



Agenda

Report for:	Strategic Planning and Environment Overview and Scrutiny Committee
Date of meeting:	28th July 2020
Part:	1
If Part II, reason:	

Title of report:	Planning Enforcement – Summary of current position, trends and issues.
Contact:	<p>Cllr Graham Sutton, Portfolio Holder for Planning and Infrastructure</p> <p>Responsible Officer:</p> <p>James Doe, Assistant Director, Planning, Development & Regeneration</p> <p>Author:</p> <p>Philip Stanley, Team Leader, Specialist Services (Planning)</p>
Purpose of report:	To provide an update on the planning enforcement service, summarising its trends, current position and issues.
Corporate objectives:	An effective planning enforcement service is vitally important in maintaining public confidence in the planning system by assisting in the delivery of the development that has been granted and in taking action against harmful development, which has not been approved.
Consultees:	Mark Gaynor, Corporate Director (Housing & Regeneration)
Background papers:	<p>Local Enforcement Plan (2019)</p> <p>Planning Enforcement Quarterly Report – July 2020.</p>
Glossary of acronyms and any other abbreviations commonly used in Planning	<p>BCN Breach of Condition Notice</p> <p>EN Enforcement Notice</p>

Enforcement:	<p>GPDO General Permitted Development Order</p> <p>LBEN Listed Building Enforcement Notice</p> <p>LEP Local Enforcement Plan</p> <p>LPA Local Planning Authority (e.g. Dacorum Borough Council)</p> <p>NPPF National Planning Policy Framework</p> <p>PCN Planning Contravention Notice</p> <p>PEO Planning Enforcement Order</p> <p>PINS The Planning Inspectorate (the body that deals with planning appeals)</p> <p>PPG Planning Practice Guidance (sometimes referred to as the NPPG)</p> <p>TCPA Town and Country Planning Act 1990</p> <p>TPO Tree Preservation Order</p> <p>TSN Temporary Stop Notice</p>
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Introduction

1. This report is intended to provide information about DBC's Planning Enforcement Service. It will discuss the recent trends affecting the service, the situation as it currently stands, and the issues it currently faces.
2. This report is not intended to discuss the future strategic direction of Planning Enforcement in terms of its resources, priorities and abilities to overcome challenges. Further work (as outlined later in this report) is required to complete a review of the Planning Enforcement service. This review would then feed into a further report to discuss the future direction of Planning Enforcement.

Recent trends in Planning Enforcement

3. The number of planning enforcement cases has been increasing in recent years. This has increased from an average of 504 cases per year between 2010 and 2016 to an average of 550 cases per year in the last three years. This represents an approximate 10% increase in case workload since 2017. The following table provides a list of enforcement cases received per year since 2010 (*2020 as of 16 July 2020):

YEAR	No. CASES RECEIVED
2010	503
2011	538
2012	485
2013	473
2014	514
2015	508
2016	510
2017	538
2018	581
2019	531
2020*	237
TOTAL	5,418

4. Conversely, the number of planning enforcement cases being closed per year since 2010 is much less consistent, ranging from a high of 675 in 2010 to a low of 380 in 2015. This will be as a consequence of the complexity of cases being received, the amount of resources dedicated to dealing with complex cases requiring formal action versus focusing on closing simpler cases, and the overall resources available to the Planning Enforcement service at that particular time. (These matters are discussed further later in this report). It is the case, however, that the number of cases being closed in the years 2010-2012 has not been reached since. The following table provides a list of enforcement cases closed per year since 2010 (*2020 as of 16 July 2020):

YEAR	No. CASES CLOSED
2010	675
2011	576
2012	578
2013	468
2014	481
2015	380
2016	519
2017	499
2018	541
2019	483
2020*	210
TOTAL	5,570

5. When seen as an overall picture since 2010 the number of live cases has decreased by 152 cases. However, this disguises the more recent trend of an

increase in the amount of live enforcement cases, i.e. the cases currently on Enforcement Officers' books. Since 2012 there has been only one year when the Planning Service were able to close more enforcement cases than were received. In particular, in the period 2014 to date there are 306 more enforcement cases on the team's books. In other words, the amount of live cases has more than doubled since 2014. The following table provides a yearly analysis since 2010 of the number of cases received versus the number of cases closed (*2020 as of 16 July 2020):

YEAR	No. CASES RECEIVED	No. CASES CLOSED	DIFFERENCE
2010	503	675	-172
2011	538	576	38
2012	485	578	-93
2013	473	468	5
2014	514	481	33
2015	508	380	128
2016	510	519	-8
2017	538	499	39
2018	581	541	40
2019	531	483	48
2020*	237	210	26
TOTAL	5,418	5,570	-152

6. The number of live enforcement cases has increased by an average of 40 cases per year since 2014. This is broadly the same as the average recent increase in the number of enforcement cases received, i.e. 46 cases per year. In other words, the Planning Enforcement service has not been able to deal with the increase in the number of cases being received in recent years.
7. It should also be mentioned that prior to 2011 the Planning Enforcement service had four full-time members of staff. Given the need for Council-wide savings at this time, this was subsequently reduced to three full-time members of staff. Therefore, the Planning Enforcement service has, through changes to its processes, managed to deal with approximately the same number of cases coming through with one less member of staff. However, the service has not been able to cope with an increased level of demand together with a reduced resource available to it.
8. In terms of the type of planning enforcement cases received in the period 2010-2019 there is no apparent trend overall. Whilst a particularly case type may drop or increase one particularly year, it would usually rebound the next. The amount of cases the service has received regarding Estate Agent boards witnessed a noticeable increase in the middle of the decade, but this has since returned to previous levels. There has also been an increase over the decade in the number of cases received regarding development not being carried out in accordance with the approved plans. All of the other significant case types show no apparent trend, either up or down. The following table

provides the yearly figures between 2010 and 2019 of the number of cases received by the most significant case types:

	Advert	Breach of Condition	Change of use of building	Change of use of land	Estate Agent Board	Listed Building	Not in accordance with approved plans	No planning permission	S.215 (untidy land)	TPO
2010	74	41	28	43	29	14	59	120	20	13
2011	61	41	35	22	29	22	71	133	32	6
2012	33	43	32	47	41	30	55	119	30	4
2013	52	39	31	25	12	20	66	129	32	14
2014	49	43	35	37	38	31	55	122	21	8
2015	76	30	32	27	69	26	63	92	16	15
2016	48	34	27	34	55	20	77	124	18	10
2017	38	46	35	24	50	22	88	151	15	7
2018	71	40	21	26	32	22	107	140	29	12
2019	77	44	26	31	5	39	77	119	11	18

9. It should be noted that the above table does not include all case types, just those that occur the most frequently, which represent approximately 90% of all cases received. Furthermore, there is a case type 'Multiple Breach', which are not recorded in the above table, but which may include additional examples of the case types recorded in the table.
10. Planning Enforcement cases are given three levels of Priority, with level 1 being the highest and level 3 the lowest. Listed Building and TPO cases would typically (though not always) be given a Priority 1 status. From the table above it can be seen that these cases amount to around 35 cases per year. It is worth noting that priority 1 cases can be resource intensive due to the requirement to visit the site within 24 hours and the potential for a crime to have been committed.
11. In terms of formal action, i.e. the service of a Notice, it is worth noting that the first Enforcement Quarterly Report (July 2017) listed 38 cases where formal action was currently being taken. This compares to the 53 in the present edition, demonstrating that there is currently additional work required of the team dealing with formal action, whether this be defending an appeal against a Notice, trying to secure voluntary compliance, or prosecuting / considering prosecution for non-compliance.
12. The Planning Enforcement service has consistently taken robust action where it is proportionate to the level of harm being caused by the breach of planning control and where it is expedient to do so. In respect of the particular Notice type, it is worth noting the fluctuation in Enforcement Notices, as well as the recent trend for an increased use of Temporary Stop Notices. The following table details the formal Notices that have been served since 2013 (2020 includes two Enforcement Notices served on 17 July 2020):

	<i>Enforcement Notice</i>	<i>Listed Building Enforcement Notice</i>	<i>Stop Notice</i>	<i>Temporary Stop Notice</i>	<i>Breach of Condition Notice</i>	<i>s.215 Notice</i>	<i>TOTAL</i>
2013	13	0	0	0	0	3	16
2014	6	0	0	0	0	0	6
2015	9	0	1	0	2	2	14
2016	12	1	1	1	2	3	20
2017	16	2	1	2	1	4	27
2018	4	2	1	3	0	4	14
2019	13	2	0	5	1	2	24
2020	5	0	1	6	3	2	17
TOTAL	78	7	5	17	9	20	136

13. It is not possible for the recipient of a Stop Notice, a Temporary Stop Notice, a Breach of Condition Notice or a s.215 (untidy land) Notice to appeal – these, however, can be challenged in the Courts. Conversely, Enforcement Notices and Listed Building Notices can be, and are very often, appealed. This creates an issue for the Planning Enforcement Service in that it is necessary to take formal action against serious breaches of planning control, yet this has significant implications on the workload within the service, in terms of firstly defending any appeal, and then secondly trying to secure compliance once a Notice has taken effect. The following table provides details of the number of such appeals between 2010 and 2019:

YEAR	No. EN / LBEN APPEALS
2010	13
2011	9
2012	3
2013	6
2014	4
2015	6
2016	8
2017	10
2018	5
2019	10
TOTAL	74

14. Corporately the performance of the Planning Enforcement service is measured quarterly in how quickly a Planning Enforcement Officer first visits a site upon the receipt of a complaint / allegation. For Priority 1 cases the target is within 1 working day, for Priority 2 cases it is within 10 working days,

and for Priority 3 cases it is within 15 working days. In all cases, the target is that 100% of site visits are completed within their respective timescales.

15. The table below provides the performance figures for the previous two quarters, as well as a comparison with Q1 from last year. From these figures, it can be seen that the Planning Enforcement service consistently attends Priority 1 cases within the required one working day. However, the service has dropped its performance considerably in respect of Priority 2 and Priority 3 cases compared to a year ago. The reasons for this are discussed in the final section of this report.

	Q1 20/21			Q4 19/20			Q1 19/20		
	Received	Visit in time	% in time	Received	Visit in time	% in time	Received	Visit in time	% in time
P1	4	4	100	7	7	100	4	4	100
P2	11	9	81.8	39	25	64.1	51	46	90.2
P3	35	27	77.1	101	76	75.2	95	94	98.9

16. From the above table it can also be seen that Priority 1 cases typically represent about 5% of those received, Priority 2 around 35%, and Priority 3 approximately 60%.

Planning Enforcement at DBC – how it currently stands

17. Planning Enforcement is a service within the Development Management and Planning Group, led by Sara Whelan, and within the Specialist Services Team, led by Philip Stanley. The service, in essence, deals with breaches of planning controls through a variety of mechanisms ranging from ‘take no action’ to ‘invite retrospective planning application’ to ‘serve formal notice’. The route chosen depends on the severity of the harm caused by the breach and the expediency of the Council taking action in that matter.
18. Olivia Stapleford (Assistant Team Leader) leads the day-to-day running of the Planning Enforcement service, in terms of allocating and signing off enforcement cases, the preparation of formal Notices, and dealing with all appeals. The service also has two Enforcement Officers, Cora Watson and Steve Hall, who undertake the investigative work required in enforcement cases and who make recommendations within their reports. Philip Stanley, whilst not having day-to-day involvement in enforcement casework, leads the strategic direction of the service and assists in the more complicated formal notice and prosecution activities.
19. The Planning Enforcement Service up to the end of 2019 had a dedicated Technical Assistant, who dealt with the setting up of enforcement cases, the upkeep of the Planning Enforcement Register, Land Registry queries, and general Enforcement Officer support. This role was merged with the overall technical planning support in the Business Support team, and the same level of technical enforcement support is being provided in this new arrangement.

20. The service currently (as of 16 July 2020) has 540 number of live enforcement cases (received since 2006). The number of live enforcement cases increases substantially the more recent the year. For example, there are 8 live enforcement cases in the years 2006 – 2011, but 149 live enforcement cases from last year (2019). The full break down by year is as follows:

YEAR	LIVE CASES
2006	1
2007	1
2008	2
2009	1
2010	0
2011	3
2012	9
2013	4
2014	10
2015	23
2016	41
2017	53
2018	84
2019	149
2020	159
TOTAL	540

21. The above table also demonstrates that enforcement cases vary hugely in their complexity. Whilst some cases can be received and closed very quickly (in a matter of days or a couple of weeks), other cases can remain 'on our books' for a considerable number of years. The older cases will almost represent enforcement matters where formal action was undertaken (such as the service of an Enforcement Notice), but where securing compliance (such as meeting the requirements of a Notice) has proved difficult and / or complicated. It can take years, for example, to go through the Courts, if an offender is absolute resolute in their efforts not to comply with an EN. Such cases are very resource intensive and therefore the team (bearing in mind the large number of new cases coming in each month) have difficulties in finding the resources to deal with all older cases.

22. The service currently has 53 live enforcement cases where formal action has been taken and where full compliance has not yet been secured (as shown in the July 2020 Planning Enforcement Quarterly Report). These can be broken down by formal action taken as follows:

FORMAL ACTION TAKEN	LIVE CASES
Enforcement Notice	33
Listed Building Enforcement Notice	4
Stop Notice	1
Temporary Stop Notices	5
s.215 Notices	4
Breach of Condition Notices	6
TOTAL	53

23. It is worth noting that the total number of live cases where formal action has been taken represents approximately 10% of our live caseload. The other 90% will be at various stages of investigation, such as:
- A brand new case – site visit not yet undertaken.
 - Site visit undertaken – no breach or not expedient to take action – need to write up report / manager needs to sign-off report and close case.
 - Further information required – serve Planning Contravention Notice, discussions with other departments/external bodies, internet/Google Maps research, etc.
 - Retrospective planning application invited – waiting for submission / waiting for determination of application (and potentially subsequent appeal).
 - Breach has been resolved - need to write up report / manager needs to sign-off report and close case.
 - Formal Notice is being prepared, potentially in conjunction with Legal.
24. In addition to the above, there are two live enforcement cases currently with the courts, one in respect of prosecution for works to TPO trees without consent, and one challenge against the authority's service of a s.215 Notice.
25. The Planning Enforcement service works primarily within the legislation of the Town and Country Planning Act 1990 and the Listed Buildings and Conservation Areas Act 1990, national policy within the National Planning Policy Framework (NPPF) and local planning policy in the Core Strategy (2013) and the Local Plan (1991-2011).
26. The actions of the Planning Enforcement service are further guided by its Local Enforcement Plan (LEP), which has recently been completely re-written and was adopted by the Council in November 2019. The LEP provides an up to date analysis of the planning enforcement tools at the team's disposal, and details its core principles when deciding to use them, and how the respective parties are engaged in the enforcement process. It also outlines the planning enforcement's priorities and its approach to proactive enforcement action.
27. A majority of planning enforcement cases are dealt with on a reactive basis, i.e. an investigation will commence after we have received a report of an alleged breach of planning control. However, this LEP acknowledges that there are some 'hot topics' or 'problem areas' where the team's resources can be focused to make the maximum impact.
28. As such, Section 9 of the LEP introduced 'Priorities and Projects'. This section will be reviewed on an annual basis to take into account changing priorities, as well as the overall resources of the Planning Enforcement team at that time. For the first year of this document (i.e. 2020), the LEP is

prioritising, firstly, Major Developments and, secondly, adverts/banners in three problem areas. The full details of these projects can be found in the LEP.

29. Recently, St. Albans City and District Council undertook a comparison of the Planning Enforcement services across Hertfordshire (attached as Appendix A), in terms of the number of full-time employees in a Council's Planning Enforcement service and the number of formal Notices served.
30. Two of the nine authorities (Stevenage and Three Rivers) were not directly comparable as the structure of their planning department sees planning enforcement embedded into the Development Management function, i.e. an Officer deals with planning enforcement and planning applications. In respect of the other seven authorities, Broxbourne has 1.6 FTEs, Hertsmere and North Herts match Dacorum in having 3 FTEs, St. Albans, Watford and Welwyn & Hatfield have 4 FTEs, whilst East Herts has 4.5 FTEs.
31. In respect of Notices served, the data is less useful as it is unclear whether an authority's figure only includes Enforcement Notices, or the full range of Notices that could be served. Furthermore, some authorities may split breaches at one site over several Notices. Nevertheless, in terms of the most Notices recorded Dacorum placed joint fifth out of the ten Hertfordshire Authorities.

Current Issues in Planning Enforcement

32. The Planning Enforcement Service is a very busy team that is finding its workload, both in terms of enforcement cases and dealing with formal Notices, on the increase.
33. The Planning Enforcement Service has to balance the competing demands of undertaking the first site visit of a new case within the corporate performance timescales, ensuring that current cases reach a conclusion (and formal action is taken where required), and attempting to close historic cases. This balance has become increasingly difficult to perform for the following reasons.
34. Firstly, the service has within the last six years had to deal with three Enforcement Officers leave the team (two of which were promoted within the Planning Department). As there are only two Enforcement Officers in the team this has meant that for periods approaching three months, on three separate occasions, the team has been at only 50% capacity in dealing with new cases coming in. Furthermore, the unresolved cases of the Officer who left has had to be picked up by the team. Even when a new starter has commenced the team's resources become stretched as the new Enforcement Officer requires training and support before they are fully up to speed.
35. Secondly, the Covid-19 pandemic has severely affected and elongated the working practices of the Planning Enforcement service in four ways.

- i) Site Visits: In the initial weeks of the lockdown site visits were virtually all curtailed. Subsequently, it became possible to undertake site visits where we could guarantee no social contact. Only more recently have the team started to undertake site visits again more generally. However, this is preceded by a letter informing the owner of the visit and the completion of a risk assessment, both of which add to the time needed for a case. The need for a letter also prevents the service from undertaking unannounced site visits, which is a key part of investigating change of use breaches of planning control. Furthermore, when an owner claims health issues, no site visit can be undertaken. The overall result of this is an increasing and concerning backlog of site visits required (first site visits and compliance site visits).
- ii) Appeals: The Planning Inspectorate initially put on hold all appeal work. More recently, they have started to undertake unaccompanied site visits where they can, and in a few cases, have completed 'remote' Hearings and Inquiries. As such planning enforcement appeal work has been delayed and / or has become more time consuming.
- iii) Notices: To reflect the difficulties affecting everyone in the Borough the Planning Enforcement service has had to firstly delay the service of a formal Notice, and where Notices have been served, have had to increase the period in time before they take effect. These processes have increased the amount of effort and time being spent on securing a voluntary resolution, whereas often it is preferable to reach a conclusion quicker.
- iv) Compliance: It has become even harder for the Service to secure compliance with formal Notices because the offenders are claiming they need more time to bring in contractors, etc. to do the works, or claiming health reasons for not doing the works. Furthermore, the Magistrates Courts were not functioning and this has only served to increase their backlogs and the amount of time it takes to bring forward and complete prosecution proceedings.

36. The large and increasing live caseload has a number of other important implications.

37. Firstly, it has resulted in a change in the way that the Planning Enforcement service treats cases in that we have increased the 'expediency bar' and are considering increasing this further. This means that cases are closed because it would not be expedient for the Council / Planning Enforcement service to use its resources on a particular matter. It has always been the case that not all breaches are harmful, and it is right and proper that cases are closed down quickly where the breach is minor and results in no harm. This allows the service to concentrate its resources on the cases that need formal action or where significant harm is being caused. However, a 'not expedient' conclusion effectively grants planning permission for a development without neighbours having a chance to comment, as is their normal right in a planning application consultation process. Furthermore, closing a case as 'not

expedient' can sometimes create more work for the service in explaining to the complainant why their concern has been closed, or in responding to complaints about inaction. Therefore, there is a balance to be struck between closing cases quickly as 'not expedient' and the potential consequences of doing so.

38. Secondly, it is an increasing challenge to deal with criminal offences, such as non-compliance of formal notices and works being undertaken to TPO trees or Listed Buildings without the required consent. Such cases are extremely resource intensive in that they could involve interviews under caution, the preparation of witness statements and prosecution papers, attendance at Court, procuring contractors to undertake Direct Action on behalf of the Council, etc. The failure to not prosecute in certain clear cases, potentially results in the continuation of the ongoing breach, but also could see the Council developing a reputation where it is known as an authority which is not prepared or not able to take the legal steps required to attempt to secure compliance with breaches of planning control. The service has to take hard decisions, therefore, on how to deploy resources most effectively across its caseload with regard to the seriousness of each case.
39. Thirdly, there are a several trends that are resource intensive, both in terms of the number of cases that the Planning Enforcement service have to investigate, and also in terms of looking at additional protections for certain areas, such as Article 4 Directions. These trends include a rise in the number of fields or woodland that have been bought and then re-sold in much smaller parcels, and a rise in the number of House in Multiple Occupation (HMO) or Airbnb type arrangements.
40. To deal with these issues and pressures on the Planning Enforcement service, the department is currently undertaking a full review of the service. This will analyse in detail the following (but not limited to) measures: work in progress; the length of time taken to deal with particular tasks; the way we correspond and update neighbours and offenders; and increased use of templates and automated e-mails.
41. This is important work as it will provide the data required to make informed decisions about the future strategic direction of the Planning Enforcement service. This work will enable the service to operate as efficiently as possible with the resources currently available to it. Subject to the outcomes of this review it will then be necessary to consider whether particular tasks need to be undertaken at all or whether more resources are required.
42. Finally, a report will be taken to the Development Management Committee in October 2020 as part of the Planning Enforcement Quarterly Update. This report will discuss the Local Enforcement Plan's priorities for 2021 and will give Members an opportunity to feed into the process of deciding these priorities, taking into account, for example, consistent concerns being raised by their constituents.

Appendices

- 1. St. Albans District Council 'Review of Planning Enforcement across Hertfordshire'**