

3rd March 2015

Planning and Development Committee

Enforcement Plan Adoption Report

Report of: *Gordon Glenday, Head of Planning and Development*

Wards Affected: *All*

This report is: *Public*

1. Executive Summary

- 1.1 This report sets out responses to the consultation Draft Enforcement Plan, including internal consultations, and provides an update on a Government fund for Legal injunctions where bidding Local Authorities must have an adopted enforcement plan for three months prior to bidding.
- 1.2 There are resource management issues to be addressed. A scoring chart for assessing harm and expediency for taking action is now recommended for inclusion in the Enforcement Plan. New procedures are required for recording decisions taken and better use should be made of technology support. A complete review of protected trees is needed, revoking in a systematic phased programme of existing protection orders and replacing immediately revoked orders by fewer but up to date Tree Preservation Orders.
- 1.3 The report recommends that subject to the Committee's decision on the proposals set out in this report, the Enforcement Plan be recommended to the Council for adoption as amended, with additional recommendations as to delegation, reporting, technology, tree protection and performance reviews.

2. Recommendation(s)

- 2.1 That subject to the Committee's decisions on the issues set out at paragraph 4.8 – 4.12 the Planning Enforcement Plan as amended be recommended to Full Council for adoption on 26th March with effect from 1st April 2015;**
- 2.2 That the eligibility criteria (Appendix A of the report) for the Planning Enforcement fund for authorities which have adopted an enforcement plan and wish to bid for funding assistance for a Court injunction be noted;**

- 2.3 That the Full Council be recommended to delegate to the Head of Planning and Development and in his absence the Team Leaders of Development Management and Planning Policy all planning enforcement decisions subject to the plan, including all types of stop notices, all types of injunctions and prosecutions, in consultation with the Chair or Vice-Chair and taking such other advice as may be practicable and appropriate and with a record made in accordance with Appendix B;**
- 2.4 That the use of technology, including the adoption of Middleware be progressed for pre-applications, local requirements and enforcement complaints;**
- 2.5 That a review of Enforcement Plan operation be considered annually by the Committee.**

3. Introduction and Background

- 3.1 The National Planning Policy Framework (NPPF) (2012) refers to planning enforcement in paragraph 207 and references the desirability of an enforcement plan. Although such a plan is not a Development Plan Document, it would provide a statement of the Council's objectives and priorities regarding planning enforcement.
- 3.2 National Guidance emphasises that a local enforcement plan 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.
- 3.3 The Department for Communities and Local Government (DCLG) has introduced a new time-limited Planning Enforcement Fund for all local planning authorities in England. The scheme provides a grant contribution to local planning authorities for securing a Court injunction to prevent actual or apprehended breaches of planning control.
- 3.4 To qualify for consideration, an authority is required to confirm it has adopted the enforcement best practice recommended in paragraph 207 of the National Planning Policy Framework and published its plan to manage enforcement of breaches proactively. An authority's enforcement plan must have been published at least three months prior to applying for grant

and the authority is required to confirm adherence to the recommendations of the National Planning Policy Framework of how the authority:

- Monitors the implementation of planning permissions;
- Investigates alleged breaches of planning control; and
- Takes enforcement action whenever it is expedient to do so.

3.5 The Eligibility Criteria are set out at Appendix A to this report.

3.6 When the draft Enforcement plan was reported to the Committee in July 2014, the Openness of Local Government Bodies Regulations were in draft. These have now been made a Statutory Instrument no 2095 of 2014. In order to meet the requirements of these regulations, a record form is proposed to be completed. Included at Appendix B is an example to show how the suggested new record system would work.

3.7 In the presentation to the Committee in July 2014, the need to make the best use of IT was mentioned. The Council has Middleware to enable Enforcement Complaints submitted by the website to be uploaded onto the Enforcement Uniform system, but this has not been brought into use.

4. Issue, Options and Analysis of Options

4.1 External responses to the consultation document raised the following issues

4.1.1 The tenor and tone of the plan is quite threatening;

4.1.2 HRA legislation gives people a right to a private life and intrusion can't be based on expediency – after all an unlawful alteration isn't going anywhere;

4.1.3 The plan should embrace the concept of a shared heritage and be a supportive measure to help householders comply with the legislation;

4.1.4 Mountnessing Parish Council is supportive of the proposals set out in the above Plan. It is in agreement with its objectives and priorities and the proposed standards are acceptable. Parish Councillors are aware that the Borough is subject to financial constraints but would urge that the necessary resources are devoted to achieve the aims of the Plan.

4.2 The tenor and tone of the plan is intended to be a transparent policy of service standards - more a promise than a threat. Planning enforcement is about achieving compliance with procedures and legal requirements.

4.3 Enforcement is discretionary where it is expedient in planning terms to take action. The word "expedient" is not defined in the Act, but implies a balance of policy and other factors against perceived or potential harm. Human rights of occupiers must be taken into account where relevant.

- 4.4 So far as heritage issues are concerned, letters were sent to owners of all Listed Buildings in the Borough drawing attention to the consultation on the draft enforcement plan and legislative changes. The concept of shared heritage has been developed in two European Conventions of the Council of Europe. The Florence Convention of October 2000 is aimed at promoting high quality landscapes for future generations, and has been in force in the UK since 2007. The Faro Convention promotes a broad definition of cultural heritage but is not in force in the UK.
- 4.5 Householders do have support. These are permitted development rights and a free single advice service for pre-application. It is accepted that more could be done in respect of new householder applications. Householders should ensure that the professionals who are engaged fulfil the application requirements. Where there are complaints about unauthorised development, it is always helpful if there has been prior discussion with a Planning Officer. The Middleware technology also serves to clarify pre-application discussions and could include local requirements and standards.
- 4.6 The response of Mountnessing Parish Council is a welcome endorsement of the aims and standards of the enforcement plan. However, the issue of managing resources involves corporate priorities which may change from time to time. In order to provide greater transparency regarding the issue of expediency, a scoring chart for assessing harm, and a threshold of expediency for taking action is now proposed. If corporate priorities change the resource available may be adjusted as a higher or lower score.
- 4.7 Internal Responses to the Consultation include the following:
- 4.7.1 The Enforcement Toolkit should be aligned with National Guidance on ensuring effective enforcement and, where appropriate, the Good Practice Guide of 1997;
- 4.7.2 Where no formal action is taken, National Guidance recommends that a record is kept of the decision. The enforcement file may be re-opened at any time. Where there is a technical breach and no formal action, the landowner may be advised that a search of the property's planning history will disclose a breach of control;
- 4.7.3 The Good Practice Guide recommends that any delay should be prevented by ensuring that a properly delegated person is always available to take urgent action/decisions when needed. This should be put in place;

- 4.7.4 Where Planning Enforcement breaches are found to involve Council owned land, any enforcement investigation will be terminated and the matter referred to the relevant asset manager to remedy. Land ownership remedies are generally speedier and more efficient than planning enforcement measures. Covenants imposed on land sold by the Council, where there is an overlap with breaches of planning control, should also be dealt with by the relevant asset manager.
- 4.7.5 A useful additional way of enforcing planning control (or indeed any part of it e.g in respect of demolition of buildings in a Conservation Area) is a confiscation order under Pt 2 of the Proceeds of Crime Act 2002 (referred to in the cases as POCA). For these provisions to apply there must have been a successful prosecution of the offence (s.6(2)) and the prosecution must have asked for the order or the Court believes it is appropriate to make it (s.6(3)). The order will not be made unless the defendant has benefited from the conduct (s.76). This should be added to the Toolkit. The confiscation order is in addition to any other penalty (e.g. fine) which may have been imposed.
- 4.7.6 National Guidance included the right to recover costs and expenses in the event of default action. Administrative costs of undertaking default works may be added as a percentage to the contractor's costs. The toolkit should refer to this and a practice note on enforced sale procedures is proposed.
- 4.8 The Toolkit and delegation arrangements should include notes on prosecutions, the power to issue a letter giving a time-limited assurance not to prosecute, and acceptance of undertakings to resolve breaches to an acceptable standard.
- 4.9 If the Committee agree, the internal responses may be incorporated in this final Enforcement Plan recommended for adoption.
- 4.10 The scoring chart at Appendix C is recommended for incorporation into the Plan.
- 4.11 The decision Record form at Appendix B is recommended.
- 4.12 The effectiveness of planning enforcement will be enhanced by improved use of technology. This should be progressed and kept under review. It is recommended that the Enforcement Plan be adopted and reviewed annually.

5. References to Corporate Plan

- 5.1 Proposals in this report support the Modern Council theme of the Corporate Plan in making efficiencies and savings, while improving service delivery to customers.

5.2 The planning service itself supports the Prosperous Borough theme by its promotion of quality development.

6. Implications

Financial Implications

Name & Title: Jo-Anne Ireland, Director of Strategy and Corporate Services

Tel & Email: 01277 312712 / jo-anne.ireland@brentwood.gov.uk

6.1 No specific financial issues arising from this report.

Legal Implications

Name & Title: Philip Cunliffe-Jones, Planning Lawyer

Tel & Email: 01277 312703/ philip.cunliffe-jones@brentwood.gov.uk

6.2 Legal implications have been incorporated into the internal responses.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

6.3 No other implications are identified.

7. Background Papers

7.1 Appendices to this report

- Appendix A – Eligibility Criteria for bidding for support for injunctions
- Appendix B – Openness Regulations 2014 decision record form
- Appendix C – Scoring chart for harm

7.2 The Draft Enforcement Plan may be found under the Planning and Development Control Committee agenda for 22nd July 2014.

Report Author Contact Details:

Name: Caroline McCaffrey, Development Management Team Leader

Telephone: 01277 312703

E-mail: caroline.mccaffrey@brentwood.gov.uk