



Report for:	Cabinet
Title of report:	Additional Planning Enforcement resource
Date:	18 July 2023
Report on behalf of:	Councillor Wilkie, Portfolio Holder for Place
Part:	I
If Part II, reason:	N/A
Appendices:	Appendix 1: 300-Plan Resources Requirement
Background papers:	Local Enforcement Plan (https://www.dacorum.gov.uk/docs/default-source/planning-development/local-enforcement-plan.pdf?sfvrsn=7f37eb9f_16)
Glossary of acronyms and any other abbreviations used in this report:	BNG: Biodiversity Net Gain HRA: Habitats Regulations KPI: Key Performance Indicator PPEO: Principal Planning Enforcement Officer SANG: Suitable Alternative Natural Greenspace TPO: Tree Preservation Order

Report Author / Responsible Officer

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Corporate Priorities	A clean, safe and enjoyable environment Building strong and vibrant communities Ensuring economic growth and prosperity Ensuring efficient, effective and modern service delivery
Wards affected	ALL
Purpose of the report:	1. To highlight the current situation within the Planning Enforcement team.

	<ol style="list-style-type: none"> 2. To explain why additional resource is required and what can be achieved with this additional resource.
<p>Recommendation (s) to the decision maker (s):</p>	<ol style="list-style-type: none"> 1. To secure agreement for two temporary Planning Enforcement Officers, with a combined resource of 16 months. 2. To recommend to Full Council to approve a drawdown from the Dacorum Development Reserve of up to £110,000.
<p>Period for post policy/project review:</p>	<p>The impact of the additional resources of live caseload will need to be reviewed 12 months after the introduction of that additional resource.</p>

1 Introduction/Background:

- 1.1 Dacorum Borough Council has a very high quality environment, both urban and rural, and having an active and well resourced planning enforcement service plays an important role in maintaining attractive and sustainable communities to the benefit of all the Borough's residents.
- 1.2 Planning enforcement sits at the heart of the planning system. Without it, planning legislation is meaningless. However, current resources within Planning Enforcement are not sufficient to deal with the caseload that the team is currently experiencing and expecting to receive.
- 1.3 Dacorum's planning enforcement service has made great strides over the past year or so to bring down the outstanding caseload, but remains under great pressure both with new cases arising and in clearing the more challenging breaches of planning control. In terms of serving formal notices to enforce planning control, Dacorum is the most active authority in Hertfordshire. It is important that this good performance is maintained to be benefit of our residents that will be looking to the Council to resolve difficult issues.
- 1.4 Retention and recruitment has proven to be very difficult in this challenging area. This report sets out a request for resourcing two further officers for the next 16 months. It sets out the challenges the service faces, the temporary measures introduced in response to the rising pressures for action, and the resource required to improve the situation.

2 Key Issues/proposals/main body of the report:

2.1 Current team situation

- 2.1.1 The team has historically been subject to resourcing shortfalls with a significant period passing between one Enforcement Officer departing and a new postholder arriving. More recently, the team has found it very hard to recruit into the Principal Planning Enforcement Officer (PPEO) role. This led to caseloads reaching unsustainable levels, which peaked at 620 live enforcement cases, as well as a backlog of formal enforcement work, i.e. serving of Enforcement Notices.
- 2.1.2 Currently, the team have filled all substantive posts and contains the PPEO and two Planning Enforcement Officers. However, recent staff movements have resulted in the departure of an experienced member of staff and the recruitment of a new member of staff with no prior Planning experience, who will require time to train and become proficient in the post.

2.2 Workload

- 2.2.1 The Planning Enforcement team has recently succeeded in achieving the objectives set in the '400 Plan'. This was a project to reduce case numbers from 620 to 400. A percentage of the caseload consisted of cases that were resolved through the grant of a retrospective planning application, or because no further action after a report assessing the expediency of the case, or were immune from planning enforcement action (because the 4 or 10 year periods in which to take action had passed). These cases were the 'quick to resolve' group.
- 2.2.2 Having achieved the target of bringing live caseload down to 400 cases, the remaining caseload has a higher proportion of more complex, and more resource-intensive cases, such as where informal negotiations have not achieved the desired effect, or where formal enforcement action is now required. Consequently, taking live caseload from 400 to 300 live cases will take considerably more work than it did reducing live caseload from 500 to 400.

- 2.2.3 In the last six months, the Planning Enforcement team has prioritised these complex cases, particularly in relation to cases where significant harm is caused by the breach of planning controls or where there is a risk that further planning enforcement action may not be possible due to the 4 and 10 year immunity rules. Dealing with such complex cases, typically requires the issuing of formal notices in an attempt to resolve the breach. The work involved in taking such formal action is case dependant, but usually requires a substantial amount of time to go thoroughly investigate and draft the notice to ensure a robust and defensible case. This focus on taking formal action in relation to complex cases has a consequential impact on the resources available in investigating new reported breaches of planning controls.
- 2.2.4 It must be noted that Planning Enforcement Notices are typically appealed. A recent sharp increase in the number of Notices served has consequently resulted in the generation of more work in defending the Notices at appeal. Beyond this, when an appeal has been successful, it is necessary for the team to ensure compliance with the requirements of the Enforcement Notices. Dealing with non-compliance of Notices, for example through Direct Action or commencing prosecution proceedings, takes up a very significant resource.
- 2.2.5 In essence, the team has three main types of workload:
- i) **New cases:** Upon receiving details of a new Planning Enforcement matter, the team is required to undertake a first site visit within 1, 10 and 15 working days for Priority 1, 2 and 3 cases respectively. Priority 1 cases need to be dealt with urgently as potentially irreversible work is taking place, for example, to a Listed Building or a TPO tree. First site visits have a KPI of 100% across all three priority ranges.
 - ii) **Continuing cases:** Whilst some cases can be closed after one site visit, many require additional investigations and the team has several tools at its disposal to gain the information needed to establish whether a breach of planning has taken place and whether this breach causes harm. It is very important that these cases progress to a conclusion. Ultimately, for our customers, whilst they expect the team to visit a site in a timely fashion, they also expect a resolution within a reasonable time period.
 - iii) **Established cases:** This relates to cases which have either become stuck due to complexity, the departure of staff (and the live cases allocated to them remaining unresolved), or where formal action has been taken. It is vital that these old cases do not linger indefinitely as they become increasingly harder to enforce (or the reasonableness of enforcing) as time passes.
- 2.2.6 The Enforcement service is a strongly performing team, demonstrated by the reduction in live caseload over the past 18 months, and also by virtue of the fact that Dacorum has taken more formal action (i.e. serve Enforcement Notices) than other Hertfordshire authorities for the past two financial years. Nevertheless, the team does not currently have the resources to take all the required action needed across all three types of workload.
- 2.2.7 As a consequence, the team is also receiving a large number of emails from customers, such as asking for a status update of their enforcement case. Responding to these emails takes up scarce capacity, leaving even less time to actually deal with the cases, resulting in a vicious circle.
- 2.2.8 The team has a strong desire to provide a service with a strong customer focus, one where decisions are taken in a timely, professional and well-reasoned manner. It is therefore proposed that a new 2-year project is implemented, called the '300 Plan'. This project aims to bring the total live caseload down to 300. Once the target of 300 live cases is reached, the position of the team will need to be reviewed to assess

whether this figure represents a sustainable total case number going forward, or whether a Phase 3 of the overall project is required to reduce live caseloads to 250. Overall, it is important for the Service to meet the objectives set out in the Dacorum Local Enforcement Plan, which is what the public expects of the service.

2.3 HRA and BNG

- 2.3.1 In addition to the pressures described above, there are two very significant developments in Planning Services that require, or will require, considerable additional Planning Enforcement resource. These are the impacts of the Habitats Regulations (HRA) and Biodiversity Net Gain (BNG).
- 2.3.2 In respect of the HRA, the Chiltern Beechwoods designation of a Special Area of Conservation has impacted the Planning service as a whole. The Council is at a critical turning point where large developments consisting of more than 9 dwellings are permitted to progress within the strategic SANG catchment zone following successful agreement of a Habitat Regulations Assessment Mitigation scheme under a Unilateral Undertaking through a section 106 agreement. However, some developers have started development without obtaining the relevant mitigation scheme requirements. Consequently, there is increased pressure on the Planning Enforcement team to deal with an issue that did not exist 18 months ago. The team will need to investigate these cases and prepare, as appropriate, Temporary Stop Notices and/or Stop Notices and Planning Enforcement Notices, either requiring the development not be occupied or the development be demolished (case dependant). Such enforcement work, as described above, is very resource intensive.
- 2.3.3 In respect of BNG, this is an approach to development, and/or land management, that aims to leave the natural environment in a measurably better state than it was beforehand. The Environment Act 2021 sets out the following key components of mandatory biodiversity gain, such as a minimum 10% gain and habitat secured for at least 30 years via planning obligations or conservation covenants. This mandatory requirement will come into place in November 2023 for major schemes and in April 2024 for all other schemes. The Government's response to the BNG consultation stated "the planning enforcement regime will be the principal way of enforcing delivery of BNG". As BNG will affect every application above a householder level, this is potentially a very significant further demand on Planning Enforcement resources.

2.5 Resource request

- 2.5.1 After the successful completion of The 400 Plan, the team is now commencing phase 2 of the overall plan to reduce live caseload to sustainable levels. An analysis has been made of the resources required to investigate and close enforcement cases of varying levels of complexity, the existing resources within the team, and consequently what would be required to overcome that shortfall. This analysis is fully detailed in Appendix A.
- 2.5.2 This analysis has established that an additional Planning Enforcement Officer resource of 16 months (preferably split across two Officers to make a more immediate impact) would enable the service to reach a live enforcement caseload of 300 within 10 months of that additional resource first coming on board.
- 2.5.3 A summary is provided in the table below:

ADDITIONAL RESOURCE	CASELOAD AT END OF 10 MONTHS FROM INTRODUCTION OF AGENCY STAFF	COST (£35-45/hr)

2 AGENCY STAFF (1 FOR 10 MTHS AND 1 FOR 6 MONTHS)	Caseload reduced to 300	£85,470 - £109,890
1 AGENCY STAFF (10 MONTHS)	Caseload reduced to 370	£51,800 - £66,600
NO ADDITIONAL RESOURCE	Caseload increases to 480	Nil

2.5.4 The outputs outlined in the table above may be subject to change if:

- There are some unforeseen absences, e.g. sickness;
- Cases being received go above 10-year average figures.
- The recruitment of the second Agency staff member takes longer than expected to come aboard.
- There is an unexpectedly high proportion of new complex cases, such as those requiring immediate formal action.

2.5.5 It should be noted that, bearing in mind the 10-month timescales indicated above that the aim of reducing live enforcement caseload will cover both 2023/24 and into the beginning of 2024/25.

3 Options and alternatives considered

3.1 Do nothing

The team will continue to lack the resources to undertake all the work expected of it. Indeed, the situation is likely to become worse as the two team members must find time to train the new inexperienced member of staff who is due to start soon.

3.2 Appoint a 10-month Planning Enforcement Officer and a 6-month Planning Enforcement Officer

This would have the following benefits:

- Capacity available to pick up some of the unallocated cases.
- New cases received are more likely to meet service first site visit performance targets.
- Cases that require formal action are more likely to be served and less likely to run low on time due to immunity through passage of time.
- Greater chance of successful delivery on the 2023 Planning Enforcement Policy projects (open cases received prior to 2016 reduced by 50%, open cases received in 2020 reduced by 50% and Berkhamsted A board advertisement compliance).
- Live caseload would reduce to 300, bringing caseload to more sustainable levels.
- Improved staff morale and wellbeing.

3.3 Solely appoint a 10-month Planning Enforcement Officer.

This would achieve many of the benefits above, but would only see live caseload fall very marginally, and certainly not a level that is sustainable for the existing team once that resource is removed.

4 Consultation

The Senior Leadership Team have been consulted and supports the proposals. There has been no wider stakeholder engagement in respect of these proposals.

5 Financial and value for money implications:

- 5.1 The financial implications of these proposals are described in paragraph 2.5.6 of this report.
- 5.2 The team will ensure that agency staff will be paid according to their level of knowledge and experience, and therefore the hourly rate will reflect the complexity of the Enforcement cases they are able to lead on.
- 5.3 Whilst this proposal represents an additional cost to the Council, it has the potential to secure efficiencies. For example, it should reduce the number of customer emails seeking an Enforcement case status update, whilst it will also bring caseloads down, at an individual level, to more manageable caseloads. Furthermore, a proactive enforcement service, with a reputation for taking robust action would discourage breaches from occurring in the first place, thereby reducing potential future caseloads.
- 5.4 Finally, this proposal could lead to an increase in the amount of retrospective planning applications being received, and consequently an increase (albeit very modest) in planning application fees being received.
- 5.5 It is proposed that these costs are met through a drawdown from the Dacorum Development Reserve.

6 Legal Implications

The Council, as the Local Planning Authority, has a statutory duty to investigate alleged breaches of planning control. The proposals outlined in this report would enable the Council to carry out these duties in a more timely and efficient manner.

7 Risk implications:

The risks of not agreeing to the proposal are summarised as follows:

- The majority of cases will have to remain in an unallocated state until permanent resources required are met.
- The corporate KPI of undertaking first site visits will fall considerably below target.
- The influx of cases requiring formal activity are more likely to run out of time for action due to immunity through the passage of time.
- The team will lack the resources to undertake some formal actions, prosecutions, etc. This could result in significant reputational damage to the Council and could result in other developers copying those who 'have got away with it'.
- Risk the successful delivery on the 2023 Planning Enforcement Policy projects (open cases received prior to 2016 reduced by 50%, open cases received in 2020 reduced by 50% and Berkhamsted A board advertisement compliance).

18 Equalities, Community Impact and Human Rights:

A Community Impact Assessment is not required for this report. There are no Human Rights Implications arising from this report.

9 Sustainability implications (including climate change, health and wellbeing, community safety)

There are no sustainability implications arising out of these proposals.

10 Council infrastructure (including Health and Safety, HR/OD, assets and other resources)

An Enforcement service with additional resources would undoubtedly be able to investigate and take the appropriate enforcement action on an increased number of cases at the same time. This could lead to the need for increased support from the Council's Legal service in the form of advice on planning matters, advice on the drafting of Enforcement Notices, or dealing with prosecutions.

11 Statutory Comments

Monitoring Officer:

As set out in the legal implications section, the Council has a duty to investigate alleged breaches of planning control and take action where it is expedient to do so. The additional resource should help the Council to fulfil this duty within a reasonable period of time.

Deputy S151 Officer:

The additional Planning Enforcement resources requested is unbudgeted and would be supported by a drawdown from revenue reserves. Reserve resources are one-off in nature. There are sufficient resources within the Dacorum Development Reserve to support the resource request set out in this report.

12 Conclusions:

- 12.1 The Planning Enforcement service has made great strides in reducing live caseloads in the past 12-24 months, with a reduction in live enforcement cases from 620 to 400 and through its robust action in taking formal enforcement action when appropriate (at higher levels than all other Hertfordshire authorities).
- 12.2 These excellent results were achieved despite the significant staffing challenges that the team has faced over the past 12 months. However, to go the next step, i.e. from 400 to 300 live enforcement cases, additional resources will be required.
- 12.3 The Planning Enforcement service strives to improve its efficiency and efficacy in order to continue to play a key role in the attractive and sustainable place making of this Borough. Upon securing the additional resources proposed within this report, the Planning Enforcement team will be able to resolve more enforcement cases, in a shorter timeframe. This will lead to the Borough both generating a reputation of having a strong planning enforcement function, and also a more efficient and resilient planning enforcement service.