

## INFRASTRUCTURE, HOUSING & ECONOMIC DEVELOPMENT COMMITTEE - 22 JUNE

### PART I – NOT DELEGATED

#### 5. REVISED PLANNING ENFORCEMENT PLAN (DCES)

##### 1 Summary

- 1.1 To consider the adoption of a revised version of the Council's Planning Enforcement Plan.
- 1.2 The current plan was initially adopted by Full Council in May 2013 and sets out what the members of the public can expect from the Council when dealing with complaints relating to alleged breaches of planning control. It also assists in setting out the general course of an enforcement investigation and the types of action the Council may take to remedy a breach of planning control.
- 1.3 As part of the 2019/20 Final Internal Audit Report (Development Management – Enforcement) the Management Action Plan identified that the Enforcement Plan should be reviewed (classed as low priority).
- 1.4 Officers commenced a review of the plan last year and this is now subject to Member agreement. The main changes are summarised at section 3 below.

##### 2 Details

- 2.1 Planning enforcement is a fundamental part of the development management framework, the powers of which can be used to ensure the credibility of the function of development management. Planning enforcement serves to maintain the integrity of the planning system, allowing local planning authorities to act proportionately in relation to breaches of planning control that unacceptably affect public amenity or which cause significant harm to the use of land and buildings that merit protection in the public interest.
- 2.2 Part VII of the Town and Country Planning Act 1990 (as amended) (“the Act”) sets out the legislative basis for planning enforcement. The Planning Practice Guidance (PPG) also sets out government guidance on enforcement and how to use the provisions provided by the Act.
- 2.3 The National Planning Policy Framework 2019 (NPPF) sets out the Government’s planning policies for England and how these should be applied. At paragraph 58 of the NPPF it states:  
  
*“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 permissions, investigate alleged cases of unauthorised development and take action where appropriate.”*
- 2.4 The driving force behind adopting the Enforcement Plan in 2013 was as a direct result of the NPPF which first came into force in March 2012. The NPPF, as per paragraph 58 of the 2019 version, emphasised that Council’s should consider publishing a local enforcement plan. This paragraph has not been altered since it first appeared in 2012.

- 2.5 Since the adoption of the Enforcement Plan in 2013 there have been limited changes in legislation and guidance on planning enforcement. As such, large parts of the internal process has remained unchanged but there have been modifications where necessary, i.e. making the process entirely electronic a few years ago. Nevertheless, it is recognised that the current plan is approximately 7 years old and therefore a review of the plan was considered worthwhile to ensure it is up to date.
- 2.6 The PPG makes it clear that the adoption of a local enforcement plan is important because it:
- Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
  - Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
  - Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
  - Provides greater certainty for all parties engaged in the development process.

### **3 Changes made to the Enforcement Plan**

- 3.1 As part of the review process it was considered to overhaul the existing plan. The revised plan seeks to tighten the existing process making it clear from the outset how officers will approach breaches of planning control, the priority of breach types, the extent of negotiation to avoid long drawn out investigations and highlights real life case studies. The revised plan also follows Government guidance and emphasises the importance of resolving breaches of planning control through negotiation in a proportionate manner.
- 3.2 One particular aspect of planning enforcement which draws criticism is the ability for contraveners to submit retrospective planning applications. It should be made clear that this is permissible via section 73A of the Act. However, this revised plan states that the repetitive submissions of retrospective planning applications in an attempt to wear down the Council will not be tolerated. In order for this to be achievable, the revised plan makes reference to the use of the power available at section 70A of the Act which prevents “similar” successive submissions within 2 years of a refusal. Additionally, where an enforcement notice has been served, the LPA will always consider using powers afforded to them via section 70C of the Act, unless there has been significant material changes in planning policy.
- 3.3 The main differences between the plans are set out below, although a comparison can be seen by comparing **Appendix A** with **Appendix B**.
- Foreword, vision and mission added (see first few pages of revised plan)
  - Promotion of Duty Planner Service and pre-application advice (see paragraph 3.3)
  - Advising what a breach of planning control is (see section 4)
  - How to report a breach electronically (see section 5)
  - Updates to priority cases (see section 6)

- What to expect from the department (see section 7)
- Explanation of possible next steps (see paragraph 8.3)
- The ability for the Council to not determine particular applications (see paragraph 8.8)
- Powers available to the Council when taking formal enforcement action (see section 9)
- Introducing a section of enforcement appeals and their complexity (see section 10)
- Prosecutions / securing compliance and relevant press releases / articles (see section 11)
- Information pertaining to enforcement register, delegation of powers, review of plan, equality and complaints process (see section 13 onwards)
- Introduction of real life examples of formal enforcement action (see Appendix A to F)
- Introduction of a new unauthorised advertisement project, linked to the Projects Register for Regulatory Services and “area projects” in respect of areas showing signs of deterioration.

#### **4 Options and Reasons for Recommendations**

4.1 Following discussion at Committee, there are 2 options available for Members:

- **Option 1:** That Members make any comments on, or additions to, the draft Planning Enforcement Plan so it can be used in the consideration of enforcement action in respect of planning control (after being ratified by Full Council)
- **Option 2:** That Members decide not to adopt the revised Planning Enforcement Plan

#### **5 Policy/Budget Reference and Implications**

5.1 There are no implications to policy or budgets.

5.2 There are no performance indicators impacted.

#### **6 Staffing, Environmental, Community Safety & Public Health Implications**

6.1 The revised plan is designed to help to ensure that special character and appearance of the district are retained, enhanced and that harmful unauthorised development is removed.

#### **7 Financial Implications**

6.1 There are no financial implications.

#### **8 Legal Implications**

8.1 The NPPF states that local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to

their area. By ensuring that the Council has an up to date enforcement plan it is meet the requirements of the NPPF.

## 9 Equal Opportunities Implications

### 9.1 Relevance Test

Has a relevance test been completed for Equality Impact?	No
Did the relevance test conclude a full impact assessment was required?	N/A

### 9.2 Impact Assessment

9.2.1 There is no detrimental impact likely towards any protected group from introducing the revised Policy.

## 10 Customer Services Centre Implications

10.1 No implications will arise. The process regarding reporting unauthorised development has not changed as a result of this review.

## 11 Communications and Website Implications

11.1 If agreed the revise plan will be displayed on the TRDC website and will be published via TRDC social media platforms.

## 12 Risk and Health & Safety Implications

12.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

12.2 The subject of this report is covered by the Regulatory Service Plan. Any risks resulting from this report will be included in the risk register and, if necessary, managed within this/these plan(s).

<b>Nature of Risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> <i>(tolerate, treat terminate, transfer)</i>	<b>Risk Rating</b> <i>(combination of likelihood and impact)</i>
<b>Option 1:</b>	Council complying with NPPF and also undertaking the only item on the audit	Members adopt.	Treat.	<b>Low 2.</b>

	Management Action Plan			
<b>Option 2:</b>	A risk that officers will not be acting on a consistent basis or complying with good practice, which could potentially impact on the Council's reputation.	Members to avoid this Option.	Treat.	<b>Low 4.</b>

12.3 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

<b>Very Likely</b> ----- <b>Likelihood</b> ----- ▶ <b>Remote</b>	<b>Low</b> 4	<b>High</b> 8	<b>Very High</b> 12	<b>Very High</b> 16
	<b>Low</b> 3	<b>Medium</b> 6	<b>High</b> 9	<b>Very High</b> 12
	<b>Low</b> 2	<b>Low</b> 4	<b>Medium</b> 6	<b>High</b> 8
	<b>Low</b> 1	<b>Low</b> 2	<b>Low</b> 3	<b>Low</b> 4
	<b>Impact</b>			
	Low -----▶ Unacceptable			

**Impact Score**

4 (Catastrophic)

3 (Critical)

**Likelihood Score**

4 (Very Likely (≥80%))

3 (Likely (21-79%))

2 (Significant)

2 (Unlikely (6-20%))

1 (Marginal)

1 (Remote (≤5%))

12.4 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

**13 Recommendation**

13.1 It is recommended that Members' agree to Option 1:

**a) That Members make any comments on, or additions to, the draft Planning Enforcement Plan for formal adoption by Full Council on 13 July 2021.**

Report prepared by: (Matthew Roberts, Team Leader, Development Management)

**Data Quality**

Data sources:

- [National Planning Policy Framework](#)
- [Planning Practice Guidance – Enforcement and post-permission matters](#)

Data checked by: Matthew Roberts, Team Leader, Development Management

Data rating:

1	Poor	
2	Sufficient	
3	High	X

**Background Papers: None.**

**APPENDICES**

**Appendix 1:** Current Planning Enforcement Plan (May 2013)

**Appendix 2:** Revised Planning Enforcement Plan (2021)