



CAI.29 13/14

Committee Challenge and Improvement Committee

3rd December 2013

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Subject: Planning Enforcement; Performance and Service Delivery Update

Report by:

Director of Regeneration and Planning

Contact Officer:

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Purpose / Summary:

This report has been prepared to provide members with the headline performance data for planning enforcement as at 31 August 2013 and gives an update on service delivery changes.

RECOMMENDATION(S): Members note the contents of this report.

IMPLICATIONS

Legal: None

Financial : FIN/51/14 None arising from this report. The costs of Planning Enforcement is met from within existing budgets.

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

Table 4: All live cases by the number of months open

Months live cases have been open	Number of cases	Additional comments
New cases (less than 30 days old)	16	All acknowledged with the customer, logged on Flare and site visits completed or underway
1 – 6 months	31	4 applications awaiting decision, 1 remedial action agreed, 4 applications agreed to submit,
6 – 12 months	9	1 notice in compliance period, 1 appeal in progress, 2 applications awaiting decision
1 year +	5	1 partially resolved, 1 planning application in progress, 1 in breach of notice direct action being taken, 1 delayed pending police involvement, 1 notice pending
2 year +	5	The oldest case involves repeated different breaches on the same site all logged as one large case. Multiple court rulings ignored, direct action proceedings underway to reach final closure. 2 nd oldest had three notices served, one fully complied with, other two on-going appeals but may now be acceptable subject to conditions, third had notice, appeals dismissed and prosecuted possible CPO liaising with empty homes one in breach of notice looking at direct action, one delayed by police action

2.8 Classification of enforcement policy priorities (taken from West Lindsey District Council Enforcement Policy)

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 (eg 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 (eg if a planning application were to be submitted or S106 agreement completed) or would not result informal enforcement action being instigated.
- b) Developments that are unlikely to require planning permission.

2.9 Appeals against enforcement action

Number of Appeals 2013/14: 3 received
 Decision (Outcome of Appeals): No decision yet; all 3 appeals are currently underway

Note: 2 of the 3 appeals relate to different breaches on the same site.

2.10 Direct Action Cases

Number of Direct Action Cases 2013/14: 0
 Total costs of work undertaken 2013/14: £0

Note: No new direct action cases have been completed since April 2013 but 2 cases are currently being prepared that may result in carrying out direct action later in the year. Officers will always seek a cooperative resolution of a breach before pursuing direct action.

2.11 Prosecutions

New Prosecutions Completed 2013/14: 2
 Current Prosecutions: 0

2.12 Table 5: Outcome of Prosecutions Completed

Location	Decision
Spring Gardens, Gainsborough	Fined £200 with £15 victim surcharge and £400 costs. Costs have been paid.
Queen Street, Market Rasen	Fined £300 with £15 victim surcharge and £600 costs. Payment is being made through court, by instalments.

3 Further Information

- 3.1 Officers are focussed on ensuring a positive experience for all customers. To improve this further officers have taken additional steps to further enhance customer service and service delivery.
- 3.2 The most significant of these is the creation of a more transparent service with clearer commitments to our customers. This is underpinned by a new guidance note *Planning Enforcement Customer Charter* that has been created to clearly explain how the section works, including the types of issues that can be investigated by the team, and how to report possible planning breaches. 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. This was identified as an issue in the last report made to members in February 2013. The document has been designed to assist both people wishing to report a breach and also those that are contacted by the council about a possible breach at their property or land.
- 3.3 All of the information contained within the new customer charter exactly reflects the contents of the adopted enforcement policy (i.e there are no policy changes to those already adopted by members), but the service is described in a more concise and customer focused way. Readers are signposted to the full policy if they require further information as well as to a

variety of other useful services that may offer assistance, both within and outside the council. Officer contact details are provided to enable issues to be reported directly to the team.

- 3.4 A copy of this document is attached for members to view at Appendix 1 of this report. A copy of this document is being provided to all customers each time a possible planning breach is reported, including reports made by Parish Councils.
- 3.5 Copies are provided to customers with the acknowledgements sent by officers. This is almost always done electronically and therefore there is no cost associated with disseminating the document. The document has also been added to the Enforcement pages of the council's website alongside the adopted policy.
- 3.6 Officers had intended to undertake a review of the enforcement policy in the early part of this year. However, given the significant number of changes to planning legislation that were announced by the Government, it was not practical to do this. These changes are likely to affect the way that the section applies its powers in future, particularly where permitted development regulations have changed. It is likely that further legislative changes will be announced in the near future however now that most of the known amendments to the system have been introduced, a review of the policy will be undertaken before the end of the current financial year to ensure it remains up to date and robust. At present officers are confident that the policy remains fit for purpose.
- 3.7 Additional efficiencies have been achieved within the section by establishing weekly tasking meetings to review live cases and priorities, as referenced in section 2.4 above. This has ensured a continued focus on the higher priority cases and enabled the quicker resolution of some of the more minor reports received by the section. A key part of the case review process is to monitor communication with the customer to ensure that they remain well informed about investigations.
- 3.8 Other initiatives include a greater connection between officers and the council's wider corporate priorities. Whilst enforcement officers regularly work with a broad number of sections across the authority there has been a particular focus on the ex-MoD land at Brookenby. Officers now visit the area on at least a monthly basis to both review existing cases and to identify as early as possible any possible new planning breaches. These visits are reported to the community meetings held in the village each month. Based on a successful trial of these visits it is planned to roll out monthly reviews of all our ex-MoD sites over the coming months.
- 3.9 As previously requested, when members are reporting possible planning breaches it will greatly assist officers if as much information as possible can be provided about the issue. This may include member's local knowledge or the history and ownership of a particular site. Preferably any reports of planning breaches from members should be made electronically to ensure that officers can pick up the report quickly, and from wherever they are working.
- 3.10 Officers will ensure that members receive updates on live cases as far as practicable. However, updates from officers may often be restricted to an assurance that an investigation is underway and it may not always be possible to provide details of the nature of an investigation or any action that may or may not follow.

This is because all of the work undertaken by enforcement officers has the potential to lead to prosecution or to be challenged through the judicial process. Therefore, as with all councils, every enforcement investigation must be conducted in a controlled and confidential way to ensure no investigation is compromised and that the necessary enforcement action can always be pursued.

- 3.11 To ensure that governance in the section operates appropriately, and within the correct legal framework, if more detailed case information is requested by a ward member, or any other customer, the request will be referred to the Team Manager. Officers are unable to discuss live cases with members in an open office for the reasons outlined above.

4 Recommendation

That members note the contents of this report.

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



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

Website: 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) on 0330 123 9244 or 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 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

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

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.

