

POLICY & PERFORMANCE SCRUTINY PANEL

THURSDAY 11 FEBRUARY 2021

PLANNING ENFORCEMENT PERFORMANCE

REPORT OF THE EXECUTIVE HEAD OF PLANNING AND ECONOMY

Recommendation

It is recommended that Policy and Performance Scrutiny Panel members note the positive enhancements to the delivery of the Planning Enforcement service and the improving performance.

Summary

In January 2020 the Eastleigh Borough Council Local Planning Enforcement Policy was presented to Policy and Performance Scrutiny Panel with a commitment to improve overall performance within the planning enforcement service. The Policy provided context for the delivery of the planning enforcement service and set out performance expectations. Since April 2019, performance monitoring has been undertaken by the Head of Housing and Development and an improvement in performance was demonstrated in January 2020 with a commitment to continue to improve the level of service provided to its customers. Reporting on performance is important in demonstrating value of a service and staff have continued to produce quarterly performance reports which are circulated to the officers, elected councillors and parish council representatives.

Statutory Powers

Town and Country Planning Act (1990)

Strategic Implications

1. The Local Planning Enforcement Policy provides a robust basis on which to ensure development within the Borough is brought forward as planned and provides clarity on the measures that can be taken to address breaches of planning legislation where it is harmful to the environment and public amenity. The Policy and performance targets set out within this play a significant part in addressing three strategic priorities of:
 - Excellent environment for all

- Enabling healthier lifestyles / wellbeing
- Increased provision and more diverse mix of housing

Introduction

2. Effective enforcement is important to maintain 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. The National Planning Policy Framework (NPPF) recommends Local Planning Authorities (LPA) provide clarity on their enforcement powers and clearly set out how alleged planning breaches will be investigated within an enforcement plan.
3. Confidence in the planning system is underpinned by a robust and timely approach to enforcement, including performance monitoring to enable the quality of the service to be evaluated. Since autumn 2018, improvements in monitoring and reporting of planning enforcement performance have been introduced which demonstrate an encouraging improvement.
4. In January 2020, with the launch of the Planning Enforcement Policy commitments were made to improve overall performance and reporting of performance, improve communication with customers and the greater publicity of successes. Achieving these commitments would be assisted with the successful recruitment to the vacant third enforcement post, providing an online interactive enforcement register and more proactive condition monitoring.
5. At their January 2020 meeting, the Policy and Performance Scrutiny Panel noted the improvement in planning enforcement action and made the following recommendations:
 - (a) To ensure that there are appropriate resources council-wide, including within the Legal team, to pursue enforcement action,
 - (b) To continue operating robustly,
 - (c) To focus on proactive enforcement, including the monitoring of S.106 agreements,
 - (d) To improve and formalise communication with complainants, members and residents
6. In March 2020, the ability of the enforcement service to operate at full capacity was hindered during the initial stages of lockdown no.1 as revised Safe Systems of Work were developed. All but the highest priority site visits were ceased, with formal enforcement action paused and extension of time to compliance periods agreed for a period of approximately two to three months. Cases were still registered during this period with as much case work undertaken from home as was possible.

Planning Enforcement - an improving service

7. The Planning Enforcement Service was subject to a review in the summer of 2018 and improvements introduced to deliver a more effective, efficient and resilient service. A number of measures were put in to place to enhance the service including:
 - Expanding the specialist enforcement officers team from 2 to 3.
 - Updating and publishing the Local Planning Enforcement Policy.
 - The management of the end-to-end process of the lower priority cases (priority level 3 and 4) within the Localities team
 - More robust approach to enforcement through shorter compliance timescales and closer working with the Borough's legal team
 - Weekly reporting of the number of live cases to staff and Councillors.
 - Introduction of monthly and quarterly Key Performance Indicators (KPIs) on the speed of site visits and the number of cases closed.
 - Production of a quarterly report on performance statistics and narrative on the enforcement activities for the preceding quarter.

8. The quarterly report includes information on:
 - Number of new cases registered,
 - Number of cases closed and reasons for closing them
 - The location of the alleged breach or breach by Parish area
 - The number of proactive condition monitoring cases
 - Performance against Key Performance Indicator targets
 - Number of formal action cases
 - Updates on enforcement appeals
 - Updates on prosecutions
 - Updates on staffing matters.

9. The performance monitoring information is used by the Senior Enforcement Officer and the Executive Head of Planning & Economy to actively manage performance of the Service. The annual report for 2019-20 is attached for reference (appendix 1) along with the quarterly reports for the first three quarters of 2020/21 (appendix 2, 3 and 4).

Planning Enforcement – performance reporting

10. Key headlines on the performance of the enforcement service are summarised below:

Cases per year

11. Cases Registered During the year 2019/20: a total of 482 new cases were registered in the Borough compared to 458 for 2018/19 – a rise of 5%. In the first 10 months of 2020/21, 497 cases have been registered up to 31 January 2021.

12. Cases Concluded: The Enforcement team & Localities team concluded 498 cases during 2019/20 compared to 472 in 2018/19 – a rise of 6%. In the first 10 months of 2020/21, 467 cases have been concluded up to 31 January 2021.
13. The anticipated increase in cases concluded for the current YTD can be attributed in part to an increase in reported breaches and enforcement staff formally registering all breaches rather than addressing some cases informally. More cases are concluded than received as a result of the backlog of cases being reduced.

Reasons for closing a case %

Reason	2019/20	2020/21 (up to 31 Jan 2021)
No breach	42%	43%
Breach resolved	28%	27%
Retrospective application received	Not recorded	4%
Breach passed to another agency	16%	4%
Not expedient	10%	11%
Permission granted	2%	7%
Duplicate cases	2%	3%

Number of live cases

14. In November 2017, on average there were 210 live enforcement cases divided equally between enforcement specialists (priority 1 and 2s) and the Localities Team (priority 3 and 4s). This had reduced significantly as of 6 January 2020 to 153 cases (down 57) of which 84 cases are with enforcement specialists and 69 cases are with the Localities Team. The initial reduction in live cases can be attributed to staff acting on complaints in a more efficient manner in line with the revised policy.
15. In 2020/21, overall case numbers have increased to 178 (up 25), 100 cases with the specialists and 78 with the Localities team. The increase can be attributed to a significant rise in cases received due to a greater awareness of issues being identified whilst residents have been working from home during the COVID-19 pandemic.

Number of Notices Served

16. Between 2014/15 and 2016/17 a total of 10 Notices were served in respect of breaches or alleged breaches of the planning. Adopting a more robust approach to planning enforcement has witnessed a considerable rise in notices being served, including Enforcement Notices, with 16 Notices served in 2017/18 (7 Enforcement Notices) and 31 Notices served in 2018/19 (5 Enforcement Notices). In 2019/20, a slightly lower number of formal notices were served at 25 but with an increase in Enforcement notices (7 Enforcement Notices).

17. In the first 9 months of 2020/21, 13 Notices were served (3 Enforcement Notices). Formal action was put on hold during the COVID-19 and was resumed mid-June 2020 and this is reflected in the reduced number of Notices served.

Proactive condition monitoring

18. Proactive monitoring of conditions (i.e. officers visiting sites to ensure compliance with approved conditions or identifying conditions that have not been applied to discharge) has not been as successfully implemented compared to other areas of enforcement service. In 2019/20, 12 condition monitoring cases were recorded as part of the enforcement service workload and officers regularly attended site to observe activities. In 2020/21, currently 7 condition monitoring cases have been reviewed and closed. Whilst not forming part of the recorded enforcement officer's workload, development sites are often informally monitored by Development Management staff as part of the condition discharge process as well as informally by the enforcement and localities teams. A formal condition monitoring case does not have to be raised to ensure development is complying with the approved plans and many deviations from plans are captured under the reactive workload of officers. The pro-active enforcement component of the enforcement officer role will be increased once the current vacant enforcement post is recruited to.

Site visits timescales – performance improved.

19. An overall target of 80% has been set for conducting an initial site visit within the relevant timescale for each priority. Site visit performance to date in 2020/21 is summarised in the table below. Note that Priority 4 cases are desk-based assessments and do not always require a site visit:

Priority Target days - % of cases within target

- Priority 1 - 74% (2019/20) improving significantly to 93% in Q1-Q3 of 2020/21
- Priority 2 - 79% (2019/20) improving significantly to 89% in Q1-Q3 of 2020/21
- Priority 3 - 82% (2019/20) improving slightly to 84% in Q1-Q3 of 2020/21

20. The overall target is met for all priorities.

Concluding cases within timescale

21. An ambitious overall target of 80% has been set for concluding enforcement cases within the relevant timescale for each priority.

Priority Target days - % of cases within target

- Priority 1 - 70% (2019/20) improving significantly to 90% in 2020/21 YTD.
- Priority 2 - 64% (2019/20) dropping slightly to 57% in 2020/21 YTD.
- Priority 3 - 51% (2019/20) improving slightly to 52% in 2020/21 YTD.
- Priority 4 - 20% (2019/20) improving significantly to 85% in 2020/21 YTD.

22. The target of 80% has been achieved for some priorities within a specific month but it has not been achieved consistently for all priorities within either a month or quarter. However, it is encouraging that the high priority cases where unlawful development can cause serious harm to amenity are performing best. Appendices 2, 3 and 4 provides further information for 2020/21.
23. The performance on concluded cases is against a background of a continued increase in formal Notices being served compared to 2018 and an increase in appeals lodged which are resource and time hungry. The specialist team was expanded to three members of staff in April 2020 with the external appointment of an experienced Planning Enforcement Officer, this officer left the organisation in December 2020 and the team is currently operating with 2 enforcement specialists. This has had an impact on performance on the higher priority cases. The service is currently recruiting to this vacant post. Once this post has been recruited to it is anticipated that performance will continue to increase over the coming months.
24. The statistics and performance figures portray an increase in the number of breaches investigated and a more robust delivery of the enforcement but further improvements to the service can still be made to meet the ambitious target set for the closure of cases.

Communication

25. Over the course of 2020, a regular Planning Enforcement / Legal liaison meeting has been established on a bi-monthly basis. This has allowed staff to engage regularly and discuss the progress of cases that require formal action and support from the legal team. The meetings are attended by the Planning Enforcement Specialists and three officers from the Legal Services team. Both teams, once recruitment to the recently vacated planning enforcement post is completed, are sufficiently resourced to ensure performance remains positive.
26. The importance of the communication is highlighted at training sessions and regular staff meetings to ensure all parties are updated more regularly, even if cases have not had significant changes. However, it is accepted that it is not always possible to proactively update all parties (of which there may be many on a particularly case) on a monthly basis.

Financial Implications

27. There are no additional financial implications arising from this Performance Report and ongoing resources are funded within existing resources

Climate Change and Environmental Implications

28. There are no significant Climate Change implications from this report, or the Planning Enforcement service itself.

Risk Assessment

29. There are no risks in noting the performance measures which have been developed after careful consideration of best practice, legislative requirements and council resources.

Equality and Diversity Implications

30. The Equality Act is not relevant to the decision in this report as the decision does not relate to eliminating discrimination, advancing equality of opportunity, or fostering good relations between different people. An Equality Impact Assessment has not been carried out.

Conclusion

31. Policy and Performance Scrutiny Panel supported the launch of the updated Local Planning Enforcement Policy in January 2020 and noted the improving performance of the Council's planning enforcement service at that time. In accordance with the Local Planning Enforcement Policy, the Key Performance Indicators are reported along with other performance indicators and statistics on a weekly, monthly and quarterly basis.
32. There has been a year-on-year increase in the number of reported breaches of planning. In response to the need to deliver a more robust planning enforcement service, cases continue to be actioned and concluded quicker than in more recent years.
33. Over the last year improvements have been seen across a range of performance indicators including;
- New complaints received YTD up 3% (+15 cases)
 - Cases concluded currently 477 and expected to pass 498 of 19/20
 - 16 Condition Monitoring cases registered 20/21 - up 31% from 19/20.
 - 13 retrospective applications received, an increase of 5
 - KPIs have all improved.
34. To improve the service further, the formal action process between Enforcement and Legal has been reviewed and amended to increase efficiency and effectiveness. The two teams meet bi-monthly to discuss cases that require formal action. Furthermore, communication and updates of interested parties on cases has improved.
35. Overall, the service has had a successful year and it is recommended that the Policy and Performance Scrutiny Panel note the improving performance of the planning enforcement function.

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Date: 01 February 2021

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Appendices – Attached 4.

- 1) Annual Enforcement Report 2019 – 2020
- 2) Planning Enforcement Quarterly Report (Quarter 1) 1 April – 30 June 2020
- 3) Planning Enforcement Quarterly Report (Quarter 2) 1 July – 30 Sept 2020
- 4) Planning Enforcement Quarterly Report (Quarter 3) 1 Oct – 31 Dec 2020

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

* List Background Papers - None.