

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

17 JANUARY 2023

Title:

Update to the Local Planning Enforcement Plan

Portfolio Holder: Councillor Andy MacLeod (Enforcement, Operations and Brightwells)
Councillor Liz Townsend (Planning and Economic Development)

Head of Service: Gilian McInnes

Key decision: Yes

Access: Public

1. Purpose and summary

- 1.1 The updated Local Planning Enforcement Plan, set out at Annexe 1, sets out how the Council intends to respond to individual complaints about breaches of planning control, the process for investigating and recording complaints and the timescales involved. The overarching principle of this Plan is that the Council will provide a fair, proportionate, and consistent enforcement service to protect the environment of the Borough and the amenities of the people who live and work in Waverley.

2. Recommendation

It is recommended that the Executive, after considering the comments made by the Services Overview & Scrutiny Committee, agree to adopt the updated Local Planning Enforcement Plan.

3. Reason for the recommendation

The National Planning Policy Framework 2021 (“NPPF”) states, at Paragraph 59, 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 permission, investigate alleged cases of unauthorised development, and take action where appropriate.**”

4. Background

4.1 The current Local Planning Enforcement Plan was adopted in June 2013. This is set out at Annexe 2 to this report. Since its adoption, there have been various updates to the NPPF, and Local Plan (Part 1) has been published. There have also been a number of organisational changes, a new Corporate Strategy and the declaration of a climate emergency. It is therefore necessary to update the Plan to reflect these changes and also the Council's corporate priorities, in order that the Council's Planning Enforcement function can deliver upon these priorities

4.2 The updated Plan at Annexe 1 seeks firstly to bring up to date the original plan by deleting references to out of date documents (such as older versions of the NPPF and a previous Corporate Strategy) and replacing them with references to up to date documents, namely:

- NPPF 2021
- Local Plan (Part 1) 2018
- Waverley Borough Council Corporate Strategy 2020-2025
- Town and Country Planning (General Permitted Development) Order 2015

In updating the Plan to include these central documents, the underpinnings of the Plan will be properly aligned with current Council priorities and objectives.

4.3 Secondly, the updated Plan seeks to provide more detailed information in relation to the Council's enforcement procedures, with an emphasis on putting its limited resources to the best and most effective use through the consistent application of the principles contained within the Plan with the aim of protecting the Borough and its residents from harmful development. It is intended that this updated Plan will be able to better manage the public's understandably high expectations of what the planning enforcement function is able to deliver, and the timeframes associated with certain types of enforcement action.

4.4 Thirdly, the updated Plan provides some accountability to the public which the current Plan does not. It refers the reader to the publication of the Council's quarterly performance report (where the Enforcement Team's performance is detailed) and explains that members of the public can attend the O&S and Executive Committee meetings where this report is discussed.

4.5 Finally, it proposes that the Plan is reviewed and refreshed every two years (or when new legislation comes into force) in view of changes to legislation and priorities.

5. Relationship to the Corporate Strategy and Service Plan

5.1 This updated Plan will seek to promote effective development management, a sense of responsibility and the health and wellbeing of our communities in accordance with the Corporate Strategy and the Service Plan for Planning Development.

6. Implications of decision

6.1 **Resource (Finance, procurement, staffing, IT)**

There are no direct financial implications arising as a result of this report.

6.2 Risk management

Through comments and recommendations from this Committee and an Executive resolution to adopt the updated Plan, the risk of challenges in relation to consistency of approach to planning enforcement matters will be reduced.

6.3 Legal

The Local Planning Enforcement Plan will guide and inform the Council's approach to undertaking planning enforcement in Waverley, and its adoption will assist in ensuring that the Council is able to demonstrate a consistent basis to decisions made in respect of all Planning Enforcement cases.

6.4 Equality, diversity and inclusion

An Equality Impact Assessment has been carried out on the Plan and this has raised no issues or concerns regarding any disproportionate impact on protected characteristic groups or additional groups listed in the impact. Where human rights and the Public Sector Equality Duty (s149 of the Equality Act 2010) become relevant, these will be addressed on a case by case basis, having regard to all relevant legislation.

6.5 Climate emergency declaration

The updated Plan will be aligned with the Council's Corporate Strategy 2020-2025 and its environmental and sustainability objectives that have arisen through the Council's declaration of a climate emergency in 2019. Through effective planning enforcement, the Council will be able to respond consistently and appropriately to harmful, unsustainable development.

7. Consultation and engagement

- 7.1 The updated Plan has been reviewed by the Portfolio Holder for Enforcement, Operations and Brightwells, Councillor Andy MacLeod, and the Portfolio Holder for Planning and Economic Development, Councillor Liz Townsend. It has been subject to the normal internal checks at Head of Service/Director level and with Finance and Legal prior to being presented to this meeting.

The updated Plan was scrutinised by Services Overview and Scrutiny at their meeting on 22 November 2022. This Committee made a number of recommendations:

- (i) That this document is restructured so that standard practice is followed such that there is a policy setting out high level objectives and principles, followed by a plan setting out how this will be implemented.**

Officer comment: The format of the Enforcement Plan is similar to those of other Local Planning Authorities. A policy-like statement could be added at the beginning of the Plan, such as:

'To assess breaches of planning control in a timely manner, to determine appropriate action, and assess whether it is proportionate to undertake formal enforcement proceedings.'

Officers do, however, have concerns in relation to such an addition; this is not a policy document and has not been the subject of any public engagement or public consultation. It is therefore recommended that this amendment is not carried forward into the Plan.

(ii) Include more information on the steps prior to issuing a notice

Officer comment: Investigations can vary significantly from case to case, depending upon the issues that arise. The flow chart at Appendix 1 to the Plan does however clearly set out the decision-making process. For this reason, it is recommended that this amendment is not carried forward into the Plan.

(iii) Complete an exercise benchmarking the workload of planning enforcement officers at Waverley with neighbouring authorities

Officer comment: This is a separate piece of work to the Enforcement Plan and would take a number of weeks to complete. The reality is that most local planning authorities are struggling with enforcement caseloads and the majority experienced an increase in the number of complaints received during the Covid pandemic. Enforcement posts, as with planning officer posts, are presently difficult to fill.

8. Other options considered

- 8.1 Do nothing – this would mean that references within the Plan would remain out of date and not reflect current corporate priorities. It would be at odds with the Corporate Strategy and Service Plans and would not reference the most up to date legislation and practice guidance. This, in turn, would reduce credibility and confidence in the planning enforcement process.
- 8.2 Delete the Local Planning Enforcement Plan – the risk of not having an adopted enforcement policy is that enforcement action could be open to challenge, particularly in the case of prosecutions or other legal action, on the basis of the Council being unable to document a consistent approach to decision making in respect of planning enforcement matters. This would also be at odds with National Planning Policy Guidance that emphasises the importance of local enforcement plans.

9. Governance journey

- 9.1 The Overview & Scrutiny Committee for Services considered the Plan at its meeting on 22 November 2022 and made comments that have been addressed within this report.

Annexes:

Annexe 1 – Proposed updated Local Planning Enforcement Plan

Annexe 2 – current, adopted Local Planning Enforcement Plan (June 2013)

Background Papers

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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Agreed and signed off by:

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Head of Finance: Candice Keet date 20/12/2022

Strategic Director: Dawn Hudd Date 16/12/2022

Portfolio Holder: Councillor Liz Townsend, date 20/12/2022 and
Councillor Andy MacLeod date 16/12/2022