



Cabinet

Tuesday, 12 November 2024

Planning Enforcement Policy

Report of the Director – Development and Economic Growth

Cabinet Portfolio Holder for Planning and Housing, Councillor R Upton

1. Purpose of report

To consider proposed amendments to the Planning Enforcement Policy following updated legislation and a revised National Planning Policy Framework and to consider whether to accept the revisions proposed.

2. Recommendation

It is RECOMMENDED that Cabinet:

- a) approves adoption of the updated Planning Enforcement Policy; and
- b) delegates authority to the Director – Development and Economic Growth to make minor updates to the Policy as required.

3. Reasons for Recommendation

- 3.1. The Council's Corporate Strategy 2024-2027 includes a Corporate Priority for 'The Environment'. The enforcement of planning controls is an important aspect of protecting the natural, built and historic environment. Furthermore, there is a need for the Planning Enforcement Policy to set out clearly for all residents and businesses, including those who may be undertaking development, to understand the approach that the Council will take when investigating alleged breaches of planning control.
- 3.2. It is important to ensure that the Planning Enforcement Policy is regularly reviewed to ensure that it is kept up to date in accordance with revised legislation and National Planning Policies.

4. Supporting Information

- 4.1. Unlike the determination of planning applications, which is a statutory function, the enforcement of planning control is discretionary. However, the National Planning Policy Framework acknowledges that effective enforcement is important to maintain public confidence in the planning system and advocates that local planning authorities should consider publishing a local enforcement plan, which should set out how they will monitor the implementation of planning

permissions and investigate alleged cases of unauthorised development, to manage enforcement proactively in a way that is appropriate to their area.

- 4.2. The current Planning Enforcement Policy was adopted by Council on 4 March 2021. Since its adoption, a revised National Planning Policy Framework was published in December 2023 and Planning Practice Guidance for enforcement was updated in August 2024. The majority of the proposed revisions to the Planning Enforcement Policy take account for these two updated statutory documents.
- 4.3. Further, new powers conferred under the Levelling-up and Regeneration Act 2023 allow for Temporary Stop Notices to also be served in respect of works which affect listed buildings and are being undertaken without the benefit of Listed Building Consent, or in breach of conditions. The Planning Enforcement Policy has been updated to take account of these new powers.
- 4.4. The draft amendments also take account for updates in legislation for when enforcement action cannot be taken against developments, which are immune due to specific time limits. The period for immunity for operational development or change of use of a building to a use as a single dwelling has changed to 10 years (previously four years).
- 4.5. Further minor updates take account of specific matters that have arisen since the original adoption of the Planning Enforcement Policy and to therefore provide greater clarity to residents and businesses on when and how the Council will carry out investigation of enforcement cases. Specifically in relation to anonymous, vexatious complaints and investigations where it will be required for the Council to quantify the harm arising from breaches of planning control.
- 4.6. The amended Enforcement Policy is attached at Appendix 1. If this document is approved by Cabinet, it will be published on the Council's website.

5. Alternative options considered and reasons for rejection

- 5.1. Enforcement Action is discretionary, and the Council could choose not to amend the adopted Planning Enforcement Policy; however, this would mean that the legislation, powers and guidance contained within the Planning Enforcement Policy would be out of date. This is not considered appropriate.
- 5.2. The National Planning Policy Framework is clear in stating that effective enforcement is important in maintaining public confidence in the planning system. It is considered that the proposed amendments to the Planning Enforcement Policy would continue to provide clear information on how the Council will deliver an effective enforcement service. If the amendments were not provided this could reduce public confidence in the Council's ability to enforce.

6. Risks and Uncertainties

- 6.1. Failure to deliver an effective planning enforcement service and to respond promptly to complaints regarding alleged breaches of planning control can impact on public confidence in the Planning Service and the reputation of the service and the Council as a whole.
- 6.2. It is also important to ensure that the Planning Enforcement Policy is measured according to the constraints and requirements of the legislative framework and resources available to the Council. Setting false or undeliverable expectations could create negative reputational issues and lack of confidence in the planning process generally.

7. Implications

7.1. Financial Implications

7.1.1. The cost of the dedicated officers responsible for undertaking enforcement work are contained within current budgets.

7.1.2. Where enforcement action is taken, there may be a risk of an award of costs in the event of an appeal or claims for compensation, principally in connection with the service of a Stop Notice. It is not possible to provide an estimate of such costs as these will vary from case to case and will depend on the factors impacted by any action, e.g. cost of plant and machinery, lost earnings, cost of expert witnesses to defend appeals etc. However, measures are put in place to ensure that any risk is identified and minimised as much as possible through liaison with other colleagues such as Legal Services.

7.2. Legal Implications

Enforcement action must be considered, and where appropriate, taken in accordance with the relevant legislation. Outcomes must be proportionate and in the public interest. To ensure a proportionate approach is taken, particularly before serving a Temporary Stop Notice or a Stop Notice, the local planning authority must be satisfied that there has been a breach of planning control and that the activity, which amounts to the breach must be remedied or, in the case of a Stop Notice, stopped immediately and before the end of the period allowed for compliance with the related Enforcement Notice. The updated Policy ensures compliance with legislation and statutory guidance and promotes consistent enforcement decisions.

7.3. Equalities Implications

There are considered to be no particular equality implications that need addressing from matters arising from this report. The Council is committed to delivering all enforcement activities in accordance with its Equality and Diversity Policy and will embed the principles of that Policy in its approach to its enforcement and regulatory functions.

7.4. Section 17 of the Crime and Disorder Act 1998 Implications

Whilst there may be community safety implications associated with the delivery of the enforcement function, they are not considered to be any such implications associated with the recommendation and consideration of this report.

7.5. Biodiversity Net Gain Implications

Bio-diversity net gain is secured (where required) at the planning application stage; however, it would form part of the Planning Enforcement Policy should an investigation be required in relation to whether the development is built in accordance with the approved plans.

8. Link to Corporate Priorities

The Environment	Unauthorised development may give rise to impacts, which may adversely affect the natural and built environment, impacts that can be resolved by taking appropriate enforcement action where this is justified or in seeking to regularise unauthorised development through a retrospective planning application and the imposition of conditions, which can mitigate the impact of development.
Quality of Life	Unauthorised development may give rise to impacts, which may adversely affect the amenities and quality of life of residents, which can be resolved by taking appropriate enforcement action where this is justified or in seeking to regularise unauthorised development through a retrospective planning application and the imposition of conditions, which can mitigate the impact of development.
Efficient Services	The delivery of an efficient and effective planning enforcement service is consistent with the Council's corporate priority to transform the Council to enable the delivery of efficient high quality services.
Sustainable Growth	Sustainable development can be delivered through the preparation of development plan documents and the application of policies within the NPPF. The operation of an effective enforcement service can ensure that development is compliant with national and local planning policies and is therefore sustainable.

9. Recommendation

It is RECOMMENDED that Cabinet

- a) approves adoption of the updated Planning Enforcement Policy; and
- b) delegates authority to the Director – Development and Economic Growth to make minor updates to the Policy as required.

For more information contact:	Andrew Cullen Planning Manager - Development 0115 914 8504 acullen@rushcliffe.gov.uk
Background papers available for Inspection:	The Corporate Enforcement Policy and Planning Enforcement Policy. These documents are available on the Council's website at: https://www.rushcliffe.gov.uk/aboutus/aboutthecouncil/
List of appendices:	Appendix 1 – Updated Enforcement Policy