



**Council**

**Thursday, 4 March 2021**

**Planning Enforcement Policy**

## **Report of the Executive Manager – Communities**

### **Cabinet Portfolio Holder for Housing, Councillor R Upton**

#### **1. Purpose of report**

- 1.1. Unlike the determination of planning applications, which is a statutory function, the enforcement of planning control is discretionary. However, the National Planning Policy Framework (NPPF) acknowledges that effective enforcement is important to maintaining 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.
- 1.2. The current Planning Enforcement Code of Practice is due for review and renewal in March 2021. Therefore, in line with the recommendations in the NPPF, a draft Planning Enforcement Policy has been produced, which is more detailed and will replace the Code of Practice.
- 1.3. The draft Policy was considered by the Growth and Development Scrutiny Group in August and October 2020, following amendments to the Policy in line with the recommendations of the Group, the Group resolved that the updated Planning Enforcement Policy be referred to Cabinet for approval.
- 1.4. The matter was considered by Cabinet at the meeting held on 8 December 2020, where it was resolved that the draft Planning Enforcement Policy be approved for the purposes of public consultation, prior to the Policy being referred to Council for adoption.
- 1.5. The consultation exercise attracted a total of twenty-seven responses from a Ward Councillor, a number of Parish Councils, other organisations and from several residents. A number of the responses included comments about the planning process generally with twenty-two providing comments specifically in relation to the Enforcement Policy. Officer responses have been provided to all the comments received and changes made to the Policy accordingly, which are set out in Appendix 2 to this report.

## **2. Recommendation**

It is RECOMMENDED that Council:

- a) adopts the Planning Enforcement Policy; and
- b) delegates to the Executive Manager – Communities authority to make minor changes/updates to the Policy as required.

## **3. Reasons for Recommendation**

The Council's Corporate Strategy 2019-2023 was adopted in September 2019. The Strategy includes a new Corporate Priority of '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 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.

## **4. Supporting Information**

- 4.1. A copy of the draft Planning Enforcement Policy is appended to this report and is the document which is recommended for adoption by Council.
- 4.2. The current Corporate Enforcement Policy was adopted in March 2010 and was last revised in October 2019. The Policy is an umbrella policy, which applies to legislation enforced or administered by the Council in the following service areas and to officers engaged in enforcement activity in those areas:
  - a) street cleansing;
  - b) 'enviro' crime – fly tipping, graffiti, litter, abandoned vehicles;
  - c) environmental health – food safety, health and safety, private sector housing, environmental protection, statutory nuisance, dogs;
  - d) licensing;
  - e) building control;
  - f) planning and development control (now referred to as Planning and Growth); and
  - g) benefit fraud.
- 4.3. The purpose of the umbrella policy is to provide guidance to, amongst others, the officers within the Council responsible for enforcement of regulations. Within the specific areas detailed above, other policies may apply.
- 4.4. The primary purpose of enforcement is to protect the public and individuals. This includes protecting health and safety, the environment, business and legitimate economic interests. The Policy sets out how the Borough Council will generally carry out its enforcement functions and each service will then operate in accordance with its own practices and legislative requirements.

- 4.5 This report deals solely with the planning enforcement function. In the case of planning enforcement, an Enforcement Code of Practice exists, and the intention is to now adopt a policy document which will replace the code of practice.
- 4.6 The draft Policy has been considered by the Growth and Development Scrutiny Group, which provided Councillors with an understanding of the process and the opportunity for them to influence changes to be made to the Policy prior to adoption. Furthermore, the process included the opportunity for all Councillors to provide comments on the enforcement function and their experiences of particular issues in their wards that would help influence the final Policy. This was a two-part process, the initial report was considered at the meeting of the Group on 25 August 2020, and the Policy amended to take account of the comments received, prior to the matter being reconsidered by the Group at the meeting held on 14 October 2020. The report also included information regarding the level of resource available to undertake the enforcement function, which had been the subject of a review by consultants, who found that the resources available were appropriate and the Group resolved to note these findings.
- 4.7 The draft Policy was subsequently considered by Cabinet at the meeting held on 8 December 2020, where it was resolved to approve the draft Policy for the purposes of public consultation. The consultation period ran for six weeks commencing on 17 December 2020. Consultations were undertaken with all Borough Councillors, all Town and Parish Councils and Parish Meetings, together with the use of social media posts on three separate occasions.
- 4.8 The consultation exercise attracted a total of twenty-seven responses from a Ward Councillor, a number of Parish Councils, other organisations and from several residents. A number of the responses included comments about the planning process generally with twenty-two providing comments specifically in relation to the Enforcement Policy. The comments received relating specifically to the policy are summarised in Appendix 2 to this report, including officer responses and indicating where changes are proposed to be made to the Policy. The comments received fall into the following general areas:
- Availability of information to the public, including on the Council's website;
  - Format of document and suggested alternative wording;
  - Process for reporting/investigating alleged breaches;
  - Prioritisation for investigation of alleged breaches;
  - Resources;
  - Need to portray tougher stance;
  - Standards for communicating progress of investigations;
  - Register of Enforcement Notices;
  - Level of penalties for breaching planning controls; and
  - Level of proactive monitoring.
- 4.9 Given the recent pace of change in planning legislation/regulations, it is vital that the Policy is kept up to date with any changes to legislation and guidance,

therefore, delegated authority is sought for the Executive Manager - Communities to make minor amendments to the Policy as and when necessary. To ensure transparency, all such minor variations to the Policy will be reported to the relevant Portfolio Holder.

## **5. Alternative options considered and reasons for rejection**

Enforcement Action is discretionary, and the Borough Council could choose not to adopt a Planning Enforcement Policy and determine the level of service it wishes to deliver. However, as highlighted in the NPPF and above, effective enforcement is important in maintaining public confidence in the planning system. It is considered that the Policy would provide clear information on how the Council will deliver an effective enforcement service.

## **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 Policy is measured according to the constraints and requirements of the legislative framework and resources available to the Council. Setting false/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 and any additional costs such as court costs are contained within current budgets.

7.1.2. Where enforcement action is taken without justification or such action cannot be robustly defended, 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.

### **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.

### 7.3. Equalities Implications

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. Therefore, the Council will treat all people equally and fairly.

### 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.

## 8. Link to Corporate Priorities

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.
The Environment	Unauthorised development may give rise to impacts which may adversely affect the natural and built environment, impacts 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.

## 9. Recommendations

It is RECOMMENDED that Council:

- a) adopts the Planning Enforcement Policy; and

- b) delegates to the Executive Manager – Communities authority to make minor changes/updates to the Policy as required.

<b>For more information contact:</b>	Andrew Pegram Service Manager – Communities 01159148598 apegram@rushcliffe.goc.uk
<b>Background papers available for Inspection:</b>	<p>The Corporate Enforcement Policy and the Rushcliffe Borough Council's Planning Enforcement Code of Practice. These documents are available on the Council's website at:  <a href="https://www.rushcliffe.gov.uk/aboutus/aboutthecouncil/">https://www.rushcliffe.gov.uk/aboutus/aboutthecouncil/</a>  (Corporate Enforcement Policy is available under the heading Documents, policies and strategies)  and  <a href="https://www.rushcliffe.gov.uk/planningandgrowth/enforcement/">https://www.rushcliffe.gov.uk/planningandgrowth/enforcement/</a></p> <p>The reports considered by the Growth and Scrutiny Group at their meetings held on 25 August 2020 and 14 October 2020 are also available on the Council's website at:  <a href="https://democracy.rushcliffe.gov.uk/ieListMeetings.aspx?Committeeld=269">https://democracy.rushcliffe.gov.uk/ieListMeetings.aspx?Committeeld=269</a></p> <p>The report considered by Cabinet at the meeting held on 8 December 2020 is available on the Council's website at:  <a href="https://democracy.rushcliffe.gov.uk/ieListMeetings.aspx?Committeeld=137">https://democracy.rushcliffe.gov.uk/ieListMeetings.aspx?Committeeld=137</a></p>
<b>List of appendices:</b>	Appendix 1 – Draft Planning Enforcement Policy Appendix 2 – Summary of Consultation Responses Appendix 3 – Equality Impact Assessment