

Report to Governance Select Committee

Date of meeting: 27 November 2018

Portfolio: Planning and Governance

Subject: Review of Local Enforcement Plan

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Committee Secretary: Jackie Leither (Ext. 4756)



Recommendations/Decisions Required:

To adopt the Local Enforcement Plan as revised.

Report:

1. The Council formally adopted the Local Enforcement Plan (LEP) on 16 October 2013 with an addendum on 11 December 2013. This was in accordance with the suggestion under Section 207 of the National Planning Policy Framework (NPPF) that such a plan should be adopted by Councils.

2. The LEP states the authority's policy for taking effective action when justified on the evidence gathered by Officers. The Plan sets out the principles of good enforcement and investigation, and explains what will and will not be investigated. The Plan sets out the priorities for responses to complaints and clarified the timescales for response by officers. The Planning Enforcement Team receives a high number of allegations of breaches of planning control, and it is impossible to investigate all of these allegations with equal priority. Resources are limited, therefore the LEP makes clear what breaches are and the prioritisation involved.

3. A review of the LEP was scheduled for 2018, five years after its adoption. Whilst there has been no significant changes to planning legislation (in respect of enforcement) in this time the NPPF has been updated and the suggestion for authorities to adopt an LEP is contained in Section 58.

4. The LEP has stood the test of time and has not been challenged in any forum by those subject of enforcement investigations or those who have made complaints about breaches of planning. Various minor changes have been made but there is no significant revision required to the process that the Council has adopted.

5. All District Councillors, Town and Parish Councils were consulted as part of the review process and we have received comments from Theydon Bois and Nazeing Parish Councils. Their comments are summarised below.

Theydon Bois:

Section 2.8 – would it be reasonable for a visit to occur in 7 days rather than 14 as building works can advance significantly in 2 weeks

Section 3.13 – are requests consistently made for formal applications for Certificates for Lawful Development? A number of examples of building works have not had a CLD made. How then is an assessment made, and by whom, as to whether the development is lawful.

Should the review period for the LEP be 3 years?

Nazeing:

Paras 2.8 and 3.7 set out timescales for site visits. Para 3.8 provides that if these timescales cannot be met the officer will notify the complainant. This is completely open ended and is not satisfactory. Provision should be made to extend the timescale by e.g. 7 days.

Under para 3.1 provides that enforcement action will be taken if an acceptable solution is not negotiated within a reasonable time. The question will arise as to what is reasonable and accordingly a maximum time should be specified.

6. With regard to the above comments:

i) – Time limits for visits. Officers currently visit 99% of all sites well within the time limits laid out in the LEP Those sites where there are ongoing building works are already prioritised by officers for visits for the reasons laid out by Theydon Bois PC. Regarding the Nazeing PC point some sites may take longer to gain access and to set a maximum time for a site visit would not be practical in such cases, and could constrain the ability of officers to engage with site owners and occupiers efficiently.

ii) – Requirement for CLDs to be made. In cases where a CLD is required the Enforcement Section request such an application by email or letter. However, if no such application is forthcoming (and there is no mechanism in the Planning legislation to force a person to make such an application), the Officers examine the available evidence (which may include speaking to the Parish Council) and if that proves on the balance of probabilities that the use/building is lawful then no further action would be taken. If the evidence does not exist then the relevant enforcement action will be commenced.

iii) – Maximum time limit to take enforcement action. This is not practical. Each case is unique and some are closed within days and others can continue for years. We have to act in a proportionate and expedient manner in investigating breaches of planning and to work to an inflexible laid down time table would leave us vulnerable to challenges at both Court and in appeals with a significant risk of awards of costs against us.

iv) – Review Period. Due to the relative stability of the enforcement regime and legislation it is considered that a five-year period is realistic and proportionate. Should major changes to the legislation occur then a review could be brought forward as required.

7. It is considered that the comments of the two Parish Councils should be noted but do not need to be incorporated into the revised LEP for the reasons set out above.

Reason for decision:

Adopting the revised LEP gives the Enforcement Section, Councillors, Local Councils, member of the Public (including complainers and complained about) and Planning professionals a simple yet comprehensive document which lays out what they can expect from the Planning Enforcement Section and for them to be able to hold the section to account if the service received does not accord to that laid down in the LEP.

Options considered and rejected:

1. To not update the LEP and let it lapse – this would leave the Council vulnerable to challenges in enforcement action and cause confusion to all parties. This is not a viable option

Consultation undertaken:

All District Councillors, Town and Parish Councillors

Resource implications:

Budget provision: Nil

Personnel: Nil

Land: Nil

Community Plan/BVPP reference:

Relevant statutory powers: Town and Country Planning Act 1990 as amended) and the National Planning Policy Framework 2018

Background papers: Local Enforcement Plan, Nazeing Parish Council and Theydon Bois Parish Council comments

Environmental/Human Rights Act/Crime and Disorder Act Implications: Nil

Key Decision reference: (if required)