decision:

The National Planning Policy Framework (NPPF) recommends that local planning authorities publish a local enforcement plan to manage enforcement proactively and in a way that is appropriate to their area. This Local Enforcement Plan sets out priorities for investigation, explains what will be investigated and what will not, and outlines the council's general discretionary powers with regard to planning enforcement. The Plan sets out the priorities for responses to complaints and clarifies the timescales for response by enforcement officers. This document also sets out the council's approach to handling other planning related enforcement matters. It therefore is a robust plan that is recommended to be adopted.

Options considered and rejected:

To do nothing – this could potentially leave the Council vulnerable to legal challenge in planning enforcement cases.

Consultation undertaken:

All Parish and Town Council have been consulted electronically on this proposal. Other County and District Council departments have been consulted. No responses have been received from Parish and Town Councils, and one comment from Environmental Health received.

Resource implications:

Budget provision: nil
Personnel: nil
Land: nil

Community Plan/BVPP reference:

Relevant statutory powers: National Planning Policy Framework – Paragraph 207

Background papers:

Town and Country Planning Act 1990 (as Amended)
Planning (Listed Building and Conservation Areas) Act 1990 (as Amended)
The Town and Country Planning (use Classes) order 1987 (as amended)
The Town and Country Planning General Permitted Development Order 1995 (as amended)
Planning and Compensation Act 1991
Planning and Compulsory Purchase Act 2004
The Town and Country Planning (Control of Advertisement) Regulations (England) 2007
Circular 10 /97 - Enforcing Planning Control

Environmental/Human Rights Act/Crime and Disorder Act Implications: nil
Key Decision reference: (if required)