

This is an open report

Report to: Confident Places Scrutiny Committee

Date of Meeting(s): Wednesday, 30 November 2022

Subject: Planning Enforcement

Report of: Assistant Director, Planning and Regeneration

Contact Officer: Gareth Jones
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Cabinet Portfolio Holder and area: Councillor Paul Prescott, Portfolio Holder for Planning, Environmental Services and Transport

Summary:

The Council adopted a Planning Local Enforcement Plan in January 2021, setting out how it would prioritise and investigate alleged breaches of planning control. The Committee is invited to consider the implementation of the policy to date, looking particularly at case volumes, the prioritisation process and outcomes achieved, and to provide feedback and challenge as appropriate.

Link to Corporate Priorities:

Our Place: Together we are proud of our towns and look after our environment:

- Vibrant town centres for all
- An environment to be proud of

Our Future: Together we will build a future where everyone has the opportunity to thrive:

- Economic growth that benefits everyone

Wards Affected:

The Local Enforcement Plan applies to all Wards across the Borough.

Recommendation:

That Committee endorse the Council's approach to triaging, prioritisation and the investigation of planning enforcement reports through the processes identified in the adopted Local Enforcement Plan.

Implications:

What are the financial implications?

None. The implementation of the policy to date indicates that a small saving within the Development Management Service has been created.

Is budget release necessary (Capital Expenditure Only)?

No.

What are the legal implications?

None. The Local Enforcement Plan is now (and since January 2021) adopted Council policy that has been through the necessary legal checks and procedures.

What are the staffing implications?

None. The implementation of the Local Enforcement Plan will be serviced through the existing Development Structure (Shown within Appendix D of this report).

Equality and Diversity Impact Assessment attached or not required because (please give reason). If not required, then a relevance check needs to be completed.

Not required – report relates to an existing approved policy.

What are the property implications in terms of reduction, addition or change to the council's asset base or its occupation?

None.

What are the Corporate Parenting Implications?

None.

Risks:

Reputational – timely, proportionate and effective planning enforcement is an important factor in maintaining the public's confidence in the planning system. The Local Enforcement Plan helps mitigate this risk by providing transparency and a basis for prioritising resource.

Sustainability/Environmental implications:

Effective and proportionate enforcement of planning controls is essential in protecting the quality of our local environments and is important in maintaining the public's confidence in the planning system.

Has the relevant Legal Officer confirmed that the recommendations within this report are lawful and comply with the Council's Constitution?

Yes

Has the relevant Finance Officer confirmed that any expenditure referred to within this report is consistent with the Council's budget?

No - NA

Are any of the recommendations within this report contrary to the Policy Framework of the Council?

No.

Reason(s) for exemption from publication:

Appendix E is exempt from publication for the following reasons:

1. Information relating to any individual
2. Information which is likely to reveal the identity of an Individual

What are the alternative option(s) to be considered? Please give the reason(s) for recommendation(s):

None – this report is seeking Committee's endorsement only.

There are no background papers for this report.

Directorate Sign-off:	David Proctor
Date:	21 November 2022

Please list any appendices:

Appendix number or letter	Description
Appendix A	The Council's Local Enforcement Plan (Adopted January 2021)
Appendix B	Planning enforcement report form for members of the public
Appendix C	Categorisation of enforcement breaches table

Appendix D	Development Management Service Structure
Appendix E	Examples of 'P99' triaged planning enforcement reports. Not for publication – this appendix contains exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972

1. Introduction

- 1.0** Effective and proportionate enforcement of planning controls is essential in protecting the quality of our local environments and is important in maintaining the public's confidence in the planning system.
- 1.1** The Development Management Service published its Local Enforcement Plan ('The Plan') to explain how it will deal with alleged breaches of planning control, so that all parties are clear on what to expect in terms of response times and the processes involved. The Plan, which can be viewed in full on the Council's website [here](#) or in **Appendix A** of this report, should be read alongside the Council's corporate Enforcement Policy.
- 1.2** The Plan sets out how the Council will deal with alleged planning breaches at each stage of the process, from initial reporting of a breach through (if necessary) to prosecution in court. It also explains how, in appropriate cases, the Council will offer its services to work positively with property owners to support them in what they are trying to achieve, while still securing rectification of any breach.

2. Legal and planning policy position to enforcement action

Legal background

2.1 The legislative background for planning enforcement is the Town and Country Planning Act 1990 as amended ('the Act'). Section 171A of the Act defines a breach of planning control 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.

This includes any contravention of the limitations on, or conditions belonging to, permitted development rights.

2.2 The Act provides a range of tools that authorities can use to take 'formal' enforcement action. These include:

- Breach of Condition Notices (s187 of the Act)
- Planning Enforcement Notices (s172 of the Act)
- Stop Notices and Temporary Stop Notices (s183 and s171E of the Act)
- Injunctions (s187B of the Act)

In addition to these definitions and powers relating to development, Section 215 of the Act also gives authorities the ability to take action where land is in a condition that impacts on the amenity of their area. Under this power authorities can serve notice on landowners specifying the steps to be taken to address the impact.

2.3 The Act also requires authorities to consider when it is 'expedient' to take enforcement action, having regard to the development plan (the Council's local and neighbourhood planning policies) and other material planning considerations. The development plan for Wigan currently comprises of the following documents:

- Saved Policies of the Wigan Replacement Unitary Development Plan (adopted 2006);
- Wigan Local Plan Core Strategy (adopted 2013);
- Standish Neighbourhood Plan (adopted 2019);
- Greater Manchester Joint Minerals Plan (adopted 2013); and
- Greater Manchester Joint Waste Development Plan Document (adopted 2012).

National planning policy and guidance

2.4 The revised National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG) set out how the Government expects authorities to approach potential breaches of planning control. The NPPF and NPPG also expand on the ways that authorities should use 'informal' approaches to resolving planning breaches where appropriate, without the need to initiate the 'formal' steps available through the legislation.

3 How the Council deals with alleged breaches of planning control

Reporting a potential planning breach

3.1 Any report of a planning breach must be made in writing. The form on which this should be done is on the Council's website at the following address:

<https://apps.wigan.gov.uk/ReportPlanningBreach/>

Appendix B of this report shows how this reporting form looks to members of the public and the information they will be expected to provide.

3.2 Reports made only by telephone cannot be accepted and will not be investigated. For customers who do not have access to the internet they are directed to self-service facilities at the Wigan Life Centre and in libraries; if these are unavailable then the Plan suggests that friends or family may be able to help. Only if all these options have been exhausted will a verbal report be accepted.

3.3 The Council will only investigate alleged breaches where all the following information is supplied:

- Address of the alleged breach;
- Details of the alleged breach; and
- Name, address (postal and email) and telephone number of the person reporting the breach (this will be kept strictly confidential but anonymous reports cannot be accepted and will not be investigated).

3.4 The Council may itself become aware of a breach without a report being received from an external party. These cases will be logged and acted upon in the same way as any other breach, in accordance with the Enforcement Plan.

Categorisation of reported breaches

3.5 On receiving a report of a planning breach, the Council will assign it to a category according to the degree of harm that appears to be being caused to planning interests. This is a triage process currently undertaken by Principal Planning Officers for their respective 'work areas'. Through this process, reported breaches will be categorised as detailed in Appendix C of this report, but the categorisation designations can be summarised as below:

- **P0:** Extremely severe harm to planning interests or planning breach resulting in risk to public safety.
- **P1:** Significant harm to planning interests.
- **P2:** Material breach of planning control but limited harm.
- **P99:** Trivial breach of planning control, no material harm.

Timescales for investigation

3.6 Other than in exceptional circumstances, the Planning Enforcement Team will aim to carry out their initial investigation into reported breaches within the following timescales:

- **P0:** within 1 working day
- **P1:** 7 working days
- **P2:** 15 working days
- **P99:** breaches in this category will be recorded but will not be investigated further.

The aim is to provide an update to the person reporting the breach within three working days of carrying out the investigation, and no later than three working days beyond the timescales set out above.

Investigation of ongoing breaches

3.7 Where a report relates to an ongoing breach (for example a construction site working outside permitted hours, or a business operating from a domestic property that is receiving visits), the alleged breach will be assigned to a category in line with the above, and the person making the report will be provided with log sheets on which to keep a record over a period (normally 21 days) of the activity constituting the breach. If the log sheets are not returned, or are returned but do not contain sufficient information to clearly determine that a breach is occurring, the case will be re-categorised as 'P99', and will not be investigated further.

Resolution by negotiation

3.8 In some cases, the steps needed to rectify a planning breach are simple for the property owner to achieve. This is normally the case in respect of land in poor condition. Where it appears that the breach can readily be rectified, the Enforcement Team will attempt to secure the required steps through negotiation with the property owner. In respect of land in poor condition, the steps required will be those that would result in a sustainable solution to the amenity impact and minimise the possibility of repeat cases. We will write to the property owner once, setting out the steps required and the timescale for completing them, which will normally be 28 days. If the breach has not been fully rectified within this timescale, we will normally proceed to enforcement action or the service of a Section 215 Notice. No reminders will be sent. The Enforcement Team will not entertain protracted negotiation or repeated submissions that incrementally adjust what is proposed.

'Formal' enforcement action

3.9 The Enforcement Team will normally move directly to 'formal' enforcement action in the following circumstances:

- Where a retrospective application has been refused – in these circumstances the aim will be to serve an enforcement notice at the same time as refusing the application.
- Where a breach has not been resolved by negotiation in the required timescale.
- Where the extent or nature of the breach means that the works that have been carried out are clearly not in accordance with the Council's policies and / or it appears that resolution by negotiation is unlikely.

3.10 In determining whether 'formal' enforcement is appropriate, the Enforcement Team will make an initial assessment of whether it would be likely to be in the public interest for the case to be prosecuted should any notice not be complied with. The final decision on any prosecution will be made at the appropriate time. Many of the types of action that the Team can take come with a right of appeal.

Prosecution

3.11 Although carrying out development without planning permission is not normally a criminal offence, the Act creates a number of offences relating to failure to comply with formal Notices, including all the types listed in paragraph 2.2 of this report. A range of penalties apply, including in some cases unlimited fines. The Council will make its decisions as to the prosecution of any planning enforcement related offence, in line with the Council's corporate Enforcement Policy.

Works in default / direct action

3.12 The Act provides the Council with powers to take direct action to remedy planning breaches. The Enforcement Team will make its decisions as to any use of these default powers on a case by case basis, having regard to:

- The degree and type of harm being caused by the breach, including to the wider community and to the public's confidence in the planning system.
- The likelihood of the breach being resolved by any other means.
- The effective use of public resources.

Cases where assistance from other Council services may help remedy a breach

3.13 The Enforcement Team recognises that there are situations in which property owners have breached planning control unintentionally or with the best of intentions. Although this does not alter the fact that a breach has occurred and will need to be remedied, the Team will also consider whether there is any other assistance that it can offer the property owner to achieve an overall aim.

3.14 In particular the Enforcement Team will aim to assist individuals who are seeking to establish a small business by operating from their home, and who in doing so have changed the use of their property so as to include a component of business use. These types of activities change the character of the property and can have a significant effect on the wider residential area. This situation has become more prevalent following the COVID pandemic and the emergence of 'home' and 'virtual' working changing many people's day-to-day working and personal life arrangements.

3.15 Businesses encountering these types of issues are often reaching a point where they are ready to progress into their own accommodation, in a commercial area appropriate for the use. If this is the case the Council's Economic Development Service will work with the business owner with the aim of identifying a suitable premises. This Service will also explore whether the business owner requires any other support.

3.16 Offering this support does not mean that the Enforcement Team is not concerned about the breach of planning control that has taken place. The Team will continue to seek rectification of the breach through its planning powers, in line with the approach set out in the Plan. The Team will consider whether it is appropriate to allow longer periods to comply with its requirements: this will depend on the severity of the impact that the business is having on the surrounding residential area, and will be kept under review.

Enforcement aligned to other activity

3.17 The Plan sets out the basis for a consistent and transparent approach to planning enforcement, which will apply in all cases, including those reported by external parties and those that it identifies itself.

3.18 From time to time the Council may, in line with a corporate priority or as part of a package of coordinated activity, adopt an approach of actively seeking to identify breaches in a specific geographical area or of a particular type. Breaches identified in this way will be categorised and dealt with in line with this Plan.

4 Implications following the adoption of the Enforcement Plan

Volumes of cases

4.1 Since adopting the plan in January 2021 and implementing its policies throughout the same year, the table below shows the number of enforcement investigation cases that have been logged by the Team since 2017 to present:

Calendar Year	Number of enforcement cases opened
2017	317
2018	414
2019	367
2020	373
<u>Adoption of the Local Enforcement Plan</u>	
2021	267
2022 (to Nov)	213

Table 1: Number of enforcement cases investigated by calendar year

4.2 From these statistics it is evident that the Local Enforcement Plan is working in terms of the number of ‘true’ planning enforcement cases that the Team investigates. For example, the table above identifies the number of cases that has led to a report being opened and investigated by an Enforcement Officer. This trend appears to be continuing in 2022 (the number of 213 in the table equates to the number of investigations the Team has logged and undertaken to present). In addition to this number, 71 reports of planning enforcement breaches have been through the triaging process and have been closed at source as ‘P99’ cases. This number is not included within the 213 investigations logged for 2022.

Examples of ‘P99’ cases

4.3 For the Committee’s benefit, this report includes a number of examples of the ‘P99’ reports of planning enforcement breaches that equate to trivial breaches of

planning control with no material harm, or reports that do not equate to planning breaches at all. Examples of these cases can be viewed in **Appendix E**, but in summary, common forms of works that are undertaken that relate to 'P99' cases include:

- 'Permitted development', predominantly to residential properties, domestic extensions mainly;
- Development that is immune from enforcement action due to the length of time that it has been in situ;
- Works that having been assessed according to the degree of harm that appear to be being caused to planning interests, are considered to be minor breaches of planning control, that cause no material harm, and therefore it is not considered by Officers expedient to progress an enforcement investigation; and
- Works that are not relevant to planning at all.

4.4 Prior to the adoption of the Plan, each one of these cases would have been investigated by an Enforcement Officer, without any triage being undertaken. This would require administration of the report, be it by phone call, hand written letter or electronically, a site visit by an Enforcement Officer, which would then be followed by correspondence and further administrative actions to close the case.

Time, cost and mileage savings for the Service's Enforcement function

4.5 The Development Management Team within its structure currently has 3 no. Planning Enforcement Officers. The Service's structure is shown in **Appendix D** of this report. Currently, 2 of these Enforcement Officers are in post with recruitment underway to the third. When in post the Enforcement Officers will be allocated a 'work area' which will align with the 3 no. Principal Planners work areas for the Borough. Taking an average of 368 enforcement cases a year being investigated by the Team (2017 to 2020 figures), following the adoption of the Enforcement Local Plan, and presuming an average of enforcement cases continuing on current levels to the end of 2022, the average number of enforcement cases being investigated by the Team post adoption is 262 cases; a reduction of 106 cases or approximately 29%.

4.6 Calculating the time and cost savings of the above for the Enforcement Team, there is not a specific time that can be allocating to a specific case or investigation, but calculating on an estimated 1 hour administration, 1 hour desk based research and 1 hour on a site visit in terms of each case that is opened and not pursued (potential for significant further hours of work if the case is pursued), then amount of time saved between pre-adoption and post-adoption of the Plan equates to 318 hours or 8.6 weeks of Officer time. This equates to an approximate saving in Officer time of £5,277. In addition to other costs incurred, such as Officer mileage claims, this work also allows a saving on vehicle journeys. Taking an average of 10 miles per investigation (this is a difficult number to take an average on having to consider group visits and the commencement of journeys from differing locations) car mileage and emissions savings can be significant, possibly over 1000 miles on the basis of this assumption.

Further benefits of the Local Enforcement Plan

4.7 Key benefits in addition to the above time, cost and mileage savings to the Service following the adoption and implementation of the Plan relate to the ability to focus the Service's Enforcement resource on cases that are of most significance and generate the greatest public benefit, and those which are creating the highest levels of planning harm. This can include the ability to proactively undertake planning enforcement that aligns with the Council's priorities and strategies, including in geographical areas such as Town and Local Centres and also heritage and historical assets within the Borough's Conservation Areas for example.

4.8 In addition, there is also increased transparency and consistency for members of the public in terms of how planning enforcement will be undertaken and delivered by the Council. The Plan is routinely referenced in complaints and also in Ombudsman cases where the approach undertaken to an investigation is required to be demonstrated and justified. Furthermore, the Plan provides a tool for elected members to be able to explain the enforcement process to members of the public.

4.9 Internally, the processes within the Plan and how breaches are now required to be reported (the online reporting form) is of great benefit to the Enforcement Officers. The reporting form is specifically designed so that the important information required to both triage and investigate possible breaches, including the option to provide photos, is all recorded at the first step of the process. This saves significant amounts of Officer time and allows the breaches to be recorded and actioned through a single channel. Previously, prior to the adoption of the Plan, breaches could be reported in many different formats to all members of the Development Management Service. Other Teams within the Council would also sometimes receive reports of potential planning enforcement breaches. This created many workstreams that were sometimes lacking in information and required multiple contacts with members of the public to ensure all the necessary information was provided to investigate the breach. This also led to issues for management in the Team in terms of the allocation and prioritisation of the Enforcement Officer's cases.

5 Recommendation

5.1 That Committee endorse the Council's approach to triaging and the investigation of planning enforcement reports through the processes identified in the adopted Local Enforcement Plan.

Relevance Check

Budget Reduction/Service Area:

Service Lead: Gareth Jones, Service Manager Development Management & Building Control

Date: 21 November 2022

In what ways does this Budget reduction have an impact on an outward facing service? How will the service feel different to your customers or potential customers?

N/A – report relates to existing approved policy

If not, how does it impact on staff e.g. redundancies, pay grades, working conditions? Why are you confident that these staff changes will not affect the service you provide?

N/A

Is a Customer Impact Assessment needed? No