

**STRATEGIC PLANNING
SUSTAINABILITY &
TRANSPORTATION COMMITTEE**

**6 November
2018**

Local Enforcement Plan

Final Decision-Maker	Strategic Planning, Sustainability & Transportation Committee
Lead Manager	James Bailey – Development Manager
Lead Officer and Report Author	Rebecca Prideaux, Senior Enforcement Officer
Classification	Public
Wards affected	ALL

Executive Summary

A full review of the enforcement policy has been carried out in order to provide a more succinct version. The review of the Local Enforcement Plan aims to ensure that it is both effective and easy to understand for employees, Councillors, the wider members of the public and is compliant with the NPPF.

This report makes the following recommendations to this Committee:

1. That the new Local Enforcement Plan is approved for publication.
2. That a new KPI for speed of enforcement site visits is agreed as set out at point 1.20 – 1.23 of this report.

Timetable

Meeting	Date
Committee (SPS&T)	06/11/18

Local Enforcement Plan

This report was previously considered at the SPS&T committee of 9th October 2018. It was deferred by members of the committee on the grounds that the suggested KPIs were formally drafted prior to approval by the Committee. Members suggested that the flowcharts included in the report could be improved. This has now been done and the amended report is now ready to be considered.

1. INTRODUCTION AND BACKGROUND

1.1 In May 2018 the Council instructed law firm Ivy Legal to undertake an Enforcement Service Review and to draft a new Enforcement Plan. Ivy Legal specialises in planning enforcement matters, has extensive experience in working in and with Local Authorities and has an in-depth understanding of how local authorities operate and how local authority decisions are made.

1.2 Effective planning enforcement is important as a means of maintaining public confidence in the planning system.

1.3 The National Planning Policy Framework says that Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. The NPPF also states that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. The enforcement plan should establish how the Local Planning Authority will:

- monitor the implementation of planning permissions
- investigate alleged cases of unauthorised development
- take action where it is appropriate to do so

1.4 The planning enforcement service is a reactive service, responding to complaints from councillors and members of the public. In practice planning enforcement is a lengthy process that requires careful assessment of planning merits of breaches both before action is taken, and in the form of an appeals process after action is taken. Further, planning enforcement action requires consideration of whether a planning breach is immune from action by virtue of the statutory limitations and careful consideration of other matters such as the reasonable time period of compliance. In drafting a local enforcement plan, consideration should be given to the planning enforcement process.

1.5 Maidstone Borough Council (MBC) covers an area which is just over 150 sq. miles with only 7% of that area being Green Belt protected. MBC is generally to the East and South of the town of Maidstone: as far north as the M2 motorway; east down the M20 to Lenham; south to a line including Staplehurst and Headcorn; and west towards Tonbridge. Generally speaking, it lies between the North Downs and the Weald, and covers the central part of the county.

1.6 MBC it is a very attractive area for potential developers due to its proximity to London and it also faces challenges relating to unauthorised Gypsy and Traveller encampments. The Council's current Enforcement Plan is outdated, does not reflect current guidance and requires a clearer structure.

1.7 The Enforcement Service Review provided an opportunity to review this plan and for members to have a real say in a new Local Enforcement Plan. Additionally, the Enforcement Service Review was intended to function as a review of the enforcement team's process and comparison with best practice. The review also aimed to identify new performance indicators (PI's) which would drive Enforcement activities and for these to be given a higher level of scrutiny, to be reported as Key Performance Indicators (KPI's).

1.8 Currently the planning enforcement team does not have KPI's that are reported to CLT and SPS&T and only has LPI's. The LPI is currently a 21 day marker within which team members are to visit sites and provide an initial response to the complainer where new planning breaches have been reported. It is felt that this is not an effective measure as it doesn't match up with the priority given to each new case at the point of registration. Currently the enforcement team uses a Low, Medium or High priority marker but there are no corresponding timescales attached so the team works to the 21 day target in all cases. We would like to introduce a new set of performance indicators, preferably in the form of a KPI for enforcement or alternatively as a LPI as this will continue to push performance and will allow transparency for CLT and SPS&T that the performance targets are being met.

1.9 The redevelopment of the current Enforcement Policy aims to ensure that it is both effective and easily to understand for employees, Councillors, the wider members of the public and is compliant with the NPPF.

The New Local Enforcement Plan

1.10. The National Planning Policy Framework says that an Enforcement Plan should set out how a local planning authority intends to monitor the implementation of planning permissions, investigate alleged cases of unauthorised developments and take action as appropriate. The purpose of a local authority's planning enforcement function is to monitor the implementation of planning permissions in a broad sense. It is not practicable to actively monitor all planning permissions granted. However, it is more feasible to adopt a reactive approach that responds effectively to incoming complaints about breaches of conditions.

1.11 In this way, clear service standards are set against which expectations can be managed. That said, while the Plan can be a driver for improvement of the service, it is equally important that aspirational elements are clearly identified as such and that it is not simply a statement of generic best practice.

1.12 It was intended that the new Local Enforcement Plan should demonstrate the borough's commitment to planning enforcement, should explain the service to residents and be a practical and accurate guide to what can be expected during the planning enforcement process.

1.13 The new draft Local Enforcement Plan was informed by input from the following:

- Initial scope meetings with key stakeholders including enforcement officers and Members;

- Discussions with Members to understand key requirements and levels of actions required for investigating breaches of planning and the priorities associated with that action;
- Discussions with key officers to understand the levels of actions required for investigating breaches of planning control;
- Appropriate benchmarking and research to inform the new policy; and
- Appropriate recommendations around appropriate KPI's and the performance management of the emerging policy.

1.14 The result was the development of new draft Local Enforcement Plan which is easy to follow, concise and clearly sets up through targeting where the Council's priorities lay.

The Emerging Local Enforcement Plan

1.15 An initial meeting with members was held on 12th July 2018 at which time the following matters were discussed.

- **A presentation of the purpose of an Enforcement Plan, with examples from other local authorities**

Consultants from Ivy Legal made a presentation on the guidance provided in the NPPF and how to obtain best value from an enforcement plan. Inevitably, discussions led to expectations of an effective planning enforcement service. In practical terms, this meant extensive discussions around appropriate timescales for first response on new planning enforcement enquiries.

- **Reducing the content of the Enforcement Plan to make the new plan more user friendly and streamlined**

The majority of members agreed that the current policy is quite lengthy and hard to read and that it would be better to see something more succinct and compact. The enforcement plans of other local authorities were discussed.

- **The Enforcement Plan as an educational tool**

The majority of members agreed that there is so much online content available to members of the public, that it was not necessary to supply an extensive summary of legislation and guidance on planning enforcement within the enforcement plan. Members felt that it was important to have a compact and punchy document that is user friendly.

- **Site visit and response targets (linked to current LPI's)**

It was felt that although it is important to set new targets, these targets must be manageable and achievable. The majority agreed the current 21 day target was not working.

Several options were suggested and the main ones were:

- **High/Medium/Low priority with 1 day/5 day/10 day target for carrying out the site visit and 1 day response time to update the complainant**
- **1 day site visit and 1 day response time meaning that every case is giving the same priority and the same follow up.**

1.16 One other suggestion was that priorities are not divided into the three-tiered High, Medium and Low. Members felt that different breaches are important to persons affected in different ways and so what may be a 'low' priority to one person could be very 'high' to another.

1.17 It was felt that where a case is given a 'low' ranking, it would essentially send a message that a complainant's concerns are not valid, and it may send a message to potential perpetrators that planning control for those development types can be violated with impunity.

1.18 It was suggested that by removing the 'low' classification no case would be given 'minimal' priority. Instead, the following prioritisations were discussed:

Priority 1 - Site visit within 24 hrs for anything deemed urgent within a 24hr response time

Priority 2 - Site visit within 10 days for anything deemed non-urgent (works that have ceased or can be dealt with in due course but still with a 24hr response time to update the complainant from the date of carrying out the site visit.

1.19 It was discussed that the priority classification would be identified by a Senior Enforcement Officer with the relevant experience to assess the case. Furthermore, Priority 2 has a maximum of 10 days which means that it could be visited at any time within that period.

Should we introduce targets for the issuing of notices when they are required?

The majority felt that this would be a good idea. It means that if an officer has responded to a case and provided a report to a senior officer and it was deemed that a notice is required, we would have a target date to issue that notice. However, it is difficult to attach specific timescales for issuing enforcement notices due to the often-complex nature of considering the planning merits of planning breaches, immunity considerations and other considerations required prior to the issuing of a notice.

Staffing and resources

It was discussed and noted that staffing and resources are an important issue that needs to be addressed. The main concerns were that the team is not adequately resourced regardless of which priorities were adopted in the enforcement plan. The Development Manager advised that the planning enforcement team was now fully staffed for the first time in 2 years, but that the team would benefit from targets to ensure expectations were met. Resources beyond the enforcement team such as the legal department, are also impacted as they provide the legal advice and assistance when required.

Setting of new Performance Indicators

1.20 Following the meeting on 12th July 2018 a new Local Enforcement Plan was drafted taking on board the comments made by members at the previous meeting. The most important point which would be at the heart of the new enforcement plan was the setting of new (PI's) for dealing with all new enforcement complaints.

1.21 A follow up meeting with members on 30th July 2018 presented the new draft enforcement plan which included new PI's which were further amended following discussions at that meeting:

<u>Nature of Breach</u>	<u>Priority</u>	<u>Target Site Visit</u>	<u>Target Response Time</u>
<p>Activities that have the potential to have a detrimental effect on public safety or cause irreparable harm to the environment, especially in sensitive sites such as Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty etc.</p> <p>Unauthorised works to a listed building.</p> <p>Unauthorised works to protected trees (Trees subject to Protection Tree Preservation Orders and Trees in Conservation Areas) and removal of hedgerows protected under the Hedgerow Regulations that are in progress.</p> <p>Change of use of land for stationing of caravans and works associated with such changes of use.</p>	1	Within 1 working day of the report being received	Within 1 working day of site visit

<p>Activities resulting in some disturbance and loss of amenity to third parties. Activities that is likely to be adversely affecting the environment, but not irreparably.</p> <p>Breach of planning conditions.</p> <p>Unauthorised works to listed buildings or protected trees and removal of hedgerows protected under the Hedgerow Regulations that have ceased.</p> <p>Unauthorised advertisements (unless the advertisement seriously affects public safety</p> <p>Untidy land issues and businesses from home.</p> <p>Unauthorised fences, walls & gates, structures</p> <p>Unauthorised telecommunications equipment or satellite dishes on residential buildings.</p>	<p>2</p>	<p>Within 10 working days of report being received</p>	<p>Within 1 working day of site visit</p>
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1.22 Members discussed the importance of a quick response to new complaints to encourage perpetrators to cease planning breaches as soon as possible after they start. Immediate action may reduce the need for further action if breaches are stopped early.

1.23 In the previous enforcement policy, performance was only measured by using LPI's which were very broad.. We would like to introduce new PI's which could either take the form of LPI's or be reported as KPI's (and be referred to CLT and SPS&T) and are seeking authority from members to introduce the PI's to highlight the importance of team performance.

1.24 Targets for the PI's would be set at 100% for Priority 1 cases and 90% for Priority 2 cases. These targets would be reviewed on an annual basis but reflect the importance that we are attaching to officers visiting the site at the earliest opportunity and reporting back to the complainer that the investigation has commenced. .

2. AVAILABLE OPTIONS

Option 1 – Agree and approve for planning enforcement purposes and agree the new suggested KPI's

2.1 If the committee chooses not to agree approval of the new local enforcement plan as proposed in the report above, then the implication of this will be that the Council will not have a succinct, up to date Local Enforcement Plan which aligns with the NPPF 2018. There are no

financial implications with not adopting the new Local Enforcement Plan however it is considered that the current Enforcement policy is very wordy and difficult to interpret.

The current policy does not have effective LPI's and treats all enforcement cases under the same priority. We would like to introduce a new KPI and are seeking authority from members to introduce the KPI's to highlight the importance of team performance. Targets would be set at 100% for Priority 1 cases and 90% for Priority 2 cases.

Option 2 - Agree and approve for planning enforcement purposes and agree the new suggested LPI's

- 2.2 If the committee chooses not to agree approval of the new local enforcement plan as proposed in the report above, then the implication of this will be that the Council will not have a succinct, up to date Local Enforcement Plan which aligns with the NPPF 2018. There are no financial implications with not adopting the new Local Enforcement Plan however it is considered that the current Enforcement policy is very wordy and difficult to interpret.
- The current policy does not have effective LPI's and treats all enforcement cases under the same priority. We would like to introduce a new LPI and are seeking authority from members to introduce the LPI's to highlight the importance of team performance. Targets would be set at 100% for Priority 1 cases and 90% for Priority 2 cases.

Option 3 – Suggest changes

- 2.3 If the committee decide to make changes to the draft, they can then be incorporated into the LEP and adopted for enforcement purposes. The implication could be that if there are multiple changes, then this may delay the new LEP's adoption. Furthermore, subsequent changes may mean that the amended LEP will be undeliverable due to current staff resources. It may also raise an expectation from the public/members as to what the service can currently deliver.

Option 4 – Do nothing

- 2.4 If the committee decide not to accept the new LEP and keeps the existing enforcement policy, the implication of this would be that the KPI's will remain as they are which are not considered effective and don't reflect current priorities. The current enforcement policy is very wordy and quite difficult to navigate through and the matrix requirements are highly onerous on day to day effective enforcement.

3. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 3.1 Option 1 as this would provide an up to date, compliant and succinct LEP with effective and customer orientated KPI's.
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3.2 Option 2 would achieve a similar effect but instead of being reported as a KPI and by reference to CLT and SPS&T, would remain as a LPI. This would still drive enforcement performance but would not be reported to CLT and SPS&T.

4. RISK

4.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

5.1 To date we have held two workshops for Councillors from planning committee and SPS&T to attend. During the workshops, feedback was taken on the current and proposed Local Enforcement Plan and this was taken back to the consultants and used as a benchmark for the draft report. The draft report was also presented at planning committee on 27/9/18 for comment and the following recommendations were made:

- Members started by passing on their gratitude to the efforts that have been made by the enforcement team and congratulated the authors of the report for taking members suggestions into consideration.
- Members requested that it was of the utmost importance that the enforcement team remain fully resourced. This was to ensure that the KPI's can be met and to make sure that the LEP can be implemented effectively.
- Members requested that the Target Site Visit in the table shown under the heading '**Initial Prioritisation of Case Types**', was amended from '**As soon as possible (and at least 1 working day)**', to '**Within 1 working day**'.

All the above recommendations were accepted and the table has been amended.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

6.1 Following agreement of the recommendations in this report, officers will update the Council's website with the new LEP and will start using it on a day to day basis to cover all planning enforcement work.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<ul style="list-style-type: none"> We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. 	Head of Service or Manager
Risk Management	<ul style="list-style-type: none"> Already covered in the risk section 	Head of Service or Manager
Financial	<ul style="list-style-type: none"> The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation. 	Section 151 Officer & Finance Team
Staffing	<ul style="list-style-type: none"> N/A 	Head of Service
Legal	<ul style="list-style-type: none"> It should be noted that members of the legal team work closely with planning enforcement officers to issue and/to enforce notices. Shorter timescales and increased targets may have an impact on the legal team, which does not have a dedicated resource for planning enforcement. 	Principal Solicitor, Contentious and Corporate Governance
Privacy and Data Protection	<ul style="list-style-type: none"> Accepting the recommendations will increase the volume of data held by the Council. We will hold that data in line with current policy 	Legal Team
Equalities	<ul style="list-style-type: none"> The recommendations do not propose a change in 	Policy & Information

	service therefore will not require an equalities impact assessment	Manager
Crime and Disorder	<ul style="list-style-type: none"> N/A 	Head of Service or Manager
Procurement	<ul style="list-style-type: none"> N/A 	Head of Service & Section 151 Officer

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: Amended Draft Local Enforcement Plan
- Appendix 2: Amended Maidstone Borough Council Enforcement Procedure: Investigation and Negotiation
- Appendix 3: Amended Enforcement Procedure Flow Chart: Formal Action and Remediating the Breach

9. BACKGROUND PAPERS

- N/A