

Place and Resources Scrutiny Committee

25 January 2021

Planning Enforcement

For Decision

Portfolio Holder: Cllr D Walsh, Planning

Local Councillor(s): All

Executive Director: J Sellgren, Executive Director of Place

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Report Status: Public

Recommendation:

That the Scrutiny Committee:

1. Supports the strategy for managing enforcement work and resources as set out in section 8 of this report;
2. Recognises that the review of the enforcement policy and procedures (to be led by the planning portfolio holder) will provide a clearer understanding of future resource needs, and that there may be a subsequent requirement to secure permanent additional staff resources; and
3. Advises on any particular issues or suggestions it wishes the planning portfolio holder to consider in reviewing Dorset Council's enforcement plan.

Reason for Recommendation:

To provide the Committee with an understanding of the Council's Planning Enforcement function and the current pressures on resource, and to enable this to be effectively addressed in the interests of staff wellbeing, service delivery, and continued implementation of the planning transformation project.

1. Executive Summary

- 1.1 This report provides the Committee with an overview of planning enforcement with the aim of illustrating the scope and role of the service. Members will note that the demands on enforcement can be many and varied, and that the team is under a substantial amount of work pressure. The report sets out some of the positive steps that are underway towards the transformation of the planning service and how the enforcement function fits within this. However, it is apparent that we face some immediate pressures that require additional staff resource, at least for an interim period, including two temporary posts for a 3-month period for the reasons set out in this report. Beyond this, the review of the Council's enforcement plan will give a clearer understanding of longer-term resource requirements needed to deliver the Council's expectations for enforcement, and additional permanent staff resources may be required.

2. Background to the role and purpose of planning enforcement

- 2.1 Development is defined in planning law¹ as the carrying out of any building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. All development requires planning permission, although for some more minor or less consequential development, there are certain permitted development rights for which planning permission is in effect granted without requiring a planning application. Such rights are normally granted via the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or the Use Classes Order. Under these Orders, the Secretary of State grants planning permission for different types of development in specified circumstances. Development not covered by the provisions of permitted rights requires express planning permission via a formal application to the Local Planning Authority (LPA).
- 2.2 A breach of planning control² is defined as:
- the carrying out of development without the required planning permission; or
 - failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, also constitutes a breach of planning control.

¹ Section 55 of the Town and Country Planning Act 1990 (as amended)

² Section 171A of the Town and Country Planning Act (as amended)

- 2.3 Enforcement has an important role to play in the planning system to prevent or remedy unauthorised development in cases where such development would cause demonstrable harm to interests of acknowledged importance. It also helps to create the necessary incentive for developers to secure the appropriate consents before carrying out development. However, it is important to recognise the following often misunderstood factors:
- i. Enforcement is discretionary and LPAs are not compelled to take action even if development has taken place that requires permission. However, the absence of enforcement action can increase the risk of future breaches, is politically sensitive, and can expose local planning authorities to complaints (which may end up with investigations by the Local Government and Social Care Ombudsman).
 - ii. Carrying out development without the benefit of planning permission is not generally a criminal offence (although some enforcement situations can involve criminal offences – see para. 5.1), but is done so at the risk of potential enforcement action.
 - iii. There are many activities that do not require planning permission. Such matters can often be sensitive, such as neighbour disputes over a boundary between properties, but these are not the responsibility of planning enforcement.
 - iv. Enforcement is not generally a quick fix due to the complexities involved, and should not interfere with matters which are controlled by other legislation.
 - v. Internal alterations to a property that is not a Listed Building do not generally require permission (unless associated with a change of use), but they may require building regulations approval which is entirely separate from planning legislation.

3. Expediency of Action

- 3.1 LPAs have a responsibility for taking whatever enforcement action may be necessary in the public interest. In exercising these powers, the LPA should act in a proportionate way when it is considered expedient to do so. This is an important principle, as it may not always be expedient to take formal action, for instance when what is taking place is highly likely to get planning approval or is of such minor consequence that it would not cause any significant harm. In such cases the developer would be encouraged to apply for permission but if they failed to do so formal enforcement action would not necessarily be expedient, because the enforcement process is designed to remedy a breach to achieve an acceptable outcome and no changes may be needed if what has happened is in accordance with the development plan and causes no significant material harm.

- 3.2 Unauthorised development risks enforcement action being taken which may require the breach to be remedied, potentially at significant cost to the owner. Even if no action is taken, the absence of a planning permission could have a bearing upon the owner's ability to sell their property, or possibly even their buildings insurance.
- 3.3 In considering whether or not it is expedient to take action, the LPA would take account of:
- i. The adopted development plan (including minerals and waste plans and neighbourhood plans)
 - ii. National planning guidance including the NPPF
 - iii. Other material planning considerations. These have to be something that is relevant to planning and would not include matters that are outside of the scope of planning control.
- 3.4 The question would then follow as to what is proportionate or appropriate. This will vary from case to case and might range from direct and immediate intervention, such as a stop notice, to more informal approaches inviting the developer to regularise the development via a planning application (or other such as Listed Building Consent). The approach needs to be reasonable and procedurally sound in law. Otherwise the LPA can be liable for costs in the case of an appeal or may have to pay compensation in the event of a stop notice being served unreasonably. Taking the example of a stop notice, this would only be used sparingly where other options are not possible to remedy the situation. They should only be used to prohibit what is essential to safeguard amenity or public safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area. Far more common is to use tactics of communication and negotiation to secure an acceptable and regularised outcome without recourse to formal action. This is the intention of Government guidance in seeking a proportionate approach.

4. Planning Transformation

- 4.1 Planning Services is in the midst of a major transformation project. A new structure began to be implemented in the summer of 2020 to replace the transitional structure that followed the merging of six former planning authorities. This has been combined with an ambitious IT project involving the creation of a single fit-for-purpose planning software platform, and migration from the legacy systems is taking place in a phased manner (due to be completed in Spring/Summer of this year). A transformation programme of the user experience will follow this, and will offer consistent and intuitive online information for customers.

- 4.2 A key element of the transformation has been the creation of a structure that is designed around the needs of the new council. Taking the case of the development management service, this is aligned around the planning committee areas of Dorset Council, with three area managers, three fast track teams dealing with minor and householder applications, and lead project officers for each area (as well as for the Council's own development) to deal with larger and more strategically significant applications. We have worked closely with the Place Business Support restructure to align all planning application validation teams with the development management area teams.
- 4.3 The enforcement service historically would have been the responsibility of five district/borough councils together with the minerals and waste monitoring and enforcement function of the former county council. Policies and procedures for non-county enforcement would therefore have comprised those of Christchurch and East Dorset Councils, Purbeck District Council, and Dorset Councils Partnership (North Dorset, West Dorset, Weymouth and Portland). The current Dorset Council enforcement plan that was prepared in the light of local government reorganisation was intended to be a transitional tool pending the wider service transformation.
- 4.4 Dorset Council now has a team manager overseeing the entire enforcement function (other than the minerals and waste monitoring and enforcement role which sits in a specialist team), working closely with the area managers and reporting to the DM and Enforcement Service Manager. The enforcement manager is supported by three senior enforcement officers (each covering one of the teams), together with six enforcement officers and three enforcement assistants (12.15 fte posts). This structure is designed to integrate seamlessly with the development management function. However, it is recognised that the Council's enforcement plan is an integral part of the wider service transformation and will need to be reviewed to ensure our approach to enforcement is effective, focused, consistently applied and appropriately resourced. It is also clear that casework pressures continue to be high and show no sign of diminishing. The need for additional permanent resources may therefore have to be considered, depending upon the service expectations that are placed upon the team as part of the enforcement policy review.

5. Resource Challenges

- 5.1 Members might find it helpful to have some indication of the range and scope of work that our enforcement team cover. The team deal with not only planning issues under civil law but also with Listed Building, Tree and Advertisements breaches under criminal law which require a more methodical, legal and time-intensive approach to straight forward breaches. This often requires detailed and forensic meetings with solicitors and barristers on complex

legal matters. The most challenging cases can demand full-time commitment from officers at given times and demands upon time are not entirely predictable. Some examples of resource-intensive cases include:

- Caravan sites and certificates of lawfulness for residential use – this concerns circumstances around sites that have benefited from caravan site licences and are seeking to intensify development through the move to more permanent mobile homes via the route of Certificates of Lawful Use or Development – this is a legal test rather than one of planning judgement;
- An on-going case involving a residential scheme on a former industrial site where legacy contamination issues require a sensitive approach that ensures safety while also avoiding a risk of causing the scheme to fail on viability grounds;
- Green Belt cases in the urban fringe around the South East Dorset Conurbation, where pressures for a variety of activities is high;
- Rural diversification of farms, often in the AONB, which can be both complex and time-consuming to deal with;
- All cases where we get to the stage of prosecuting for non-compliance.

Two examples are attached at **Appendix A** which illustrate well some of the complexities and challenges involved.

- 5.2 The more challenging cases often require legal input. We currently have 5 cases which involve significant legal support due to their complexity, and these are distributed across all three of the team areas. Some involve multiple activities/alleged breaches and all are locally contentious. This does not include day-to-day legal advice that is required on various matters such as interpretation of planning law and enforceability of conditions, all of which can be less than straightforward. In addition to these there are a few on-going cases of such legal complexity that specialist counsel advice has been procured. These tend to concern situations where there is a risk of legal challenge or where case law is inconclusive.
- 5.3 Dorset Council has made a positive commitment to supporting the creation of the new planning service and this is welcome. However, it is an inevitable consequence of a prolonged period of tightening of public funding since the banking crash in 2010 that officer resource is stretched more thinly than 10 years ago. We now have a team of 12.15 (fte) enforcement officers, together with a conservation enforcement specialist in the Conservation Service, dealing with casework covering the geographical area of five former district/borough councils (this number would have equated to just over 2 officers per former council area). By comparison, the former district of North Dorset alone used to have 5 officers.
- 5.4 It is clear from the levels of casework and pressures on the team that demand for the enforcement service is extremely high. The following table illustrates this:

Role	Number of officers (fte)	Casework numbers	Average per officer
Senior Enforcement Officer	3	294	98
Enforcement Officer	5.15	387	75
Enforcement Assistant	3	81	27
Conservation Officer (specialist conservation enforcement matters)	1	17	17
Agency Officer (specific case types)	1	15	15

5.5 It is difficult to quantify precise workload because a single case can be extremely resource-intensive, and some are of a specialist nature, such as some of the work covered by the conservation and agency officers. Taking these two post holders aside, the remaining enforcement casework officers are dealing with an average of nearly 70 cases each (fte).

6. Immediate resource challenges

6.1 The restructure and transformation of planning is intended to provide an effective enforcement service that provides our dedicated officers with a framework to operate with due expediency and in a proportionate manner, but also safely and in ways that protect them from unreasonable stress or casework pressure in what is a difficult and potentially confrontational job. This will rely upon constructive working relationships with local members, but also with parish and town councils, developers and landowners. However, it is apparent that the service is facing an immediate resource difficulty principally due to the following:

- i. The service has been affected by some long-term absences in key positions which has placed more pressure on other officers and limits the capacity of the service to review the Council's enforcement policy (which will be important to the management of casework);
- ii. The software transformation project is a significant undertaking which by necessity is taking up some staff resource from colleagues who best know the legacy systems (this is critical to data capture/migration onto the new software platform). This will rely on a key member of the enforcement team who happens to be a digital champion and is one of the few officers with familiarity of the legacy Weymouth software platform.

6.2 It is therefore considered necessary to bring in some interim support to assist the team in coping with the temporary loss of resource in the team to help deliver the software transformation, while also managing current staff absences. The additional resource is vital given that the pandemic has not diminished demands on the enforcement service (and may in fact be placing added pressures on it) while officers are also dealing with the knock-on effect of service disruption caused by the initial lockdown in March 2020.

6.3 To cover the transformation project backfill requirements and the impact of staff absences, there is a need to recruit two agency enforcement officers for a period of 3 months.

7. Longer term resource implications

- 7.1 It is clear from casework levels and the continuing demands upon the enforcement service that resources are likely to be stretched for the foreseeable future. The review of the Council's enforcement policy (led by the planning portfolio holder) will be important in establishing the service commitments of Dorset Council and in turn the expectations placed upon the team. This may require additional staff resource on a more permanent basis to ensure that the LPA is in a position to deliver the service expectations placed upon it.

8. Strategy for managing enforcement work and resources

- 8.1 Working with the resources we have at our disposal requires careful prioritisation, and pressures are such that officers will not be able to deal with all casework. The Planning Leadership Team is therefore aiming to manage the capacity of the enforcement team through a number of measures, including the following:
- i. The existing enforcement policy will be reviewed to provide a concise framework for how Dorset Council will manage and prioritise enforcement work, including how reporting is handled, triage of cases, clear guidance on prioritisation, explanation of what is not the role of enforcement, and setting out clear service standards. Our approach will need to concentrate on whether the breach is causing planning harm. We should be focusing on those cases where harm is arising, and we need a way of closing down other more minor matters quickly, so we can make best use of officer time.
 - ii. Greater use of software and technology once the planning transformation project reaches the next phase.
 - iii. A partnership approach between officers and local members.
 - iv. Close working between planning officers, building control, conservation and enforcement to make optimum use of resources and provide increased opportunity for proactive or pre-emptive interventions, including monitoring of planning conditions.
 - v. Clearer guidance and expectation management about when enforcement action is appropriate, including close liaison with town and parish councils.
 - vi. Operational management of the staff resource in accordance with what is needed to deliver the enforcement policy.

9. Financial Implications

- 9.1 There will be financial implications associated with the cost of employing two agency enforcement officers for a period of three months. Subject to the review of the Council's enforcement policy, there may be a need for future permanent commitments to additional staff resource needed to deliver the policy.

10. Well-being and Health Implications

- 10.1 The immediate pressures on the enforcement team are having an adverse impact upon staff health and well-being. Whilst officers are doing their best and working hard to manage the most pressing casework, the current

position is not sustainable without an intervention of some additional resource. This will also help to provide some capacity to review enforcement policies and procedures.

11. Climate implications

11.1 There are no climate implications arising from the recommendations in this report.

12. Other Implications

12.1 There are no other direct implications that have not already been covered in this report.

13. Risk Assessment

Having considered the risks associated with this decision, the level of risk has been identified as:

Current Risk: High

Residual Risk: Medium/low

This is based upon implications for staff well-being and for reputational risk arising from current high workloads. An injection of support from two additional officers for a three-month period will assist with managing these pressures. This may need a longer term commitment subject to the review of the enforcement policy.

14. Equalities Impact Assessment

14.1 This report does not propose any immediate change to existing policies or procedures and any interim staff will be managed in accordance with the Council's existing approved working practices.

15. Appendices

Appendix A: Testimonial of Senior Enforcement Officer

16. Background Papers

16.1 None.

Footnote:

Issues relating to financial, legal, environmental, economic and equalities implications have been considered and any information relevant to the decision is included within the report.

Appendix A: Testimonial of Senior Enforcement Officer

Two examples of the resource intensity of what may first appear to be straightforward cases:

CASE 1:

The initial breach was an unauthorised building to be used as a residential dwelling constructed partly in the curtilage of a listed building partly on agricultural land. Not only was there extensive negotiation to try and convince the owner this was unlawful but due to their failure to carry out repairs works to the listed building additional enforcement action was threatened in relation to the condition of this building. There was extensive liaison with conservation, planning and the legal team before the expediency report could be completed and notice served. The owners have appealed on a number of spurious grounds including claiming the building is permitted development and a caravan. In order to address all these points [The officer's] appeal statement ended up over 10,000 words long - a piece of work that took approximately a week. Overall a case like this from start to finish will involve weeks' worth of work for the enforcement officer and collectively days of work for conservation, DM and legal officers (there are many more internal and external experts we rely on please see my next example) as their input in to a case is vital for enforcement action to be successful. This also raises the issue in my view that much of the resource that an enforcement officer is reliant on they have no control over, yet if there are delays outside of their control it is the enforcement officer that deal with the complaints from members, PC's and residents about the delays, a further time consuming exercise. This is just one, on the face of it fairly straightforward case but, due to the adversarial behaviour of the owners and limited resources of DM, Conservation and Legal resulted in an immense amount of work for [the officer]. Despite this I think [the officer] has done an outstanding job.

CASE 2:

Another example of a case which has been resource intensive is [address removed] the unauthorised conversion of a shop to a late night bar. Again there has been extensive negotiation with the owner including three retrospective applications. There has been extensive liaison with DM, Conservation, Environmental Health, Licensing and the police, in relation to this unauthorised change of use. The investigation actually found a total of nine technical breaches of planning control. Officers have visited late in the evening, attended a license committee hearing, had meetings with the owner and agent. A multi-agency approach with the Police EH and licensing to try and resolve this case informally was undertaken but failed. EH in particular have provided evidence and expert opinion (and monitored the site taking action under their own legislation). There was extensive liaison with legal because of the number of breaches found, drafting of the expediency report and notice required extensive legal input due to complexity and the decision to under enforce. The resultant expediency report was in excess of 5,000 words and the recently completed appeal statements were again over 10,000 words. The accumulative time I have spent on this case runs in to months of work over the last four years and accumulatively weeks of work for DM and Conservation officers. The liaison with EH officers who were vital in proving the harm due to noise levels to neighbours was particularly onerous due to the technical difficulties in proving actual harm from noise related complaints [together with challenges in securing some necessary specialist officer input from outside of planning] (this is not a lack of willingness but a lack of understanding how planning enforcement works).