

PLANNING ENFORCEMENT SUB - COMMITTEE

DATE OF MEETING: Monday 30th January 2023

TITLE OF REPORT: Update on planning enforcement

Report of: Executive Director - Place

Cabinet member: Councillor Graham Cockarill

1 PURPOSE OF REPORT

- 1.1** To provide the Planning Enforcement Sub-Committee with an overview of the Planning Enforcement function in 2022.

2 OFFICER RECOMMENDATION

- 2.1** That the Planning Enforcement Sub-Committee notes the overview of the Enforcement function.

3 BACKGROUND

- 3.1** The Council has a duty to investigate complaints about development, including building and engineering works and changes of use, that may have been carried out without the necessary permission or consent.
- 3.2** Effective planning enforcement is a useful tool in tackling breaches that would otherwise have had an unacceptable impact on amenity in the District and to help maintain the integrity of the Development Management process.
- 3.3** There are a range of enforcement powers available to the Council, however whether the Council takes any enforcement action is a discretionary matter. When considering taking any formal action the Council must consider if it is expedient to do so having had regard to the Development Plan and any other material considerations including the Enforcement Plan. It is also necessary to weigh up in each case whether taking Enforcement Action is in the public interest.
- 3.4** Taking formal Enforcement Action should be regarded as a last resort and many breaches of planning control can be resolved informally without action being taken. For example, retrospective planning permission can be obtained or the transgressor can voluntarily cease the breach through negotiation with Officers.
- 3.5** Councillors are often the public face of the Council and Member involvement in planning matters is crucial in maintaining an effective enforcement service. This report has therefore been prepared to provide an overview of the enforcement function in 2022.

Whilst taking formal enforcement action by serving Enforcement Notices or other actions can be high-profile what often gets overlooked is the amount of work involved in collaboratively resolving cases without the need for formal action which has resulted in a breach ceasing or being regularised.

4 CONSIDERATIONS

4.1 Number of Service Requests

Following on from the extraordinary previous two years, the number of service requests received by the team has reduced and now reflects service levels prior to the Covid-19 pandemic:

1st April to 30th June 2022 (Quarter 1), 56 requests to investigate alleged breaches of planning control were received from customers.

1st July to 30th September 2022 (Quarter 2), 47 requests were received.

1st October to 31st December 2022 (Quarter 3), 41 requests were received.

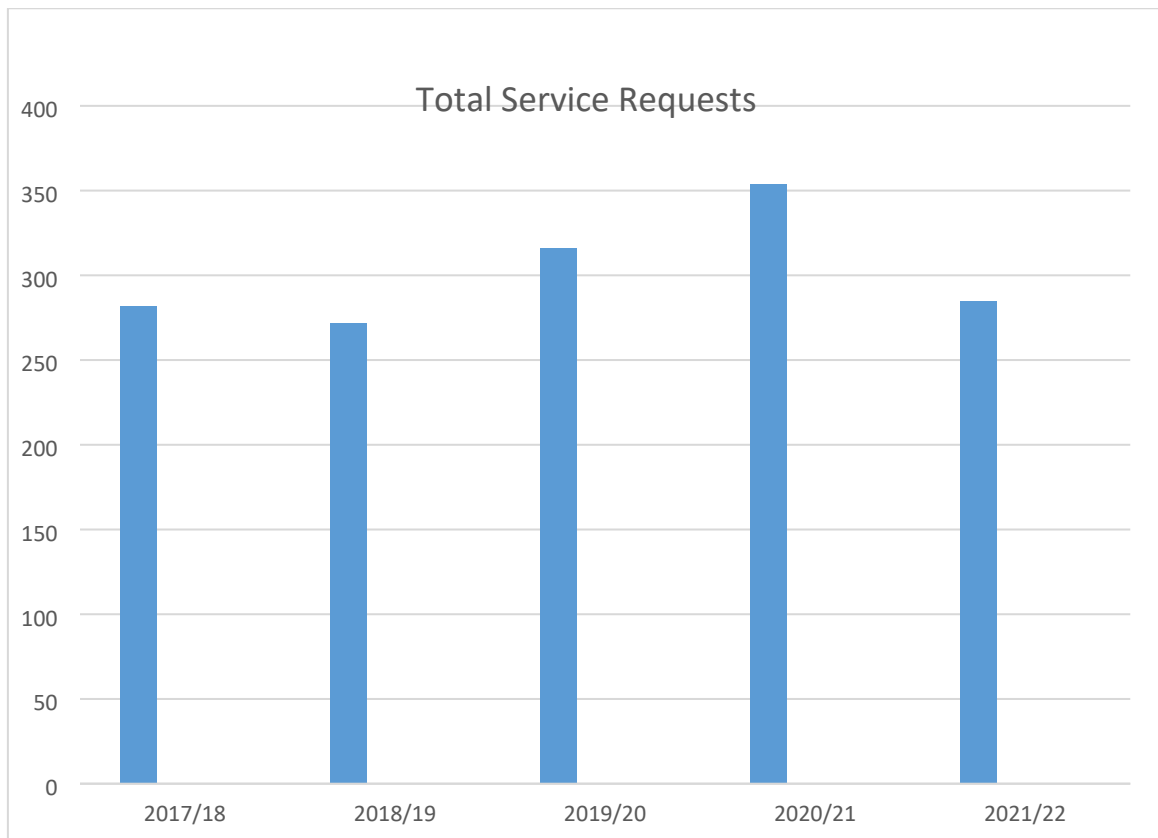
As this report is being prepared during Q4 no details are included for this period.

In comparison with the pandemic years of 2018/20/21 the number of service requests have been significantly lower, however, it is fair to say that a number of the related cases have been more complex, time consuming and challenging.

	Number of service requests					
	17/18	18/19	19/20	20/21	21/22	22/23
Q 1 April-June	74	80	90	79	109	56
Q2 July - September	73	77	87	102	60	47
Q3 October - December	68	55	67	85	49	41
Q4 January - March	67	60	72	55	67	N/A

In comparison with the pandemic years of 2019/20/21 during the last year we have seen a fall in the number of service requests, however, it is fair to note that in a number of the cases multiple complainants have been recorded to one case to avoid duplicity and a number of the cases considered have been more complex, time consuming and challenging.

It is notable that over the last six years, overall case numbers rose and now appear to have fallen to pre – pandemic levels, officers therefore acknowledge this marked increase might have been directly related to the pandemic. As a result, service requests and resources will continue to be monitored.



4.2 Number of Cases Closed and Resolution

When a request to investigate an alleged breach of planning control is received, the case is prioritised by the Enforcement Team Leader in accordance with the Council's Enforcement Plan:

Priority 1 – High priority (Site visit within 2 working days):

- Demolition or alteration of a Listed Building
- Demolition of a building within a Conservation Area.
- Works to trees protected by a Tree Preservation Order or within a Conservation Area. Any unauthorised development/activity/operation, falling within planning control that presents an immediate and serious danger to the public

Priority 2 – Medium priority (Site visit within 5 working days):

- Development not in accordance with the approved plans during the construction process
- Development causing serious harm to the amenity of nearby residents, e.g. through impact on privacy or outlook
- Advertisements causing serious harm to amenity or highway safety
- Commencement of works without clearing conditions precedent

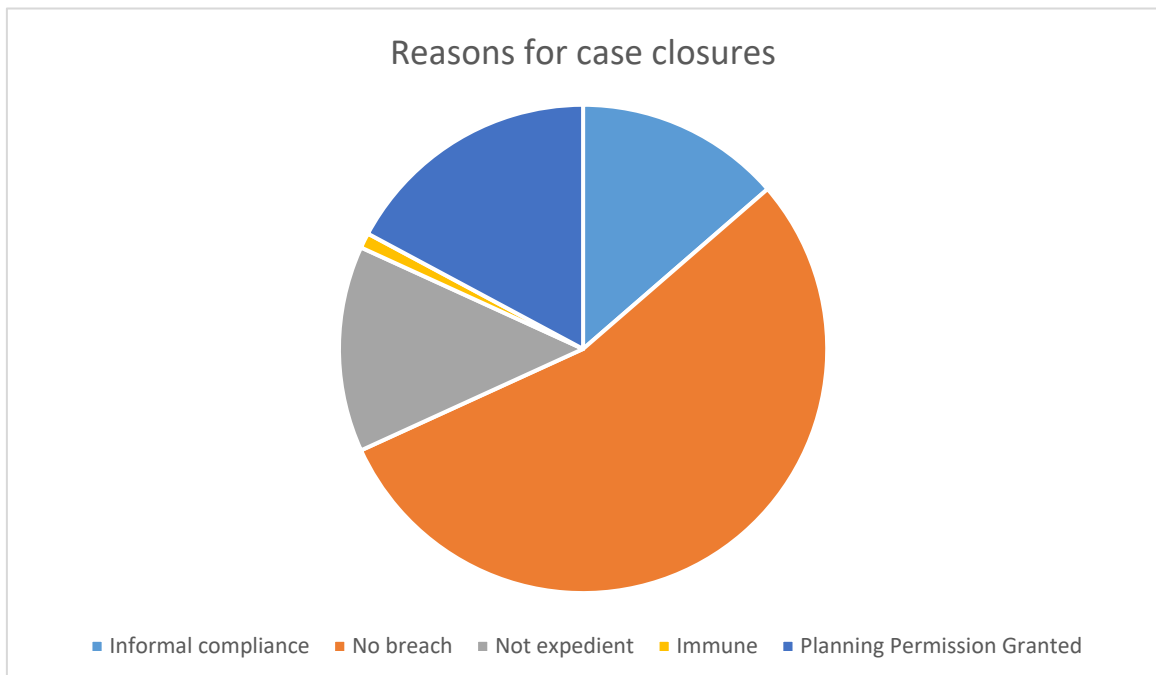
Priority 3 – Low priority (Site visit within 10 working days):

- Advertisements
- Minor works including fences, walls, small extensions
- Condition monitoring

- Untidy sites
- Other breaches of planning control

Once the initial investigation has been completed, officers will make a recommendation on the case. Cases are closed for a variety of reasons and the graph and table below sets out the cases closed and their reason for being closed.

The graph below shows the split in the reasons for cases being closed in January to March 2022.



Whilst the above pie chart represents a simple snapshot of cases closed during one quarter of the last year, it is notable that just over half of the closed cases investigated (54%) during this quarter did not represent a breach of planning control. Based on recent officer experiences this is reflective of the nature of service requests received during and following the pandemic period. Prior to the pandemic period, officers usually experienced up to one third of cases being not planning breaches, however, this has clearly increased. Officers will continue to monitor whether this situation continues or as a result in the reduction of number of service requests received this percentage falls.

Members will see that an equivalent number of cases were closed because the breach had ceased due to negotiation, or that planning permission was subsequently granted for the development. It is important to highlight these cases because they amount to a large proportion of workload that is otherwise unreported. In relation to the number of cases closed due to the breach ceasing these should be regarded as successful outcomes.

Whilst no formal enforcement action was taken during this quarter, members will be aware that such action has been taken during the year.

Number of live enforcement cases

The total number of ongoing/live enforcement cases recorded in the system is 201 cases. These cases remain ongoing for a number of reasons :

2016 – There are 27 cases relating to Enforcement Notices issued in relation to Bramshill. The Court of Appeal remitted these cases to the Secretary of State to rehear the appeals. The appeals remain in abeyance pending determination current and ongoing applications/proposals for the site. In this respect no further action can be taken until a decision on these appeals is reconsidered by the Secretary of State.

2017 – There are 3 cases open. Two of these cases relate to sites being monitored. One case relates to a listed building where due to the personal circumstances of the owner (terminal illness) it was not considered in the public interest to pursue a prosecution for unauthorised works to a listed building. The property in question has been sold so further consideration on the expediency of action could take place as the responsibility for the unauthorised works has passed to the new owners. A review of the case will therefore take place within the next quarter.

2018 – There is 1 open case which may result in instructions to legal.

2019 – There are 13 open cases which are long running matters including some of the notable cases referenced later in this report. They are in the main issues relating to alleged breaches of condition particularly in relation to failure of landscaping. These cases continue to be monitored.

2020 – There are 38 open cases.

The remaining 112 open cases are active investigations.

Officers are satisfied that all casework is regularly monitored and investigations are progressed in accordance with the adopted Local Enforcement Policy priorities.

4.3 Formal Enforcement Action

There are a range of options open to the Council when considering enforcement action including the following:

- Enforcement Notice
- Breach of Conditions Notice
- Planning Enforcement Order
- Stop Notice
- Temporary Stop Notice
- Injunction
- S215 Notices (untidy site)
- Listed Building Enforcement Notices

Formal action including the serving of an Enforcement Notice should only be taken where the Council is satisfied that there appears to be a breach of planning control and it is expedient to issue a notice. In deciding whether to issue a notice or take any other

form of action, the Council has to take into account the provisions of the Development Plan and any other material considerations. Generally taking such action should be treated as a last resort where negotiations to remedy the issue have failed, however there will of course be instances where negotiation is not appropriate.

Whilst Enforcement notices are a powerful tool, the fact that an Authority may not have served a large number of notices doesn't mean that it is failing to manage or deal with unauthorised development or works within its area.

All types of notice have a period for compliance which will vary depending on the nature of the breach and the steps required to remedy the situation. After the compliance period the Enforcement Team will visit to check whether the notice has been complied with. Failure to comply with the requirements of a notice may result in the Council seeking to prosecute.

There are rights of appeal associated with any Enforcement Notice in the same way that an applicant can appeal against the refusal of a planning application. For example, an appeal against a planning Enforcement Notice (as opposed to a Listed Building Enforcement Notice for example) can be made on the basis of the following grounds:

- a. That planning permission ought to be granted or the condition or limitation concerned ought to be discharged;
- b. The matters stated in the enforcement notice have not occurred;
- c. The matters stated in the enforcement notice (if they occurred) do not constitute a breach of planning control;
- d. At the date when the notice was issued, no enforcement action could be taken;
- e. Copies of the enforcement notice were not served in accordance with the relevant statutory requirements;
- f. The steps required by the notice exceed what is reasonably necessary to either remedy any breach or to remedy any injury to amenity (i.e. the steps are excessive); and or
- g. Any period for compliance falls short of what should reasonably be allowed.

Where an appeal is lodged, the notice is effectively held in abeyance pending the outcome of the appeal. Unfortunately, the planning appeals process is slow and the Planning Inspectorate has seen unprecedented levels of planning and enforcement appeals, resulting in the Inspectorate asking Authorities to resolve issues at the local level wherever possible. Timescales for planning enforcement appeals which are heard by written representations have an average delay of 50 weeks to determine them. For local hearings this time increases to 93 weeks whereas Public Inquiries are 59 weeks on average.

During 2022 the Enforcement team was extremely busy dealing with some complex and difficult matters.

Four separate Enforcement Notices and two Breach of Condition Notices were issued during the year. Notably, the team also successfully obtained 2 separate Injunction Orders from the High Court which relate to ongoing cases.

The details of these notices are entered into the Register of Enforcement and other notices which is published online via the Councils' website.

During 2022 the following notices were issued :

New Farm, Froyle Lane, South Warnborough – Unauthorised residential use of 4 structures – Enforcement Notice required cessation of the unauthorised use – no appeal was lodged against this notice and it was complied with.

1 Ridgeway Parade – Extraction Equipment at pizza shop – Breach of Condition Notice required work to be undertaken in accord with planning permission – notice complied with.

12 Hawkwell, Church Crookham – Unauthorised fence – Breach of Condition Notice required removal/reduction in height – notice complied with.

The Frog and Wicket, Eversley Cross – Unauthorised Pergola – Enforcement Notice required removal – subject to appeal

2 Haywood Drive, Fleet – Building not in accordance with approved plans – Enforcement Notice required removal – subject to appeal

Land South of Beechcroft, South Warnborough – Unauthorised use of land for residential caravan and associated developments – Enforcement Notice required use to cease and work to be removed – notice comes into effect unless appeal lodged by 21/1/23.

4.4 Notable Cases

Land at Five Acres, Broad Oak, Odiham

An Enforcement Notice relating to a change of use of land arising from the siting of a mobile caravan structure for residential purposes in relation to the keeping of alpacas on the above mentioned land was issued in September 2021.

The notice requires removal of the timber caravan structure and reinstatement of the land. An appeal against this notice has been lodged.

The matter is to be considered through the Informal Hearing procedure. The Hearing is scheduled to take place on 24th January 2023.

Paynes Cottage, Potbridge

An Enforcement Notice relating to change of use of land to commercial use was issued in 2019. An appeal against the notice was lodged,

The original inquiry date (Nov 2021) was postponed by PINS as the inspector became unavailable due to unforeseen circumstances.

The revised inquiry is now scheduled to take place over 4 days from 7th March 2023.

Land North of Winchfield Court

Members will recall that this site was sold in parcels to a number of owners. Some of the new owners have caused significant disruption to neighbouring occupiers through activities on the land.

A Temporary Stop Notice and 2 Enforcement Notices were served in relation to 3 of the parcels of land in May of 2021 requiring that the use of the land for the stationing of a caravan used for residential accommodation and storage of waste/building materials ceased and unauthorised operational development including erection of gates/fencing exceeding 1 metre in height, an unauthorised access, engineering works, culverting works, alterations to a former sewage pumping station, unauthorised extensions to the building and the creation of a hardstanding were removed.

Appeals against the Enforcement Notices have been lodged. These appeals will be heard through the Informal Hearing procedure, however, no date for this hearing has been fixed.

The Enforcement Notices will not come into effect until the appeal has been determined, as mentioned above, there is a very significant delay in determining enforcement appeals via the hearing or inquiry procedures.

Officers will update members when the matter progresses.

Land South of Beechcroft

The Enforcement team successfully secured an injunction in the High Court in relation to this matter in October 2022. Without planning permission, a twin-unit caravan and structures had been placed on the land capable of human habitation. The Injunction prevented the transgressor from occupying the land for residential purposes.

Subsequently, the Enforcement team served an Enforcement Notice on the land to require the removal of the twin-unit caravan, structures and all operational development. The Council has received no notification of an appeal having been lodged against this Enforcement Notice to date.

The Enforcement Notice will come into effect on 21st January 2023 unless an appeal is lodged beforehand. Officers will continue to monitor the situation.

Big Meadow, Wingate Lane, Long Sutton

The Enforcement team successfully secured an injunction in the High Court in relation to this matter in December 2022. The planning application reference was 15/00424/FUL for "The erection of 5 dwellings with carport/store, access road and landscaping; change of use of agricultural field to public open space and associated landscaping" which was granted planning permission on 17th June 2016. The relevant enforcement references are 20/00282/XPLAN3 and 19/00263/XPLAN3.

In recent months, Council Officers have repeatedly requested the payment of the second affordable housing contribution referenced in Clause 15.2 of the s106 Legal Agreement. Despite sending invoices, reminders, and emails from shared legal services (outlining that legal proceedings may follow) the debt remains unsettled.

We applied for an Injunction in the High Court to prevent the sale or occupation of the final (fifth) dwelling at the site unless and until the debt was paid to the Council. The Injunction Order was made by the judge.

The Injunction was served on the developer in December 2022 however no response from the developer or dialogue of any form has been received despite further contact from our legal team.

As a result, Officers have authorised the shared legal services team to proceed to seek a County Court Judgment to recover this debt.

The matter will continue to be monitored.

The year ahead

Members will be aware that the Peer Review into development management services highlighted no particular issues with performance of the planning enforcement function. A subsequent review by a “critical friend” similarly raised no urgent actions requiring attention.

Officers are however mindful that the adopted Planning Local Enforcement Plan has been in place since January of 2016.

Whilst officers consider it remains fit for purpose, it is recommended that it is reviewed in light of any practical or legislative changes which may need to be considered since it was adopted 7 years ago.

Subject to resourcing availability, a key action to be considered is therefore recommended :

- Reviewing the adopted Local Enforcement Plan

5 FINANCIAL AND RESOURCE IMPLICATIONS

There are no anticipated financial implications in respect of this report although workloads for the team will continue to be monitored.

It should be noted that the Enforcement Team Leader will be leaving Hart District Council in March 2023 and the Assistant Enforcement Officer left in January 2023 for new opportunities elsewhere in local government. As a result, recruitment campaigns are underway to secure replacement permanent staff. The Development Management & Building Control Manager is also in discussions with agencies in respect of temporary staff to cover between March (when the Enforcement Team Leader leaves the Council) and May 2023, which is the earliest anticipated start date for a permanent replacement.

6 ACTION

It is recommended that the Committee notes the contents of this report.

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