

Planning and Building Control Enforcement

LEAD MEMBER: Councillor David Moore
LEAD OFFICER: Neil White, Scrutiny Officer

Recommendation: that the Task and Finish Group found that the Council was not fully following its own Planning Enforcement Manual and the Planning Panel is requested to consider the following recommendations and recommend to Council (via the Executive where appropriate) that:

(A) in respect of the Manual:

- (1) it should be updated with a clear design and layout as well as the use of plain English,**
- (2) the priorities set out in the manual should be confirmed by the Planning Panel,**
- (3) once updated a copy should be placed on the council's website and be made available for download.**

(B) the following processes be implemented, as a matter of urgency, to ensure that greater control is available over Planning and Building Control Enforcement Issues:

- (1) The information on planning enforcement on the council's website should be updated. It should also include the capacity to submit information and raise planning enforcement concerns on-line, and have a "who's who" of key officer contacts,**
- (2) Good practice examples from other local authorities should be investigated in order to produce the best possible material and presentation,**
- (3) The recording of Planning Enforcement Complaints should be improved and brought into line with the Council's policy of acknowledging a complaint within 3 working days and a full response within 10 working days,**

All such complaints, using postcode details only, should also be sent to the Customer Relations Officer for monitoring and recording purposes,

- (4) An ongoing log of enforcement successes should be established and maintained,**
- (5) A programme for securing regular and widespread publicity for planning enforcement successes should be developed and implemented in collaboration with the Communications Team,**

(6) The requirement in the Council's planning enforcement manual for a quarterly review of the performance of the enforcement function should be implemented and the reviews submitted to the Planning Panel,

(7) The proposal to Personnel Panel to recruit an enforcement officer be strongly supported.

(C) Resources be made available over the longer term to ensure a number of improvements can be made to the Planning and Building Control Enforcement Service that should include that:

(1) Officers are requested to find a cost effective solution to checking that developments take place in accordance with approved development plans so that future complaints against the council can be minimized,

(2) An Enforcement Forum (a multi-disciplinary working group of officers involved in enforcement action across the Council) should be established to review and utilise more effectively all the possible powers that the Council has at its disposal to secure enforcement, including planning enforcement,

Consideration should be given to the inclusion of the Police within this forum,

(3) The Officer group that is looking at dilapidated buildings consider how the council could take a similar approach to Allerdale on the renovation or demolition of such sites and report on this to the Planning Panel.

(D) A report be submitted in six months time on the changes made as a result of these recommendations and the effect of those changes.

1. BACKGROUND

This Committee in the last civic year agreed to a task and finish group being established to look at how the planning and building control enforcement service is dealt with by the council.

The membership of the task and finish group was made of Councillors D Moore, R Salkeld, J Bowman, P Whalley, N Clarkson, and Tyson.

The Sub Group met on three occasions and heard evidence from:

Tony Pomfret, Development Services Manager
Martin Jepson, Head of Legal and Democratic Services
Mark Key (Principal Building Control Surveyor)

The Sub Group also had a series of site visits which showed the range of different enforcement issues across the borough.

It also considered written evidence. This included:

- (A) Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements
- (B) Planning Policy Guidance 18 Enforcing Planning Control
- (C) Department for Communities and Local Government November 2006 Review of Planning Enforcement
- (D) Copeland Council Development and Environment Business Unit Planning Enforcement Manual
- (E) Building Control Enforcement Flowcharts
- (F) Allerdale Borough Council – Dangerous structures and public safety

2. EVIDENCE CONSIDERED

(A) Development Control and Building Control

Building Control set standards for the design and construction of buildings to ensure the safety and health for people in or about those buildings. They also include requirements to ensure that fuel and power is conserved and facilities are provided for people, including those with disabilities, to access and move around inside buildings.

Development Control seeks to guide the way our towns, cities and countryside develop. This includes the use of land and buildings, the appearance of buildings, landscaping considerations, highway access and the impact that the development will have on the general environment.

For many types of building work, separate permission under both regimes (separate processes) will be required. For other building work, such as internal alterations, Buildings Regulations approval will probably be needed, but Planning permission may not be.

(B) Planning Enforcement

Planning enforcement action is taken under the Town and Country Planning Acts. Other than in the case of unauthorised advertisements, or works to listed buildings such breaches are not criminal acts unless there is a conviction in the Magistrates Court, and usually involve lengthy civil actions including rights of appeal. Some basic principles of the system are:

- Planning enforcement is a discretionary power of a local authority and should only be used when it is considered expedient to do so. When there is no demonstrable harm caused by a breach enforcement action should not be taken. This means that when there are no grounds for enforcement there is little incentive for the contravenor to regularise the situation by submitting a retrospective application and no fee is payable to the council without such an application.

- Retrospective applications are considered on their planning merits in exactly the same way as other applications with no negative weighting being given due to their retrospective nature.
- Unauthorised development can become lawful by the passage of set periods of time providing it is not challenged by enforcement action. This means that once a person responsible knows the local planning authority is not going to take enforcement action he or she can simply wait until the development becomes lawful after the requisite period, avoiding the payment of any fee to the authority. This gives the understandable impression to other interested parties and the public generally that the normal planning control system of submitting a planning application upon which they can comment and influence a decision has been circumvented.
- Planning guidance from the government and best practice principles encapsulated in the Enforcement Concordat encourage the local planning authority to explore alternative ways of rectifying harms caused by a breach before resorting to formal enforcement action, e.g. negotiating voluntary changes to the works.
- A local planning authority has a number of options for enforcement action.

These include the service of an enforcement notice which requires works or action to take place, or a use to cease, sufficient to remedy the harm caused by the breach, or a breach of condition notice to require compliance with a planning condition.

Where breaches are causing serious harm a Stop Notice may be served in conjunction with an enforcement notice to require a negative action such as ceasing work or a use. In terms of the requirements of the stop notice, an appeal against the enforcement notice does not suspend its effect pending the appeal decision and contravention of an enforcement notice gives a liability to immediate prosecution. An alternative means of taking relatively quick action in the case of a seriously harmful breach would be to seek an injunction. Court action can be taken directly against unauthorised advertisements.

- There is a right of appeal against enforcement notices and although the government has recently taken steps to try and speed up this aspect of the appeals system, historically enforcement notice appeals have taken considerably longer than those connected to planning application refusals. This results in the process of enforcement action actually coming into effect taking long periods with a year or 18 months not being uncommon. In these circumstances the process can be abused simply to maximise benefit from the unauthorised development while the public interest suffers, although in appropriate cases this is mitigated by the service of stop notices.
- When successful court action is taken in the event of a failure to comply with an enforcement notice, or in the case of unlawful advertisements the fines imposed are paid to the court with no financial penalty or contribution to the enforcement service payable to the local authority. Fines imposed may not be sufficient to act as a deterrent when considerable commercial advantage has been taken by exploiting the long process involved.
- Other enforcement options include planning and listed building contravention notices, high court injunctions; Section 215 notices (untidy sites).

(C) Building Control

Building Control enforcement follows procedures highlighted in the Building Act 1984.

At the moment the powers under the Building Act are very limited. The Act gives a period of 12 months in which to take action on to alter/remove offending work under Section 36 of the Act. However the magistrate's court can reduce this to 6 months if the offender does not commit a "continuing offence".

There are other time limits for prosecuting for Building Control regulation contraventions – i.e. 2 years from the day the offence was committed or six months from the date a Council becomes aware of a problem. Maximum fine is up to £5000 plus £50 per day for a continuing offence.

Offences are usually controlled through negotiation without the need for formal action which is extremely rare.

The way in which the Building Regulations are administered and enforced is currently being reviewed by the Government in a consultation document "The Future of Building Control".

One of the recommendations is that consultation would be for a time limit of 2 years for all contraventions of building regulations.

Currently around 10% of the work done by building control is enforcement work but this was likely to increase if the extra powers proposed in the consultation document become law.

The existing software does have the capacity to generate "triggers" where projects have not had inspections for long periods. It is intended to address this through new software which would enable sufficient triggers and this would make the enforcement of ongoing works on Building Regulations applications far easier.

(D) Providing the Public with Better Information

Most members of the public do not know the principles on which the enforcement system is based and assume that any unauthorised development can, and should, be quickly enforced against and that as a matter of principle it is wrong and should incur a penalty of some sort. The actual constraints of the system combined with this commonly felt attitude undermines confidence in the planning system and those who regulate it.

The fact that what has planning permission is not necessarily the limit of what may be acceptable is not often understood by residents. Residents do not understand the often confusing principle of "permitted development". They tend incorrectly to regard a planning permission as a bilateral agreement between the applicant and the planning authority.

Whilst the Council does provide information on planning enforcement on its website it has not been updated since 12 September 2006.

There are no clear service standards for customers outlining what to expect from Copeland Borough Council in relation to planning enforcement including response times and prioritisation of enforcement work.

The Council should publish clear service standards outlining how we prioritise enforcement complaints, including process and timescales for dealing with complaints.

The Council's Planning Enforcement Manual should be updated and confirmed by the Planning Panel.

The information on planning enforcement on the council's website should be updated. It should also include the capacity to submit information and raise planning enforcement concerns on-line, and a "who's who" of key officer contacts.

Good practice examples from other local authorities should be investigated in order to produce the best possible material and presentation.

The recording of Planning Enforcement Complaints should be improved and brought into line with the Council's policy of acknowledging a complaint within 3 working days and a full response within 10 working days.

All such complaints, using postcode details only, should also be sent to the Customer Relations Officer for monitoring and recording purposes.

A downloadable copy of the updated Planning Enforcement Guide should be made available on the website.

(E) Getting the Message Across – that the Council takes enforcement seriously.

Action needs to be taken to demonstrate publicly that the Council can and does take effective planning enforcement action. Demonstrating that such action is taken will help to discourage those who set out to deliberately ignore planning requirements.

The Task and Finish Group noted with great concern one site they visited where enforcement action had been taken, an appeal heard by the Secretary of State but the unauthorised development still remained some 18 months following the Secretary of State's decision.

Where the Council does take enforcement action it must complete it quickly and ensure that the public is aware of it to build confidence in the council's performance.

Regular usage of 'Copeland Matters' would be one means of communicating information to the public about planning matters (excluding statutory advertisements for applications submitted under planning and related legislation, which have specific publicity requirements).

This could include information at least once a year on planning enforcement, how it operates, how people can make complaints about developments that do not have planning approval and what happens to these complaints.

To this end the Group feels that an ongoing log of enforcement successes should be established and maintained.

A programme for securing regular and widespread publicity for planning enforcement successes should be developed and implemented in collaboration with the Communications Team.

The requirement in the Council's planning enforcement manual for a quarterly review of the performance of the enforcement function should be implemented and submitted to the Planning Panel.

(F) Council Planning Enforcement Staffing Levels

The Council does not employ a planning enforcement officer.

The Council's establishment of Planning Officers is currently short by 2PTE the equivalent of 1FTE.

One of the Planning Officers leads on enforcement issues although all the Planning officers keep a look out and become involved in enforcement issues in their respective localities.

The Task and Finish Group's view is that Planning enforcement within Copeland is not undertaken in a proactive way. Taking into account the comparative data the Planning Enforcement Service would appear to be somewhat under-resourced and able to provide only a reactive service. Furthermore there was little evidence given that the community is encouraged to report breaches of planning control.

The Development Services Manager's view is that enforcement workloads are likely to increase in the future as there is an increasing tendency towards complaints.

The Department for Communities and Local Government 2006 Review of planning enforcement states that local planning authorities should be encouraged to spend a proportion of their Planning Delivery Grant on enforcement.

The Task and Finish Group was pleased to learn that the Development Services Manager was intending to follow this advice and would be seeing from the Personnel Panel in August approval to recruit an enforcement officer.

That the proposal to Personnel Panel to recruit an enforcement officer be strongly supported.

(G) Development Plans

There are no national or local procedures for checking that developments take place in accordance with approved development plans.

The Group felt that the Council is not taking full advantage of the potential inter-linkages between the work of building control and planning enforcement in securing effective planning enforcement.

The group was informed that the onus is on developers to ensure that building lines were in accordance with the approved plans. Building control officers visit sites to check such items as foundations, depth of excavations, grounds, adjacent trees and broken drains.

Building control officers are likely to pick up blatant changes in developments from the approved plans and refer them back to the relevant development control officer. Less blatant changes were unlikely to be picked up and it was these that had caused problems recently where objecting neighbours had picked up the changes and drawn them to the council's attention with the resultant bad publicity and recurrent reports to Planning Panel.

One suggestion to overcome this would be to have a development control and building control officer checking sites at the same time. However this could have huge potentially significant resource implications as the officers would have to measure developments on site and check all details are in compliance.

The Group requests that the officers find a more cost effective solution to this problem so that future complaints against the council can be minimised.

Action should also be taken to ensure that the Council uses all the powers at its disposal.

It was noted that there had been a number of multi disciplinary sweeps in Whitehaven town centre that had picked up a number of planning breaches. Sweeps in other parts of the borough could prove to be similarly rewarding and with sufficient press coverage could aid in getting the council's message across.

In light of this the Group feels that a new Enforcement Forum (a multi-disciplinary working group of officers involved in enforcement action across the Council) should be established to review and utilise more effectively all the possible powers that the Council has at its disposal to secure enforcement, including planning enforcement.

Consideration should be given to the inclusion of the Police within this forum.

(H) Dangerous structures and public safety

The Group noted that Allerdale Borough Council had been nominated in the Innovation category of the LGC Awards 2008 for its use of section 79 of the Building Act 1984 to restore eyesores to assets.

Section 79 requires an owner to deal with a building that it is in a ruinous or dilapidated state of repair either by renovation or demolition.

Allerdale had successfully dealt with 89 properties since the mid 1990s with 39 being tackled under section 79. It currently has a further 149 cases of long term empty, dilapidated buildings and sites to consider.

The Group further noted that an officer group was looking at this issue in particular one site in Whitehaven.

The Group would encourage that officer group to look at ways the council could take a similar approach to Allerdale and report on this to the Planning Panel.

3. CORPORATE PLAN

There are two applicable actions in the Corporate Plan. These are:

	Action	Outcomes (measurable)	Target date
2.2.9	Provide top quartile service in development Control and Building Control	Effective development, investment and regeneration, with increased availability of the built environment.	2010
2.2.10	Enhance the architectural and historic environment in our towns.	Increase in quality of the environment; vitality of our towns; tourist visits; and regeneration.	2012

4. BENCHMARKING AND PERFORMANCE

The performance of the other Councils in Cumbria in formal enforcement action during the period 1 April 2006 to 31 March 2007 is detailed in the table below.

	Allerdale	Barrow	Carlisle	Copeland	Eden	South Lakeland
Enforcement Notices Issued	22	18	7	7	5	7
Stop Notices Served	0	1	0	0	0	0
Temporary Stop Notices served	2	6	0	5	0	0
Breach of Condition Notice Served	3	0	0	1	0	7
Planning Contraventions Served	8	15	0	1	4	6
Enforcement injunctions granted by High or County Court	0	0	0	0	0	0
Enforcement injunctions refused by High or County Court	0	0	0	0	0	0

A scrutiny review in Lancashire in 2006 showed the number of planning enforcement complaints being received as:

	Pendle	Lancaster	Rosendale
Population	89,248	134,000	65,652
Area (hectares)	16,900	56,500	13,810
Complaints received (avg. p.a.)	250	400	305
Staff	1.6	3	2

A similar scrutiny review in 2006 in relation to planning enforcement by Canterbury City Council produced the following benchmarking information.

	Canterbury	Chichester	Oxford	Tonbridge & Malling	Winchester
Population	141,300	106,100	149,100	106,900	110,109
Area (hectares)	31,056	78,678	4,560	24,013	65,934
Complaints received (avg. p.a.)	660	450	989	530	620
Staff	5	6 (inc. clerk)	3	4 (inc. clerk)	5 (inc. admin)

NB However, in comparing the above information it is important to remember that methods of recording and reporting and use of delegated powers will vary and this could influence staff resource requirements.

Copeland's population is 70,300 (2006 estimate) and 73,176 hectares (2001 census).

5. CONCLUSION

The Committee is invited to consider the recommendations of the Task and Finish Group at the head of this report.

List of Appendices

None

List of Background Documents:

None