

24 March 2015

Ordinary Council

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. The Government has a fund for assistance with the costs of Legal injunctions under planning legislation whereby Local Authorities bidding for financial assistance must have an adopted enforcement plan for three months prior to bidding.
- 1.2 The Planning Enforcement Plan amended as agreed by the Planning and Development Control Committee will follow. This now includes a scoring chart for assessing harm and expediency for taking Enforcement Action. New procedures are required for recording decisions taken under delegated powers under the Openness of Local Government Bodies Regulations when the effect of the decision affects the rights of an individual. The effect of such decisions have to be published and maintained on the website for six years subject to exceptions as to confidential or exempt information. Better use should be made of technology support as the weekly list is replaced.

2. Recommendations

- 2.1 That the Planning Enforcement Plan as amended by the Planning and Development Control Committee be adopted with effect from 1st April 2015;**
- 2.2 That all planning enforcement decisions be delegated to the Head of Planning and Development and in his absence the Team Leader of Development Management or and Planning Policy subject to the Enforcement Plan. Decisions to approve recommendations of any type of stop notice, injunction or prosecution action shall not be taken under delegated authority except after consultation with the Chair or Vice-Chair of the Planning and Development Control Committee and having regard to such advice as may be practicable**

and appropriate. A record of all enforcement decisions shall be made in accordance with statutory requirements ;

2.3 That a review of Enforcement Plan operation be considered annually by the Planning and Development Control Committee .

3. Introduction and Background

3.1 The National Planning Policy Framework (NPPF) (2012) refers to planning enforcement in paragraph 207 and references the need for an enforcement plan. Although such a plan is not a Development Plan Document, it does provide a statement of the Council's objectives and priorities regarding planning enforcement.

3.2 National Guidance emphasis that local enforcement plans are 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
- Take enforcement action whenever it is expedient to do so.

- 3.5 The Eligibility Criteria was set out at Appendix A to the Planning Committee report.
- 3.6 When the draft Enforcement plan was reported in draft 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 negotiations, a record form is proposed completed with a current example to show how the suggested new record system would work was included as Appendix B to the Planning Committee report.
- 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 lift 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 all owners of Listed Buildings in the Borough drawing attention to the consultation of 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 when 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 for 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 on a prospective sale 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 has been 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 includes the right to costs and expenses in the event of default action. The toolkit now refer to this and a practice note on enforced sale procedures proposed.

4.8 The Toolkit and delegation arrangements includes references to best practices 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 A scoring chart for assessment of harm and expediency test for enforcement action is recommended for incorporation into the Plan with a form of decision record form where required. Publication of Enforcement Action by ward and Parish will be considered separately.

4.10 The effectiveness of planning enforcement will be enhanced by improved 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

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- 6.1 Legal implications have been incorporated report and revised Enforcement Plan recommended for adoption 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.

- 6.2 No other implications are identified.

7. Background Papers

The revised Brentwood Local Planning Enforcement Plan is appended to this report. Report to the Planning and Development Committee and the Appendices:

- Appendix A – Eligibility Criteria for bidding for support for injunctions
- Appendix B – Openness Regulations 2014 decision record form (included in the revised Enforcement Plan)
- Appendix C– Scoring chart for harm (included in the revised Enforcement Plan)

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