

Environment and Economy Overview and Scrutiny Panel

Agenda
Item:
A.5

Meeting Date: 28 July 2016
 Portfolio: Economy, Enterprise and Housing
 Key Decision: No
 Within Policy and
 Budget Framework NO
 Public / Private Public

Title: LOCAL ENFORCEMENT PLAN
 Report of: Director of Economic Development
 Report Number: ED.28/16

Purpose / Summary:

The Executive resolved to refer the Local Enforcement Plan to E&E O&S. This report sets out an updated Local Enforcement Plan as required by the National Planning Policy Framework.

Recommendations:

That the Economy and Environment Overview and Scrutiny Panel consider and comment on the Local Enforcement Plan in response to the current consultation.

Tracking

Executive:	
Overview and Scrutiny:	
Council:	

1. BACKGROUND

- 1.1 The Council's existing Planning Enforcement Policy was adopted in 2007. The National Planning Policy Framework affirmed that effective enforcement is an important part of the planning system being a statutory function that delivers discretionary and proportionate action

2. PROPOSALS

- 2.1 Report ED.07/16 was prepared for Development Control Committee to inform them of the Council's statutory duty to have in place a Local Enforcement Plan and provide them with an opportunity to input early into the revised document. Development Control Committee resolved that the document be referred to the Council's Executive to undertaken consultation.
- 2.2 At its meeting on the 4th July 2016, Executive resolved to refer the Local Enforcement Plan to Economy and Environment Overview and Scrutiny Panel as part of the consultation process. Members of Development Control Committee have requested a workshop during the progression of the plan prior to its approval. Development Control Committee Report ED.07/16 is attached to this report and contains the proposed Local Enforcement Plan which will is the subject of consultation.

3. CONSULTATION

- 3.1 Formal consultation with planning agents and the public will take place for a period of six weeks, utilising the Council's web site/social media feeds and through notice in the Cumberland News.

4. CONCLUSION AND REASONS FOR RECOMMENDATIONS

- 4.1 In order that the Council has a robust Enforcement Plan in place and complies with the requirements of the National Planning Policy Framework it is essential that the Council's current Enforcement Strategy is updated. Updating the strategy requires consultation.
- 4.2 As part of the consultation process Economy and Environment Overview and Scrutiny Panel are requested to consider and comment on the Local Enforcement Plan.

5. CONTRIBUTION TO THE CARLISLE PLAN PRIORITIES

5.1 The Local Enforcement Plan helps to achieve two of the Carlisle Plan priorities Continue to improve the quality of our local environment and green spaces so that everyone can enjoy living, working in and visiting; and, Address current and future housing needs to protect and improve residents' quality of life

Contact Officer: Chris Hardman

Ext: 7502

**Appendices
attached to report:**

Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers:

- **None**

CORPORATE IMPLICATIONS/RISKS:

Chief Executive's – n/a

Deputy Chief Executive – n/a

Economic Development – Contained within the report

Governance – The Legal Services Manager has been involved in the drafting of the Local Enforcement Plan and comments are contained within the report/appendices.

Local Environment – n/a

Resources - The costs of implementing and monitoring this Local Enforcement Plan can be met from within existing base budgets under the control of the Economic Development Directorate in 2016/17.

CARLISLE CITY COUNCIL LOCAL ENFORCEMENT PLAN

1. Introduction to Planning Enforcement

- 1.1 The Planning system exists to control the development and use of land in the public interest. The planning system can only achieve this if planning controls are enforced when necessary. The enforcement of planning controls is therefore a fundamental part of the planning system.
- 1.2 The main objectives of the planning enforcement function are to remedy harm to public amenity resulting from a breach of planning control and to manage it, making sure that the integrity of the planning system is not undermined. A breach of planning control is development, or the damage or destruction of protected trees and hedgerows, carried out without the requisite consent from the Local Planning Authority (LPA).
- 1.3 One of the fundamental principles of planning enforcement is that of 'expediency' and the resolution of breaches of planning control is not therefore limited to taking formal action. A large number of identified breaches are in fact resolved by negotiation.
- 1.4 Most breaches of planning control are not criminal offences and the resulting development is unauthorised rather than illegal. Criminal offences in relation to planning only occur in the following circumstances.
- ❖ Unauthorised works to listed buildings;
 - ❖ The demolition of some unlisted buildings in conservation areas;
 - ❖ Causing damage to or the destruction of a tree protected by a Tree Preservation Order or within a Conservation Area;
 - ❖ The destruction of hedgerows in contravention of the Hedgerow Regulations 1997;
 - ❖ Displaying unauthorised advertisements;
 - ❖ Failing to comply with the requirements of an Enforcement Notice or other formal notice.
- 1.5 This plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.

“Local Planning Authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so”.

The principal legislation relevant to Planning Enforcement includes:

- ❖ The Town and Country Planning Act 1990 (as amended)
- ❖ The Planning (Listed Buildings and Conservation Areas) Act 1990
- ❖ The Planning and Compulsory Purchase Act 2004
- ❖ The Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005
- ❖ The Town and Country Planning (General Permitted Development) (England) Order 2015
- ❖ The Town and Country Planning (Use Classes) Order 1987 (as amended)
- ❖ The Town and Country Planning (Development Management Procedure) (England) Order 2015
- ❖ The National Planning Policy Framework 2012
- ❖ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- ❖ The Carlisle District Local Plan 2016 – 2030 and associated Supplementary Planning Documents.
- ❖ The Human Rights Act 1998
- ❖ Planning Practice Guidance 2014
- ❖ Planning Policy Guidance 18 Enforcing Planning Control
- ❖ The Hedgerows Regulations 1997
- ❖ Town and Country Planning (Tree Preservation) (England) Regulations 2012
- ❖ Planning and Compensation Act 1991
- ❖ Regulation of Investigatory Powers Act (RIPA) 2000
- ❖ Data Protection Act 1998
- ❖ Freedom of Information Act 2000
- ❖ Policy and Criminal Evidence Act 1984
- ❖ Proceeds of Crime Act 2002
- ❖ Anti-Social Behaviour, Crime & Policing Act 2014

1.6 This Local Enforcement Plan makes it clear what those undertaking unauthorised development and those objecting to it can expect from the Local Planning Authority. The Plan also explains how the Local Planning Authority will prioritise and undertake its investigations.

2. **When the Council takes action**

2.1 The City Council operates its planning enforcement activities in accordance with Government advice. This means that:

- ❖ The LPA must decide whether a breach of planning control unacceptably affects the character of an area or the amenity of neighbours;
- ❖ It is usually inappropriate to take formal enforcement action against a technical breach of planning control which causes no significant harm to either the amenity of the area or the amenity of the occupiers of neighbouring premises; and
- ❖ Action should not be taken just because development has been undertaken without the necessary permission.

2.2 In deciding whether or not to take action, the LPA must consider if it is 'expedient' to do so, that is whether the action proposed to be taken is appropriate and commensurate with any alleged harm that has been or is being caused. This involves deciding whether the breach or planning control unacceptably affects public amenity or the existing use of land or buildings meriting protection in the public interest. A judgement has to be made in each case as to the seriousness of the breach and the level of any harm that it causes.

2.3 Carlisle City Council undertakes all planning enforcement action within Carlisle District with the exception of that which relates to minerals and waste development, and works on adopted highways, for which Cumbria County Council as Local Planning Authority and Highways Authority respectively are responsible.

3. **Non-Planning Issues**

3.1 There are often matters which concern the local communities that do not involve a breach of planning control. Such matters will be outside the remit of planning enforcement, and the LPA will not therefore take action. It may be possible to address issues such as these by way of civil action but this is a matter for the individual to pursue and is not an area where the LPA could become involved. If such matters arise during the course of our investigations, we will however seek to direct you to the relevant department or outside body where possible. Examples of issues which may not be planning matters include:

- ❖ Unauthorised use of a highway;
- ❖ Dangerous structures;
- ❖ Internal refurbishment of buildings that are not listed;
- ❖ Party wall disputes;
- ❖ Disputes regarding right to light;
- ❖ Neighbour disputes;
- ❖ Boundary/ownership disputes; and
- ❖ Pests or vermin.

4. **Reporting breaches of planning control**

4.1 Reports about breaches of planning control can be made through the Council's website on the [Planning Enforcement](#) page by filling out the [Planning Enforcement Complaints Form](#)

4.2 In order to deal with an alleged breach of planning control, we will need the following information:

- ❖ Your name, address and contact details (preferably an email address or telephone number to enable us to contact you more quickly);
- ❖ The address where the alleged breach is taking place;
- ❖ What the breach is;
- ❖ When the breach occurred;
- ❖ If possible or known, the name or contact details of the property/land owner.

4.3 Please be aware that anonymous complaints will not be investigated unless there is considered to be irreparable and immediate harm to public amenity, or the natural or built environment.

4.4 If complainants still wish to remain anonymous but are concerned that the alleged breach would not fall into the exception above, they will be advised to contact one of their ward councillors and refer the matter to the Council through them.

4.5 All complainants will be made aware of the LPA's final decision following the investigation.

5. **If a Complaint is made about you and your property**

5.1 If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it). You are also entitled to explain the situation from your side. If a breach is established, you will be advised of the details and how it may be put right.

- 5.2 Your cooperation in remedying the breach will be sought and you will be given a reasonable amount of time to do this. In some circumstances you may be invited to submit a planning application to retain the unauthorised works or development, if it is considered that planning permission may be granted. Most breaches are resolved through negotiation and discussion, and you will therefore be encouraged to maintain an open dialogue with our enforcement officers.
- 5.3 If you are issued with a formal notice, you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.

6. Power to enter land

- 6.1 Due to the nature of planning enforcement work, it is not normally prudent or possible to arrange a site visit. Officers will not therefore ordinarily make an appointment. This may mean that access cannot be gained on the first attempt. As such it may take longer than the initial site visit to conduct an effective investigation. Officers of the Local Planning Authority have the power to enter land for the purpose of investigating breaches of planning control and ensuring compliance with enforcement notices and other orders. This right will be exercised where there are reasonable grounds to believe a breach of planning control has taken place in order to ascertain the nature and degree of the breach. Officers will also exercise their right of access to check for compliance with any enforcement action that has been undertaken. In the case of a property being used as a dwelling house, 24 hours' notice has to be given prior to officers entering the dwelling.
- 6.2 Where entry is refused, a warrant may be sought. Prosecution will be considered where wilful obstruction of an officer attempting to exercise the right to entry takes place. Officers carry identity cards bearing their name, post title and photograph and details of the legislation which gives them the powers to enter land for the purposes of investigating planning enforcement complaints.

7. Confidentiality

- 7.1 The LPA will protect the identity of complainants and will treat such details as confidential. Although the general public will not have access to the LPA's enforcement files, if the investigations proceed to formal action, resulting in prosecution or a public inquiry, it will not be possible for the LPA to guarantee the anonymity of the complainant.

8.0 Decision Making

8.1 In making decisions regarding enforcement, the following principles will be followed:

- ❖ The LPA will only take enforcement action when it is expedient to do so. Enforcement action will not be instigated solely to regularise breaches of planning control.
- ❖ In considering whether to take enforcement action, the LPA will not give weight, either way, to the fact that development may have commenced.
- ❖ Decisions to take enforcement action will be taken by the Director of Economic Development, the Development Manager or the Principal Planning Officer after consultation with the Director of Governance.
- ❖ Decisions not to take enforcement action will normally be made by the planning enforcement officers in consultation with the Development Manager or the Principal Planning Officer. Reasons for not taking action will be recorded.
- ❖ The LPA will not allow prolonged negotiation to delay essential enforcement action.
- ❖ In situations where an unauthorised development may only be made acceptable by the imposition of appropriate conditions, an application will be sought to regularise the development. Where such an application is not submitted within a pre-agreed period of time, enforcement action will be pursued, with the caveat that the LPA would be prepared to grant planning permission subject to specific conditions.
- ❖ In considering whether to take enforcement action, the LPA will not give weight to non-planning considerations.
- ❖ In considering whether to take enforcement action, the LPA will have regard to the use of powers under other legislation, as such powers may be able to secure the desired outcome more efficiently.

9.0 The City Council's Priorities

9.1 In order to manage resources appropriately it is necessary for the LPA to adopt a priority system for responding to and dealing with alleged breaches of planning control. Complaints regarding breaches of planning control will be investigated in accordance with the following order of priority:

Priority 1 – any immediate and irreparable harm to the natural or built environment, or public safety, for example:

- ❖ Unauthorised demolition or alteration to listed buildings;
 - ❖ Substantial demolition to buildings within conservation areas;
 - ❖ Unauthorised development which causes demonstrable harm in the locality;
- or

- ❖ Unauthorised works to protected trees or hedgerows.

Priority 2 – any unauthorised development or activity which causes clear and continuous harm or danger to amenity. For example:

- ❖ Development which is unlikely to be granted planning permission without substantial modification;
- ❖ Severe nuisance such as noise at unsociable hours or for a prolonged period; or
- ❖ Dangerous vehicular access arrangements.

This may also include other unauthorised works to listed buildings or their curtilage and buildings within conservation areas.

Priority 3 – any unauthorised development or activity where there is a risk of material harm to the environment and/or some harm to residential amenity, for example:

- ❖ A breach causing concerns which may be resolved by limited modification (such as the insertion of obscure glazing or restrictions on hours of operation);
- ❖ Where works, or uses, have the potential to cause material long term damage to the environment; or
- ❖ Developments and uses which are clearly contrary to established policies or have a clear conflict with Carlisle District Local Plan 2016-2030.

Priority 4 – other breaches of planning, for example:

- ❖ Advertisements, satellite dishes and minor works including boundary treatments (except those affecting listed buildings or within conservation areas); or
- ❖ Unauthorised uses or development, which are likely to be granted planning permission if an application is submitted; or
- ❖ Untidy land; or
- ❖ Technical breaches of planning control where there is no serious harm to amenity.

9.2 The examples given above are not exhaustive but give an indication of the type of breach which may fall into each category. The priority of an alleged breach may alter during the course of an investigation if circumstances change or new information is obtained. Any change in priority will be agreed by the planning enforcement officers in consultation with the Development Manager or Principal Planning Officer.

9.3 By prioritising cases, the LPA is not condoning unauthorised development or implying that action will not be taken against other breaches of planning control.

Some breaches may however, due to their significance, take longer to investigate and resolve.

10 Keeping People Informed

10.1 Carlisle City Council is committed to treating both the person who has reported the alleged breach of planning control and the person who has allegedly breached planning control fairly. In many cases, due to lengthy and complex negotiations, failure to gain access to a property or make contact with the parties involved, or there is nothing to report and therefore parties often believe that no work is being undertaken. This is not the case. We will endeavour to keep the person who reported the alleged breach of planning control informed as regularly as possible regarding the progress of our investigations, but potential stages of notification will vary depending upon the nature and outcome of the investigations. In addition, the person who has allegedly carried out a breach of planning controls will be advised of our intended course of action before we are able to advise the person who has reported the alleged breach.

10.2 We will send all complainants an acknowledgement of their complaint within 3 working days of receipt. This will outline the main point of contact, the initial priority rating and the provisional timescales involved. It will also provide details of the City Council's website where further information, including this Plan, can be found. In addition to the acknowledgement, all letters will be fully responded to within 10 working days where possible. We will make contact with the complainant at the following stages of our investigations:

- ❖ After the site inspection advising of our findings and what our next actions will be;
- ❖ To provide an update if new information is received or deadlines are issued, for example the serving of a Planning Contravention Notice and the associated timescales, or the submission of a planning application;
- ❖ When the first phase of our investigations has been reached, and the outcome (see below);
- ❖ That the decision has been taken that enforcement action is not necessary or expedient and the case has been closed. The reasons for the decision will also be provided;
- ❖ That formal action is being taken, the nature of this action and the timescales involved;
- ❖ If an appeal is lodged; and
- ❖ The outcome following formal action.

10.3 The first phase of investigation is complete when one of the following points has been reached:

1. A case is closed because the investigation identifies that no breach has occurred;
2. A case is closed because an alleged breach has been identified and resolved by negotiation;
3. A planning or other application has been submitted following the investigation which satisfactorily addresses the breach; (Please note: a case may be re-opened if a planning application is subsequently found not to address the breach and is refused or cannot be determined within an appropriate timescale due to insufficient information);
4. A breach of planning control has been identified and an application requested but not submitted. An assessment has been made determining that it is not expedient to take enforcement action in this case at this time; or
5. A breach of planning control has been identified. An assessment has been made determining that it is expedient to take enforcement action in this case. Instructions have been issued to the Council's Legal Services section to instigate legal proceedings;
6. The damage or destruction of protected trees or hedges has been identified but it is not considered to be in the public interest to take enforcement action.

10.4 Where the first phase of investigation leads to further work (i.e. where a case remains open), this will be undertaken in accordance with timescales agreed by the enforcement officers in consultation with the Development Manager or Principal Planning Officer. The agreed timescales will take account of the nature and complexity of each case and the particular issues raised. Complainants will be kept informed of progress as detailed above.

11. **Our Standards**

11.1 The LPA will always seek to be:

1. Professional;
2. Courteous;
3. Consistent;
4. Fair;
5. Proportionate;
6. Responsive;
7. Honest;
8. Treat complaints in Confidence. We will not release any information that would identify a complainant. However, the Council can be required to disclose non-personal information on receipt of a request under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

12. **Comments and Complaints**

12.1 Carlisle City Council is committed to providing an effective and efficient planning enforcement service. However, anyone not satisfied with the service should use the Council's [Complaints Policy](#) which can be found on its website. In certain circumstances complaints can be referred to the Local Government Ombudsman who may decide to investigate further. However, the Ombudsman may ask that the Council's procedures are completed before carrying out his/her own investigation. The Ombudsman will investigate the way your case has been handled, or the Council's failure to do something but does not question a Council's decision simply because you do not agree with it. Contact details for the Ombudsman can be obtained on the [Local Government Ombudsman's](#) website.

13. **Monitoring & Review**

13.1 Details of certain complex or high profile cases are reported to the Development Control Committee quarterly. The Planning Department's Service Delivery Plan contains one local performance indicator related to enforcement, which is monitored quarterly.

Contact Us – [Carlisle City Council Planning Enforcement](#)

Telephone: (01228) 817175

EXCERPT FROM THE MINUTES OF THE EXECUTIVE HELD ON 4 JULY 2016

EX.56/16 **LOCAL ENFORCEMENT PLAN**
(Non Key Decision)

Portfolio Economy, Enterprise and Housing

Relevant Overview and Scrutiny Panel

Environment and Economy

Subject Matter

The Economy, Enterprise and Housing Portfolio Holder submitted report ED.25/16 setting out an updated Local Enforcement Plan as required by the National Planning Policy Framework.

Members' attention was drawn to Report ED.07/16 prepared to inform the Development Control Committee of the Council's statutory duty to have in place a Local Enforcement Plan and provide them with an opportunity to input early into the revised document.

The Development Control Committee considered the matter on 12 February 2016 (Minute DC.26/16) and resolved that the document be referred to the Council's Executive to undertake consultation. Members also requested a workshop during progression of the plan prior to its approval. The above mentioned report contained the proposed Local Enforcement Plan which would be the subject of consultation.

The Economy, Enterprise and Housing Portfolio Holder stated that the Local Enforcement Plan was extremely clear and easy to understand. She added that it was proposed to consult for a period of six weeks through direct email to local agents who had regular contact with Council's planning service, utilising the Council's website/social media feeds and through notice in the Cumberland News. It was also proposed that consultation be undertaken with Overview and Scrutiny and that a Workshop be undertaken with Members of the Development Control Committee.

The Chairman of the Development Control Committee was in attendance at the meeting. She reiterated the Portfolio Holder's comments, particularly regarding the workshop session which would enable Development Control Committee Members to gain a better understanding of the processes by which Planning Officers formulated their recommendations to the Committee.

In conclusion the Economy, Enterprise and Housing Portfolio Holder moved the recommendations, which were duly seconded by the Leader.

Summary of options rejected None

DECISION

That the Executive resolved to:

- (i) Refer the draft Local Enforcement Plan to Overview and Scrutiny;
- (ii) Undertake a six week consultation on the Local Enforcement Plan;
- (iii) Undertake a workshop for Members of Development Control Committee; and
- (iv) Receive a further report to the Executive following consultation.

Reasons for Decision

In order that the Council has a robust Enforcement Plan in place and complies with the requirements of the National Planning Policy Framework it was essential that the Council's current Enforcement Strategy was updated. Updating the strategy also required consultation and therefore the report recommended that a six week consultation be undertaken