



**CAI.33 14/15**

**Committee** Challenge and Improvement Committee

**Date** 27<sup>th</sup> January 2015

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**Subject: Planning Enforcement Information**

Report by:

Director of Resources

Contact Officer:

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Purpose / Summary:

This report has been prepared following a request from the November Challenge and Improvement committee meeting in regards to an update on planning enforcement

**RECOMMENDATION(S):**

- a) Elected members are asked to review the report and consider any additional information that is required

## IMPLICATIONS

**Legal:** legal advice has been sought in regards to Data Protection and is summarised in section 4.

**Financial :** FIN / REF/121/15 there are no financial implications within this report. The service is being delivered effectively within existing Council resources.

**Staffing :** None arising from this report

**Equality and Diversity including Human Rights :**

N/a

**Risk Assessment :**

N/a.

**Climate Related Risks and Opportunities :**

N/A

**Title and Location of any Background Papers used in the preparation of this report:**

None

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

Yes

No

## **1. Introduction**

1.1. This report has been prepared to provide members with information in regards to the planning enforcement services provided by the Council. It sets out the following:

- How priorities in regards to enforcement are determined
- The customer charter which supports planning enforcement
- The legal position in regards to data protection in planning enforcement
- The current performance of the service

1.2. Elected members should note that overall the service is performing well and there are the appropriate resources in place to maintain this level of performance. Key points to note are that the number of open cases (the day to day caseload) is at a significantly lower level due to the effective progression and closure of cases. Alongside this, open cases are being closed on average, well within the 13 week target.

## **2. Enforcement Priorities**

2.1. Listed below is the classification of enforcement policy priorities taken from the West Lindsey District Council Enforcement Policy, which has been set out and agreed by elected members. These priorities reflect the importance that is placed on the built and natural environment within the district and form the basis for decisions that officers make when dealing with planning enforcement. There are four priority classifications in the enforcement policy that officers consider when looking at enforcement, these are shown below;

### **High Priority**

- a) Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area) or any other development that causes irreversible demonstrable harm.
- b) Unauthorised works to trees covered by a Tree Preservation Order (TPO) or in a Conservation area.
- c) Unauthorised development in an AONB, SSSI (or other national or local designation of nature conservation).

### **Medium Priority**

- a) Any unauthorised development/activity which, causes clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents.
- b) Breach of a condition, which results in serious demonstrable harm to amenity in the neighbourhood.
- c) Unauthorised development in Conservation Areas or where an article 4 direction has been issued.
- d) Unauthorised development, which is the source of significant public complaint (significant public complaint can be quantified as 5 or more independent sources complaining about the same alleged breach of planning control).
- e) The erection of unauthorised advertisements that have a detrimental impact on highway safety.

### **Low Priority**

- a) Any unauthorised development where the time limit for enforcement action will expire within the next 6 months.

- b) Unauthorised development, which is not the source of significant public complaint.
- c) The erection of unauthorised advertisements.

### **Lowest Priority**

- a) Unauthorised development, which would be likely to receive planning permission/approval (e.g. if a planning application were to be submitted or S106 agreement completed) or would not result in informal enforcement action being instigated.
- b) Developments that are unlikely to require planning permission.

## **3. The Customer Charter**

- 3.1. The planning enforcement customer charter is included at appendix 1. This charter sets out the service standards and decision making procedure and is sent to every customer who raises a planning enforcement concern with the Council. The document also sets out a commitment for how and when officers will respond to customers and will assist in improving clarity over customer expectations of the section.
- 3.2. The charter has been very well received by service users and has brought clear benefits to the service. The additional clarity this has provided to customers, since it is provided at the outset of an investigation, has had the effect of significantly reducing questions or challenges over the way that decisions regarding enforcement matters are made. Officers identified that prior to the introduction of this charter there was a lack of information available to customers that concisely explained how decisions would be taken and the level of response that could be expected from officers. Responding to these additional queries and concerns created added pressure on staff resources. This demand is now almost entirely eliminated, allowing officers to focus their time on resolving cases.
- 3.3. This customer charter and the enforcement priorities document are in line with the report published by the Local Government Ombudsman in December 2014, which is focused on learning from complaints and can be found here <http://www.lgo.org.uk/downloads/special%20reports/2093-Planning-Focus-report-final.pdf>
- 3.4. The report reviews various areas of the planning process and quotes directly from the National Planning Policy Framework. "Sometimes development takes place without planning permission or planning permission that has been granted is breached. Although councils have powers to stop development they do not have to take action in every case. Government guidance says "enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control". (***National Planning Policy Framework, paragraph 207***)
- 3.5. In specific regards to enforcement action it also suggests it is good practice to have an enforcement plan demonstrating how the Council proactively manages enforcement, to set out how cases will be investigated and to assist officers in making consistent decisions. The customer charter and enforcement policy are in line with the requirements for this type of plan. The level of consistency in regards to decisions can be demonstrated by the low level of complaints and appeals that the service receives.

## **4. Data Protection in Planning Enforcement**



5.2. There are currently 59 open cases categorised as follows:

- Priority 1 = 4
- Priority 2 = 15
- Priority 3 = 33
- Priority 4 = 7

5.3. Figures from 2014/15 reflect a significant improvement in the time taken to complete an enforcement case compared to 2013/14. The performance from 14/15 demonstrates that there is likely to be a higher number of enforcement requests received compared to 13/14. There is no general pattern to these requests and there is limited influence that can be had in terms of managing the number of enquiries that are received.

5.4. The cases opened in year are being closed within the target number of weeks and the average timescale for closing cases opened is currently 11.5 weeks, which is in line with the customer charter. This includes the timescales for the more complex cases, which naturally take longer to close and in some cases are influenced by other parties and are not in control of the Council. These timescales demonstrate the improved effectiveness of the service.

5.5. The number of notices served in year is unlikely to reach the same total as 13/14. This indicates that the work undertaken by officers to resolve cases informally is proving effective and that only cases that cannot be resolved informally will progress to the serving of a notice.

5.6. There are no cases that have been open for a period of longer than 12 months.

## **6. Recommendations**

6.1. Elected members are asked to review the report and consider any additional information that is required

**END**

# Planning Enforcement Customer Charter

## **A guide to the aims, service standards, decision making and procedures of the planning enforcement service.**

West Lindsey District Council has set out in its corporate plan a commitment to ensure that the district is a place where people **'want to live, work, invest and visit.'** Part of achieving this for the people in West Lindsey depends on ensuring the local environment is conserved or enhanced.

The council can deliver this commitment by ensuring that the businesses and communities in West Lindsey operate and develop in a sustainable and environmentally responsible way. A key way of ensuring this happens is to consistently use the council's enforcement powers to take action against any breaches of planning control.

Each year the council receives around 400 reports of possible planning breaches from a wide range of people, including; residents, local ward or parish councillors and other partner organisations.

These reports are where someone believes that there may be an activity, a change in use or development (i.e. building work) taking place that could require planning permission.

The council will always seek to operate its planning enforcement in a fair, consistent and open way. Whether you wish to report a planning breach or you have been contacted by the council about a possible planning breach at your property or on land you own, this guide will help you understand how the enforcement service works.

This guidance contains extracts from the separate *West Lindsey Planning Enforcement Policy* which can be viewed in full on the council's website. Please see the back page of this guidance note for details.

[www.west-lindsey.gov.uk](http://www.west-lindsey.gov.uk)



**Introduction** - Being in breach of planning control is not, in itself, a criminal offence. For each allegation, the council will investigate the circumstances of the case and determine what, if required, would make the development acceptable according to the planning regulations. The general test applied is 'would planning permission have been granted for the development if it had gone through a planning application?'. Non-planning considerations will not be part of this process.

The council will initially attempt to resolve all breaches of planning control through negotiation, with the exception of breaches of planning control which could not be rectified to meet the planning criteria and should be removed/amended as a priority. Negotiation will not be allowed to unjustifiably delay any necessary planning enforcement action.

**Service Standards** - The planning enforcement section will operate the service in accordance with the published enforcement policy which sets out the full level of service and performance the public and businesses can expect. This is summarised below. We will regularly review these standards taking account of the views of stakeholders.

**Reporting a breach** - People reporting possible planning breaches will be asked to provide as much detail as possible and must provide their own contact details so that officers can obtain additional information if required, such as evidence of the impact and harm being caused by the potential breach. To focus staff resources appropriately, investigations will be carried out on a priority based approach. This means officers will gather as much information as possible on the cause and impact of the possible breach and apply judgement to decide

which priority category the breach would fall into, and how best to address the issues raised.

**Non-enforcement issues** - There are a number of issues that are regularly reported to the council that **cannot** be pursued by planning enforcement. These include:-

- **Neighbour disputes:** The Council will not pursue obvious neighbour disputes unless there is a clear planning issue which has a significant impact on local amenity.
- **Anonymous complaints:** Unless relating to works on protected trees or listed buildings.
- **Breaches of covenants or deeds:** These may be civil matters but are not planning concerns.
- **Trade complaints:** In cases where the issue is purely trade or competition.
- **Boundary disputes:** Again, this is generally always a civil matter and not a planning concern.
- **Clearing of un-protected trees or landscaping and gardening works**
- **Height of hedges and trees:** This can be pursued under other legislation.
- **Internal alterations** (unless to a listed building – if in doubt please ask!).
- **External security lights fixed to houses:** If serious, this can be pursued under other legislation.
- **Fences and walls in rear gardens:** Unless assessed to have a 'substantial' impact.

**Responding to customers** - In all cases when a report of a possible planning breach is made to the enforcement officers it will be acknowledged within **2 working days**. It will be allocated a priority status which is



determined by the level of impact and severity of the breach, as set out in the full enforcement policy.

All users of the service are encouraged to report issues directly to the enforcement team to ensure the quickest response. Any personal information provided to the council is held securely in line with the Data Protection Act (DPA) 1998. Your local ward member may be notified of the complaint but personal details will not be disclosed. Anonymous complaints will not be investigated.

**Investigating reports of potential planning breaches** - An initial site inspection will be carried out if there has been enough information provided to officers to allow an investigation to start. Site visits will take place within the timeframes set out in the adopted policy and are based on the priority given to the reported breach. Where the impact of the breach could be serious (priority 1 cases) officers will attend within 1 working day.

Examples of priority 1 cases include; potential damage to a listed building or designated important site, or clear and immediate risk to public safety. For all other breaches site visits will be carried out between 3 and 15 working days depending on severity. The case will then be assessed against the appropriate legislation, policy and regulations to determine if a breach of planning control has occurred.

**The council's response** - A response will be made to the enquirer (and the owner of the site under investigation when a breach has occurred), within 20 working days of receipt of the enforcement enquiry. The response will set out the council's decision and/or any proposed further action. Examples of further actions are: closure of the investigation; request for further necessary information; invitation of a planning application; a proposed solution; or progression of enforcement action

**First steps to resolving planning breaches** - At one end of the scale, if no or little harm is identified, the matter could be treated as a 'technical breach' with no further action to be taken. Alternatively a planning application might be invited to 'regularise' the situation. At the other end of the scale, where it is assessed that serious harm has occurred, a formal notice

might be served and other formal steps considered.

The Council will always exercise its enforcement powers on an individual basis and assess the expediency and public interest of taking action before deciding how best to act. The council has a wide range of planning enforcement powers, but must act in accordance with national policy and guidance.

**In most cases** the council will provide the owner or occupier of the land or building where the breach has occurred an opportunity to put things right. This can include to voluntarily remedy any harmful effects of the unauthorised development. Sometimes this may include making a breach acceptable by obtaining a conditional planning permission. If this is the case an officers will invite an application to be made to the council, allowing two months for submission in normal circumstances. Any submitted application will be subject to normal consultation procedures and details will be made available on the council website.

In cases where an application has been invited and no harm is being caused to the local area; no further formal action can be taken regardless of whether or not an application is submitted.

**Taking Action:** For the most severe planning control breaches or where a request to undertake remedial work is not adhered to, formal enforcement action will be taken.

Prior to the serving of a formal notice the council will normally allow the owner(s) of the site under investigation an opportunity to discuss by telephone, letter, site or office meeting, which can be mutually agreed. This will include any steps which can be taken to avoid action by the council and the right of appeal of the owner(s).

Where enforcement action is deemed necessary a notice will be served within 20 working days of the decision. The enquirer and the owner of the site/ land concerned will be advised in writing.

**Updates on investigations and the level of information that can be shared** - Progress updates will be given to the enquirer and any other party with a legitimate interest in the issue (such as ward councillors and parish councils). However, enforcement can be a very complex process. Where action needs to be taken by the

council this must follow the necessary legal course. Each enforcement case can vary considerably, and so too will the time taken to resolve it. Although many cases do not result in formal enforcement action, many do require lengthy investigations, site surveillance or legal action over several months.

Because enforcement action is part of a legal process officers are often very limited in the level of detail or information that can be provided in an update. This can be frustrating to people who have reported the issue but is totally necessary to ensure that the appropriate action can be taken and the investigation is not compromised. Officers will advise in their initial acknowledgment when updates will be provided.

**Appeals** will be processed in accordance with the Government's timescales. Full details will be provided with the enforcement notice served.

**Service pledge** - The service will be operated in a professional and customer-focused manner. In

cases of dispute, rights of complaint or appeal will be clearly explained.

**Further information:** In circumstances where the most reasonable course of action to deal with the harm being caused lies outside of planning controls, the planning enforcement team will refer the matter to the relevant department/team for action. This could be in partnership with the planning enforcement team, where appropriate. The enquirer will be made aware of any referrals/partnership working. The decision to take enforcement action will normally be made by the Team Manager or Senior Officer within the team, as agreed through the delegation arrangements. Enforcement action will always be proportionate with the breach of planning control that has taken place. Enforcement action will not be taken against a minor or technical breach which causes no harm to the local area. Enforcement action will not be taken purely to regularise breaches of planning control. In cases where an application would have a chance of success, an application will be invited for consideration through the usual process.

**To make an enforcement enquiry and for general enforcement advice:**

**Phone:** 01427 675 194 or 01427 676 570

**Write to:** West Lindsey District Council, Marshalls Yard, Gainsborough, Lincolnshire, DN21 2NA

**Email:** [enforcement@west-lindsey.gov.uk](mailto:enforcement@west-lindsey.gov.uk)

**Website:** [www.west-lindsey.gov.uk](http://www.west-lindsey.gov.uk) for viewing the full planning enforcement procedures, to find out about or view planning permissions, or to make a new complaint online.

**Your local ward councillor(s):** Contact the council offices or visit the website for full details. Councillors can give advice about how to access council services and make your views known.

**Independent advice:** You can obtain free independent professional advice on planning issues by contacting [Planning Aid](http://www.planningaid.org.uk) on 0330 123 9244 or [advice@planningaid.rtpi.org.uk](mailto:advice@planningaid.rtpi.org.uk).

**Planning Portal:** The Planning Portal is the UK Government's online planning and building regulations resource for England and Wales. It provides information on plans, appeals, applications, contact details, research areas. The planning portal has an interactive guide for householders; you may wish to use this guide to ascertain if planning permission is required – [www.planningportal.gov.uk](http://www.planningportal.gov.uk) You can also use the Planning Portal to submit an planning application.

**Building Control:** If your plans include an extension or alteration to a dwelling, or if you are concerned about a possible dangerous structure, you can talk to our Building Control team 01427 676 670 or e-mail [building.control@west-lindsey.gov.uk](mailto:building.control@west-lindsey.gov.uk)

**Environmental Protection Team:** This section of the council can investigate issues such as noise, pollution, odour, and flooding. Contact 01427 676676 or [env.protection@west-lindsey.gov.uk](mailto:env.protection@west-lindsey.gov.uk)

**Customer care standards:** West Lindsey District Council has a customer care procedure available on the council's website or by request in writing. This explains the common standards which apply to all of the council's services and our general complaints procedure.

**Feedback and/or complaints about the service:** In the first instance please phone, or send a letter or email to the Planning Enforcement Team Manager via the details shown above.

If you need this information in another format, please contact 01427 676 676 and advise our Customer Services Advisors.

