



REPORT of DIRECTOR OF SERVICE DELIVERY

to
**STRATEGY AND RESOURCES COMMITTEE
24 NOVEMBER 2020 (SPECIAL MEETING)**

PLANNING ENFORCEMENT

1. PURPOSE OF THE REPORT

- 1.1 To seek Members recommendation for the adoption of a new Planning Enforcement Policy.

2. RECOMMENDATIONS

- (i) That the Planning Enforcement Policy (**APPENDIX 2**) is recommended for adoption to Full Council;
- (ii) That Members note the inclusion within the 2021 / 22 Budget Cycle growth requests the provision of additional staffing resources.

3. SUMMARY OF KEY ISSUES

3.1 Background

- 3.1.1 At the Council meeting on 16 July 2020 Councillor M S Heard raised a query, under Questions to the Leader of the Council, regarding Planning Enforcement and the number of outstanding investigations. The Leader suggested that Councillor Heard met with him, along with the Chairmen of the Area Planning Committees and the Director of Service Delivery, to discuss the matter of the backlog of complaints.
- 3.1.2 At this meeting Members highlighted ongoing concerns with the level of the backlog and that whilst it had been previously been decreasing it appeared to have grown over the previous months. It was agreed, at this meeting, that Officer's would look into coming forward with a suite of options and methods in an attempt to reduce the backlog; this included the consideration of an appropriate level of resources and a review of the existing Enforcement Policy (please see **APPENDIX 1**). It was also acknowledged that it will not be possible to remove the backlog instantly.

3.2 Planning Enforcement

- 3.2.1 The Town and Country Planning Acts give discretion to the Local Planning Authority (LPA) in the exercise of its powers for the control of unauthorised development. Enforcement action can only be taken when there is a breach of planning control. This is defined as the "carrying out of development without the

required planning permission” or “failing to comply with any condition or limitation subject to which planning permission has been granted”.

- 3.2.2 A breach of planning control is normally a form of development (a building / engineering operation, use or other activity) that is unauthorised, in that it does not have the benefit of planning permission or other required consent. It also includes development not carried out in accordance with a planning permission, and any breach of condition. The fact that something is unauthorised does not, in itself, amount to an offence.
- 3.2.3 Enforcement powers are discretionary, and the Council is not required to take action because there has been a breach of planning control. However, the need to undertake a robust and appropriate investigation of an enforcement complaint is not discretionary in nature. A common phrase in planning enforcement is expediency; when deciding whether or not to take enforcement action the Council has to decide whether or not it is expedient to do so (section 172(1)(b) of the Town and Country Planning Act 1990). Expediency basically is whether or not is necessary, practical and reasonable to take action against the breach. Enforcement action is intended to be remedial rather than punitive and should only be taken where there is demonstrable harm. The most appropriate way to decide if it is expediate to take action is through having an up to date and usable planning enforcement policy.
- 3.2.4 Just as a breach of planning control has taken place it does not mean that the Council should take action as it may not be expedient to do so. The key test is whether the breach of planning control would result in unacceptably affect public amenity, safety etc. and the date of the original breach. To help decide this it is necessary to consider if planning permission would have been granted for this development had it been the subject of a planning application. However, there will be circumstances where planning permission has been refused but it is not expedient to take enforcement action.
- 3.2.5 Paragraph 58 of the National Planning Policy Framework (NPPF) states that:
- “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. They 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 appropriate.”*
- 3.2.6 As stated above, in most cases it is not illegal to breach planning control. However, in the case of displaying an advertisement without consent or unauthorised works to a listed building or a tree protected by a Tree Preservation Order the works are illegal.
- 3.2.7 Maldon District Council aims to negotiate acceptable outcomes were possible, avoiding the need for formal action. A planning department should also consider if another arm of the council such as Environmental Health or the Highway Authority are more appropriate to deal with the issue.

3.3 Enforcement Policy

3.3.1 The District Council is committed to effective enforcement of planning control and when considering what action to take, regard will be paid in each instance to the prevailing circumstances and the particular impact of the unauthorised development in question. The Council views breaches of planning control very seriously and already has an adopted enforcement policy.

3.3.2 After working with the existing policy officer's it was recognised that there was a need for some amendments to the policy to make it both more user friendly, for both officers and the public, and effective. Furthermore, this has been reviewed further taking in to account the current resources, proposed level of customer service and the current structure of the Council.

3.3.3 The Planning Enforcement Policy has been reviewed and a new one has been drafted (please see **APPENDIX 2**). The alterations have been undertaken in an attempt to make the policy more succinct, to expedite the enforcement process and to make the process clearer from the outset; the main alterations include:

- Streamlining the document including removing general guidance contained within the document;
- The production of a booklet that explains the planning enforcement and compliance process which will be sent to all complainants as part of their acknowledgement letter;
- Setting new performance targets;
- Agreeing that some complaints will not be investigated;
- Detailing that for the Council to be able to undertake an investigation there will be times that the Complainant will need to work with the Council;
- Clearly stating, that when the Council will not hold enforcement action in abeyance when it is not considered the submission of a planning application would overcome the identified harm;
- When negotiation does not appear to result in the resolution of the breach of planning control moving to considering the expediency of enforcement action in a timely manner;
- Not requiring the submission of a retrospective planning application when there is no identified harm or the breach of planning control is considered de minimas;
- Improved engagement with the customer. This will partially be delivered through the expedition of the enforcement process;
- The inclusion of an online reporting system that will ensure that an acceptable level of information is provided, to aid the investigation, from the start.

3.3.4 Whilst it is considered that the adoption of the new policy will improve the level of service provided by the Planning Enforcement Team it must be noted that to deliver a good standard of service, and to meet the targets set within the new policy, the Service will require the provision of additional staffing resources as requested with

the 2021 / 22 Budget Cycle growth report which will be presented to the Strategy and Resources Committee on 19 November 2020.

- 3.3.5 Alongside this, officers have been working on a number of templates that will allow officers to keep the general public updated of the progression and outcome of the investigation.

4. CONCLUSION

- 4.1 It is considered appropriate to revisit the Council's enforcement policy to ensure that the Council is providing the best customer experience and delivery of the service possible. The proposed policy has been brought forward in an attempt to reduce the time taken when undertaking an enforcement investigation, expediate the decision making process and to provide clarity of a number of ambiguous points contained within the existing policy.

5. IMPACT ON STRATEGIC THEMES

- 5.1 Having an effective and planning service contributes to the Council's Strategic Themes.

6. IMPLICATIONS

- (i) **Impacts on Customers** – The ability to ensure that enforcement process, including enforcement action where appropriate, is taken in a timely, open and transparent way.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – None.
- (iv) **Impact on Resources (financial)** – None.
- (v) **Impact on Resources (human)** – To continue to be identified through the management of the service.
- (vi) **Impact on the Environment** – Failure to have an effective enforcement policy or service could result in an increase in unauthorised developments and delays in investigating breaches in planning control could lead to adverse impacts on the environment resulting in long term harm which might be difficult to mitigate.
- (vii) **Impact on Strengthening Communities** – None.

Background Papers: None.

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