

ECONOMIC DEVELOPMENT COMMITTEE

9 SEPTEMBER 2020

ADOPTION OF PLANNING ENFORCEMENT PLAN (PEP)

1.0 Purpose of Report

- 1.1 Members will recollect a report regarding adoption of the Council's Planning Enforcement Plan (PEP) was circulated to Economic Development Committee Members in May/June 2020 following presentation to the Planning Committee on 3 March. In accordance with the recommendation, the PEP was consulted on between 22 June and 31 July. This report responds to the responses received and recommends the Economic Development Committee adopt the PEP and for its use in the undertaking of planning investigations by the Planning Enforcement Team. The PEP is being presented to members of the Planning Committee on 8 September and any comments arising from this Committee will be verbally reported to Economic Development Committee.
- 1.2 National Planning Policy Framework (NPPF) states that effective enforcement is important to maintain public confidence in the planning system. It also makes clear that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Additionally, the national Planning Practice Guidance states that local enforcement plans are important because:

"The preparation and adoption of 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."*

Paragraph: 006 Reference ID: 17b-006-20140306

Revision date: 06 03 2014

- 1.3 In line with this it is encouraged that Local Planning Authorities (LPA's) consider publishing a local planning enforcement plan (PEP) to manage enforcement proactively, in a way that is appropriate to their area. It is advised that such a plan should set out how the LPA will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.
- 1.4 At present the Council has a Corporate Enforcement Policy, which was written in the knowledge of an ability to have a PEP for specific service areas. In recognition of the growing consciousness of the planning enforcement function, the attached PEP has been written in order to give elected members and the wider public a clearer understanding of how it is envisioned that the service will function. The purpose of this report is to set out the purpose of the PEP, with a dialogue behind the philosophy and considerations contained within, and ultimately to request that Members consider supporting the adoption of the PEP. Should the Planning Committee support the proposal, the matter would then be advanced to the Economic Development Committee for adoption, together with any recommended changes.

2.0 Background Information

- 2.1 The purpose of the proposed local planning enforcement plan is to provide information on how the Council will respond to suspected breaches of planning control, tackle unauthorised developments, and monitor the implementation of planning permissions.
- 2.2 It is not a criminal offence to carry out unauthorised development (unless an enforcement notice is in place), and there are many different ways that the Council can tackle unauthorised development and other breaches of planning control. The NPPF advises that that LPA's should act in a proportionate way when tackling breaches of planning control and formal enforcement action should be used as a last resort.
- 2.3 This means the Council cannot normally justify taking formal enforcement action against minor breaches of planning control but in other cases the Council may take formal enforcement action to resolve a breach of planning control. In some cases, the Council may seek a retrospective planning application to resolve a breach of planning control instead of taking action, whilst in others the Council might determine not to take any further action.
- 2.4 The Council also has to prioritise cases to ensure there are sufficient resources to make sure serious breaches of planning control are dealt with urgently and to ensure other cases are dealt with effectively and efficiently and with a view to the planning enforcement service undertaking increased activity in a proactive approach. This means that whilst we will take a consistent approach to planning enforcement, different cases may well be dealt with differently depending on the individual circumstances of the case.
- 2.5 Therefore, the preparation and adoption of a local enforcement plan is important because it:
 - Sets out the objectives and priorities which are tailored to local circumstances;
 - Outlines 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; and,
 - Offers greater certainty for all parties engaged in the development process.

It is therefore anticipated that adoption of the PEP will be the catalyst for driving the planning enforcement service towards being a key component in an effective development management service.

3.0 Proposals

- 3.1 The planning enforcement function plays a key role in helping the Council to deliver an effective Development Management service. The team forms part of the development management activity to deliver good community outcomes in line with the Community Plan (2019 – 2023) and Local Plan.
- 3.2 The planning enforcement process is not an isolated activity simply limited to reacting to complaints about breaches of planning control. Whilst it is not expedient for the Council to monitor every planning permission that is implemented across the District, the increased resources allocated to the function has led to an opportunity to evaluate the current function and working practices and to explore opportunities to increase the overall

efficiency of the enforcement service with a view to increasing the level of proactive development monitoring within the District.

- 3.3 Members will be aware that whilst the investigation of suspected breaches of planning control is a statutory function, and will lead to the determination of whether a breach has taken place, ultimately the Council does not have a duty to take enforcement action.
- 3.4 The PEP therefore seeks to provide a clearer understanding of the discretionary nature of the planning enforcement function and to explain how investigations will be prioritised following receipt and the associated timescale outlined within the PEP. It is envisaged that the PEP will provide greater transparency and accountability about how the local planning authority prioritise enforcement action and how it is decided if it is expedient to exercise its discretionary powers.
- 3.5 Ultimately the PEP is intended to provide greater certainty for all parties engaged in the development process.

Prioritisation of Investigations

- 3.6 The PEP contains a scale of case prioritisation. This is designed to guarantee that there are sufficient resources to ensure that serious breaches of planning control are dealt with urgently and to ensure other cases are dealt with effectively and efficiently. This means that whilst we will take a consistent approach to planning enforcement, different cases may well be dealt with on a different timetable depending on the individual circumstances of the case. In these respects, it is important that we can show how we decide to deal with some issues urgently and how long we will normally need to deal with less urgent cases.
- 3.7 A clear policy statement is a way of managing expectations, and everyone (including members) has an important role in seeing that it is respected and that the enforcement team can go about its business in a purposeful and efficient way.
- 3.8 Without this, the enforcement team can come under pressure complaints that are not always deserving of immediate attention.

Performance Management

- 3.9 Government, in recognition of the discretionary nature of planning enforcement, has never set 'targets' or 'standards' for planning enforcement, as is the case with development management.
- 3.10 From reviewing the approach taken to performance management from other local authorities it is noted that authorities commonly set target times for carrying out some form of action (this is usually a site visit) following receipt of a complaint. Some authorities' PEPs set targets for completing the first phase of the investigation, and for the closure or resolution of cases.
- 3.11 Therefore in order to increase the transparency and accountability of the planning enforcement function, the PEP contains targets for response times for the recognition of the initial report and then the initial investigation and assessment of the enforcement action. These targets are based upon the level of prioritisation of the enforcement case.

- 3.12 The PEP that is proposed places targets on taking action, rather than specifically a 'site visit', as it is acknowledged that it may be possible to make contact with a developer or an alleged 'contravener' without an initial site visit, thus increasing the efficiency of the service. The PEP does not place a target on the outcome of enforcement cases as it is considered that such targets would not reflect the often complex and discretionary nature of planning enforcement investigations, which can include decisions of organisations or processes beyond the control of this authority (e.g. a court case or appeal).
- 3.13 It is also considered that it is important that a balance is struck for performance targets between a level that is challenging and motivating, but is also realistic and does not unduly raise public expectations. It is important that enforcement targets should also relate to the planning service objectives in order to ensure a corporate response to workload.

Proactive Enforcement

- 3.14 Historically the planning enforcement function at Newark and Sherwood has largely been 'reactive' in that we investigate alleged breaches of planning control as they are reported to the authority.
- 3.15 However, nationally it has been noted that enforcement officers are also becoming proactive in dealing with local problems through direct targeted interventions. This can be through working alongside other departments to tackle the problem of empty run down properties affecting the morale of the local community, taking direct action to deal with unauthorised advertisements and flyposting, or to remove eyesores and clean up properties under section 215 powers (untidy land).
- 3.16 There are further gains that can be made from the team checking when notified of a commencement [of development] to draw attention to the developer of any conditions that may cause particular problems if not addressed, and to build relations on particular sites that are likely to create concerns for the local community.
- 3.17 The PEP recognises this impetus for a more proactive approach in certain circumstances and the potential benefits to the wider community.

Reporting to Committee

- 3.18 It is proposed to continue with the quarterly reports to Planning Committee setting out a snap shot on the general volumes of planning enforcement cases received and dealt with, along with details of the following:
- An outline of the enforcement activity during the previous quarter which captures the overall split to show the number of cases investigated, how many are found to be a breach of planning or otherwise.
 - A summary of formal action taken for that quarter.
 - Examples of cases where breaches of planning control have been resolved without formal action having been taken.
 - Notices complied with.

- 3.19 In addition, once the enforcement team has been brought up to a full complement, it is also anticipated that figures will be presented in relation to the performance standards outlined within the PEP.

Consultation

- 3.20 In line with the Planning Practice Guidance, consultation has been undertaken regarding the contents of the Plan between 22nd June and 31st July. Consultation has been undertaken with all Members of the District Council, Parish Councils, Agents, consultees, members of the public engaged with the planning process and via the Council's website. Two responses have been received from South Clifton Parish Council and Girton Parish Council as follows:

South Clifton Parish Council:

"It is remarkable how many ways the planning enforcement team have for doing nothing. There is a gap between the stated actions and what is seen on the ground. Contrary to the stated intention the Plan reinforces the lack of confidence in the Newark & Sherwood Planning Enforcement Team"

Girton Parish Planning:

"The PEP consultation document is an excellent plan with some good ideas. I especially favour the "proactive enforcement" angle and the "performance management" ideas."

- 3.21 Clearly the views of the two parishes in respect to the document are very much in contrast to one another. With reference to South Clifton's response – until the PEP is adopted, what is cited within the document within some areas would not be seen – such as proactive enforcement. The resources available to the Enforcement team has increased since the previous report was presented to Members, although not to the level anticipated prior to the outbreak of the Covid-19 pandemic. It is hoped, subject to budgets permitting to be able to recruit the final member of the team in the final quarter of 2020/21 which will then enable, subject to its adoption, all of the measures within the PEP to be undertaken. It is hoped that this will then overcome the criticism raised by South Clifton Parish Council. Notwithstanding this we would also draw Member's attention to the contents of the quarterly reports to the planning committee which have outlined the continuing work of the enforcement section.
- 3.22 With regards to their point regarding ways in which the planning enforcement team have for doing nothing. The reason for the PEP is very much to outline what a planning enforcement team is lawfully able to do and what it cannot. Many complaints are raised with the planning team that do not fall within the remit of planning legislation and thus we are not able to deal with them. It is hoped the document, as well as the summary document attached, will be of assistance to members of the public.
- 3.23 Whilst these comments do not raise any need to amend the PEP previously presented, it has been amended in light of the late representations received and presented to Planning Committee in relation to the Empty Homes Officer and Data Protection, as well as providing clarification as to periods for compliance for the initial phase of an investigation. The latter are underlined within Part 3.

4.0 Conclusions

4.1 The PEP has been written to reflect the Council's commitment to focus on the needs of the Newark and Sherwood community and to reflect the objectives contained within the Community Plan, towards which the planning enforcement service will be at the forefront. The PEP seeks to not only provide information as to how the enforcement service will operate, and how recorded cases will be prioritised, but also set targets for standards of service that customers can expect to receive from the service.

5.0 Equalities Implications

5.1 There are no equalities implications. All alleged breaches of planning control will be investigated in accordance with the standards and timescales set out within the Plan, once adopted.

6.0 Financial Implications

6.1 There are no direct financial implications arising from the adoption of the Planning Enforcement Plan. However, its adoption will have the benefit of ensuring that Planning Enforcement resources are directed in a timely manner according to the priorities set out.

7.0 Community Plan – Alignment to Objectives

7.1 The PEP aligns with the Council's Community Plan Objectives 'Continue to maintain the high standard of cleanliness and appearance of the local environment'; 'Enhance and protect the district's natural environment'; and 'Reduce crime and anti-social behaviour, and increase feelings of safety in our communities'.

8.0 Comments of Director

The development and adoption of a Planning Enforcement Plan (PEP) is welcomed. It will allow the service to set clear, but deliverable expectations for service users and members of the public. A targeted focus on major developments, alongside the additional resources already committed in the 2020/21 budgets onwards assist delivery of any adopted PEP.

9.0 RECOMMENDATION

That the attached Planning Enforcement Plan (Appendix 1) and summary document (Appendix 2) is adopted and used as a policy document in the undertaking of the Planning Enforcement function.

Reason for Recommendations

The PEP is a document that is recognised by the NPPF as being an important document in ensuring effective enforcement takes place and to provide confidence to the local community. The adoption of the document will show clear guidelines on what the Planning Enforcement is and is not able to do and the timescales for investigating cases.

Background Papers

National Planning Policy Framework 2019

Planning Committee – Adoption of Planning Enforcement Plan (PEP) – 3 March 2020

For further information please contact Richard Marshall on Ext 5811

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