

Enforcement Plan Update

Cabinet Member: Councillor I Pritchard

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Agenda Item: 5

Contact Officer: Peter Gittins

Tel Number: 01543 308205

Email: peter.gittins@lichfielddc.gov.uk

Key Decision? No

Local Ward All

Members



PLANNING COMMITTEE

1. Executive Summary

- 1.1 This report relates to an update proposed to the Planning Enforcement Plan dated April 2013.
- 1.2 Whilst largely a technical update, ensuring that government policy references and changes to Council's departmental and personnel structure are up-to-date, there has been opportunity to also make some changes to our processes, in line with current best practice and advice on the contents of enforcement plans as set out in a document entitled "Towards a pro-active enforcement service: making the most of the tools in the box" prepared by PAS (Planning Advisory Service) in conjunction with NAPE (the Network for Planning Enforcement).
- 1.3 This plan was reported to the Economic Growth, Environment and Development (Overview and Scrutiny) Committee on the 12 November 2018. The Committee resolved:
 - i) That, subject to the addition of reference to also working closely with 'Environmental Heath' at paragraph 2.4 of the plan and that a note about the seriousness of flouting the planning regulations and that action would be taken where necessary be included, that the updated Local Enforcement Plan be endorsed and recommended that the Planning Committee approve the updated Plan.

2. Recommendations

- 2.1 That Planning Committee,
 - i) Approve the proposed updated Local Enforcement Plan, as attached at Appendix 1 and, that this updated Local Enforcement Plan replaces the April 2013 version with immediate effect.

3. Background

- 3.1 The Council had an Enforcement Policy which was adopted in January 2005, updated in 2007 and again in 2010. In April 2013 the current planning Local Enforcement Plan was adopted, which replaced the Enforcement Policy, in order to accord with the provisions of the National Planning Policy Framework (2012). This Enforcement Plan is some five years old and so is now due for review and update, in order to reflect the updated NPPF (July 2018), changes within the team personnel and also, in order to reflect more recent best practice.
- 3.2 The proposed draft, revised Local Enforcement Plan essentially is a proposed technical update to the current document, ensuring that government policy references and changes to Council's departmental and personnel structure are up-to-date. However, whilst the current update shares the original evidence base of the 2013 Local Enforcement Plan and there is considered to have been little change to the Council's planning enforcement related priorities since such time, the opportunity to include some changes to our processes, in line with more recent best practice and latest advice from the Planning Advisory Service (PAS) in conjunction with NAPE, are also included. The more significant, proposed changes are summarised below.

- 3.3 It is proposed that the Local Enforcement Plan explicitly states how it will deliver the objectives of the Lichfield District Local Plan, by ensuring that where unauthorised development does not accord with the specific policies of the Local Plan it is effectively remedied.
- 3.4 Reference is also included to the possibility of undertaking proactive enforcement projects, subject to the availability of resources.
- 3.5 The performance standards within the draft updated Enforcement Plan have been altered, in order to reflect the model enforcement plan standards promoted by PAS. In particular, it is considered that to 'seek to close 80% of all cases within 12 weeks from the date of receipt' will be an effective and reportable measure of the team's performance and therefore has been included.
- 3.6 The potential for chargeable services has been further considered. Whilst charging directly for planning investigation services is not considered appropriate because the Local Planning Authority has a duty to investigate and deal effectively with breaches of planning control, there are a number of income streams that are attributable to effective and well-resourced planning investigation service which may be considered.
- 3.7 Currently, fee income may be derived from retrospective planning applications; lawful development certificates fees; appeal fees and costs; prosecution and caution costs; and recovered cost from direct action. In some cases where there has been an unauthorised change of use of land there may have been an underpayment of council tax and this is then brought to the attention of the council tax team. In addition, the proposed revised draft plan also aims to raise the profile of the potential for large sums linked to successful prosecutions and the award of a Confiscation Order, where the investigation and prosecuting authority would keep 37.5% of any award by the Court.
- 3.8 Members will note that Paragraph 2.4 of the Local Enforcement Plan has been amended to include reference to working closely also with Environmental Health officers and also paragraphs 1.5 and 1.6 of the Plan have been amended to highlight the importance of not flouting the planning regulations and the approach that will be taken by the Council, in accordance with the recommendations of the Economic Growth, Environment and Development (Overview and Scrutiny) Committee, 12 November 2018
- 3.9 The proposed revised (draft) Local Enforcement Plan is included at Appendix 1.

Alternative Options	<ol style="list-style-type: none"> 1. Not update the current Enforcement Plan; although it is noted this is already 5-years old and contains incorrect information regarding personnel within the Council and requires updates to reflect change in guidance and best practice. 2. Not have an Enforcement Plan- although this would not be in line with best practice or the government endorsed approach. 3. Undertake further consultation with the Parish and Town Councils prior to the adoption of the updated local Enforcement Plan to re-establish priorities, although it is envisaged that this will not have changed significantly in the last 5/6 years' time and would delay the adoption of an up to date Enforcement Plan.
Consultation	<ol style="list-style-type: none"> 1. There has been no consultation related to this revised document for the reasons stated.
Financial Implications	<ol style="list-style-type: none"> 1. As set out at paragraphs 3.6 – 3.7 of this report there are opportunities to generate income from planning enforcement investigations and any subsequent action taken. 2. An up to date adopted Enforcement Plan ensures a consistent and transparent approach to planning enforcement that would minimise any upheld Corporate Council and Ombudsman complaints.

Contribution to the Delivery of the Strategic Plan	1. The review of the Local Enforcement Plan will assist in delivering the objectives of the Local Plan which is all part of the objective to ensure that the district is clean, green and welcoming place to live.
Equality, Diversity and Human Rights Implications	<ol style="list-style-type: none"> 1. The policies and procedures in the draft Local Enforcement Plan are such that they do not discriminate, or disadvantage any group protected under the legislation. 2. The proposals as set out in this report are considered to be compatible with the Human Rights Act 1998.
Crime & Safety Issues	1. The recommendation will impact positively on our duty to prevent crime. The draft Local Enforcement Plan identifies the tools and procedures that will be used to prevent crime and to effectively deal with planning crimes should they occur.
GDPR/Privacy Impact Assessment	1. The draft Local Enforcement Plan states that we will keep customers personal details confidential at all times, unless required to disclose them as part of court proceedings, or to the Local Government Ombudsman (LGO), and that only necessary information will be kept indefinitely, unless the Council receives an erasure request. It is considered necessary to keep customers' personal information on file, as the Council may be required to provide information to the LGO should there be a complaint about the lack of enforcement action, or the process we follow. It will not be possible to predict what information will be needed. The immunity period from planning enforcement action is ten years for unauthorised uses and it is possible that a case could be referred to the LGO sometime after this period. Therefore, it is considered that the retention of information indefinitely is justified for the Council to fulfil its statutory duty in the case of planning enforcement.

	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Not updating the Local Enforcement Plan is likely to affect the efficiency of the service to some degree.	Refer to national policy and guidance and provide other information on planning and enforcement on the Council's website.	Risk is considered to be tolerable (Green).

Background documents

The adopted Planning Enforcement Plan (April 2013)

Economic Growth, Environment and Development (Overview & Scrutiny) Committee (12 November 2018) agenda item 7.

Relevant web links

<https://www.lichfielddc.gov.uk/Council/Planning/Planning-enforcement/Downloads/Planning-Enforcement-Plan-2013.pdf>