

REPORT OF THE
OVERVIEW AND SCRUTINY
SERVICES PANEL

DRAFT REVIEW OF
PLANNING ENFORCEMENT
ACTIVITIES

JANUARY 2009



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1.0 Outline of the Planning Enforcement Activity Report

- 1.1 During 2006 the Development Panel was given approval to undertake a review to examine the planning enforcement options available to Teesdale District Council, the role of Councillors and the workload of the Enforcement Officer.
- 1.2 Members agreed to investigate the effectiveness (at the time) of the present system of planning enforcement. Amongst other things, this entailed looking at resources, workload and the inherited backlog situation.

2.0 Brief overview of the Role of Planning Enforcement

- 2.1 Planning Enforcement is an essential requirement of any local authority in order for it to ensure that its development control framework works effectively. The complicated nature of the work does mean that it is not easy to always see things in just black and white and as straightforward. Some cases can be resolved by agreement but others can lead to complicated and time consuming investigations and, eventually, legal proceedings.
- 2.2 Like most authorities Teesdale District Council (TDC) operates in a reactive way to complaints received on planning and development, taking into account the resources available to carry out the work.
- 2.3 It must be noted that planning enforcement is a discretionary power, and national guidance exists which indicates that local authorities should always attempt to resolve matters by negotiation wherever possible. In order to commence any form of enforcement action, it must first be established that there is a breach of planning control. If this is the case, then the planning authority must determine whether the breach would unacceptably affect public amenity or the use of land or buildings. This decision is usually taken by the enforcement officer using powers delegated to them by the Council.
- 2.4 In 2006 the Overview and Scrutiny Committee carried out a comprehensive review of the enforcement activities at TDC. Due to the perceived high number of outstanding enforcement cases, it was decided to re-visit this area of work to see where we are now as we approach the creation of the new unitary authority. In 2006, at the time the previous report was written, the outstanding caseload was 329 cases. This was broken down as follows:

125 Current year case load

73 Cases outstanding 1 year +

69 Cases outstanding 3 years +

62 Cases outstanding 5 years +

The report made a number of recommendations in its conclusion:

(a) That the Director of Community Services is required to provide:

- (i) a Planning Enforcement Protocol to include a scheme of delegation and an agreed Procedure for reporting to members; and
- (ii) a scheme of prioritisation for enforcement complaints.

2008 - A Planning Enforcement Protocol (i) has not been effectively introduced, in part due to the decision to move towards Unitary and the gradual loss of key personnel in the Planning Department. Reporting cases to members has been done through the weekly planning updates that all members receive. A prioritisation scheme for complaints (ii) has been established (see below)

(b) That the Head of Planning and Building Control is required to provide:

- (i) an effective performance management system to cater for the virtual elimination of the current backlog of outstanding enforcement cases;
- (ii) contingency plans in the event of an upturn in caseload; and
- (iii) a relevant set of performance indicators for the service.

2008 - Effective performance management systems (i) have been put in place and are dealt with further in this report. Due to the move towards Unitary and the gradual loss of key staff, any contingency plan (ii) in the event of an up turn in complaints has been virtually impossible to introduce. Performance Indicators (PI) (iii) for the service have been effectively introduced.

(c) That the Director of Corporate Services is required to provide:

- (i) an examination of alternative legal provision for the enforcement function; and
- (ii) a Performance Action Team to assist in the establishment of a robust computer model for the enforcement process.

2.5 TDC continues to operate with one Enforcement Officer covering all the complaints received on planning and development control. Across the seven District councils, only one operates with more. Whilst it is impossible to predict the number of complaints received by the Council, it has been shown that by having a robust procedure for handling all referrals it enables the enforcement officer to prioritise the workload. All complaints are looked into and from

examining the current procedure in operation, it is clear that TDC operates an effective scoring system.

3.0 Enforcement Procedure

3.1 It was found that consistent approaches were taken in relation to each breach and a standard letter was modified to suit each case. The initial letter seeks voluntary compliance, asking the offender to apply for retrospective planning permission (if the works are considered acceptable), or to take down a building or to stop work/a use, giving them a period for compliance. If the offender complies then the case file can be closed. If the offender does nothing and there is sufficient harm from the breach they will be reminded of the steps required before formal action is necessary. If there is still no response a planning contravention notice is served, after which the Council can serve an enforcement notice where it is deemed appropriate and justified given the circumstances. All of the enforcement process is subjective; there are no rules or standards and each case is assessed on the facts of that case.

3.2 Once a complaint has been received the Enforcement Officer adopts a consistent approach to assessing, monitoring and observing whether there is a breach of planning control - this being a time consuming exercise. Detailed research into breaches has to be undertaken before any enforcement commences.

3.3 A complaint regarding change of use is more complex as it requires an assessment of the change, planning history, case law, legislative requirements and the degree of change and the “planning harm”.

4.0 Scoring System:

CODE	BREACH	POINTS
P1	Unauthorised works to protect trees (i.e. covered by TPO and/or Conservation area) Unauthorised works to Listed Buildings or Ancient Monuments of SSSI's	10
P2	Severe harm to residential amenity or public health	8
P3	Severe harm to visual amenity	6
P4	Unauthorised works affecting a Conservation Area or AONB	2
P5	Development contrary to established policies (examples): 1. New dwelling in countryside (inc caravans/mobile homes 2. Retail outside settlement limits	2
P6	Breach of planning conditions or s.52 Agreements or 106 Obligation Agreements	1

P7	Development likely to become immune from enforcement within 12 months	2
P8	Repeated breach	1
P9	Advertisements	1
P10	Ageing file – 2 months Each month thereafter	1

High priority cases - score 13+

Medium priority cases – score between 6 and 12

Low priority cases – score between 0 and 5

- 4.1 The concern has been the number of outstanding enforcement cases dating back a number of years. Where possible the Enforcement Officer has attempted to resolve these cases.
- 4.2 Prior to 2005, the post of Enforcement Officer was part time and, when the post became vacant, the former Head of Planning & Building Control had to justify to members a full time position. It was confirmed that the new post holder would inherit a back log of enforcement work. Teesdale District Council's planning service has historically been under resourced.
- 4.3 The 2007 Peer Review of Planning Services acknowledged the Council's lack of resources and the fact that the Planning Delivery Grant isn't invested back into the planning service. The report also refers to officers' heavy case loads and acknowledges the progress made with regards to enforcement.
- 4.4 When planning officers started to leave the department, it was agreed that planning applications would be a higher priority than enforcement. This decision led to the Enforcement Officer's time being directed to validating planning applications, householder enquiries, planning appeals etc, which left less time to undertake enforcement work.
- 4.5 Priority has been given to resolving cases received prior to 2005, with the Enforcement Officer allocated a personal PI of closing 4 old cases each month and a total of 12 cases. Between January 2007 and December 2008 94 old cases were closed/resolved.
- 4.6 Performance on resolving current year cases has also improved since 2006, going from 37% to 43% in 2008. The number of complaints received has also increased. The outstanding caseload as at 19 November 2008 was 287 cases.

4.7 Outstanding cases from 2000 - 2004

2000 – 3 cases

2001 – 3 cases

2002 – 6 cases

2003 – 14 cases

2004 – 46 cases

A more detailed breakdown for the last 3 years:

2006

	Cases closed	Total cases received	Percentage closed
Jan - Jun	11	46	23%
Jan - September	28	93	30%
Jan - December	53	122	43%
Total cases resolved in year	142		37% of total closed cases were 2006 cases

2007

	Cases closed	Total cases received	Percentage closed
Jan-Jun	19	80	23%
Jan-September	39	108	36%
Jan-December	59	148	40%
Total cases resolved in year	145		40% of total closed cases were for 2007

2008

	Cases closed	Total cases received	Percentage closed
Jan-Jun	15	81	18%
Jan-September	53	132	40%
Jan-December	75	162	46%
Total cases resolved in year	182		41% of total closed were 2008.

4.8 Once an enforcement notice is served, a reasonable period for compliance must be provided, which will depend on the circumstances of the case, employment issues, human rights etc. and can be anything from 3 days to months/years. An offender has the right to appeal the notice, and if this is taken up it can take between 10 and 12 months before the Planning Inspectorate will be able to make a decision on the appeal/notice, during which time the notice and enforcement is suspended. If they do not appeal, then a notice will take effect after a minimum 28 days.

4.9 Once a notice is extant, then there is the issue of enforcing any failure to comply with the notice. This will be an issue when the new Unitary Planning Authority comes into being on 1 April 2009, however it currently applies to Teesdale District Council.

5.0 Mediation

5.1 Larger authorities have access to a mediation service, which serves to negotiate with both parties in a dispute as this helps to resolve issues before the disagreement escalates further. This service deals mainly with neighbour disputes rather than planning issues. Teesdale does not have access to this service, and it has become necessary for the planning service to suggest/arrange mediation on planning matters that have escalated, even though there is no specific budget for this.

6.0 Enforcement Write Offs

6.1 The Enforcement Officer spends a lot of time writing detailed reports for each enforcement case, including enforcement write offs. Enforcement write off reports include site/enforcement and planning history details as well as details of all site visits, letters and phone calls and it is a statutory requirement that full justification is given on why the authority is not taking enforcement action when a breach of planning control has been identified, otherwise the complainant may have cause to challenge the decision making process.

6.2 There is no written procedure for dealing with write off cases. Guidance is provided by government on matters to be considered ie level of development and harm, along with the likelihood of planning permission being granted or conditions which apply. With all enforcement matters it is a “matter of fact of degree” in each case and subjective. However, the Planning Enforcement Officer/Planning Authority are required to set out their reasons for writing the case off as the decision is open to challenge by complainants, which is why there is no formal report prepared for each case; under the Scheme of Delegation the matters are considered and authorised by the Chair of the Planning Committee. The prioritisation of cases assists in this determination, by allocating low, medium and high priority based on the harm and circumstances of the individual cases.

7.0 Legal Services

- 7.1 It was necessary to outsource all legal services, including the planning legal service. As planning is a complex area of the law, it was agreed that Darlington Borough Council would provide planning legal advice as they are familiar with planning issues and other district matters. The downside to this is that response times are slow and advice isn't always clear, although it is recognised that enforcement is complex. It may have been prudent to consider using one of the major private law firms in the area, as other authorities have in Durham's seven districts. This is an area that was highlighted in the 2006 report as requiring action but this was not done and it is too late to change now.

8.0 LGR

- 8.1 In the lead up to the establishment of the new unitary authority, officers within the district have been participating in the process of sharing best practice in order to formulate working procedures and policies for the new planning service.

9.0 Changes to Legislation

- 9.1 From 1 October 2008, the new planning bill changed the rules for householder "permitted development", where planning permission is not required. There are major loopholes in this new legislation, which will potentially have a greater impact for enforcement. For example, if new materials don't match existing ones then they would need permission, which is different to the old rules, where they could use whatever they liked as long as it didn't exceed a certain size. The impact of this change is still being considered by Planning Forums and the working groups referred to above.

10.0 Conclusion

- 10.1 Despite the obvious difficulties over the last 18 months it has to be recorded that significant progress has been made since the Overview and Scrutiny review in 2006. As at January 2009, there are 275 outstanding cases.



Planning Enforcement Manual

Planning Enforcement Investigation Priority Policy

Standard Operating Procedure 1A – Enforcement Complaints and Investigations Scheme of Priority

Background

A system of prioritisation for undertaking initial site visits and thereafter for dealing with the identified breaches of planning control.

Policy Approved by:

Last Update/Reviewed:

Date of Next Review:

STANDARD OPERATING MANUAL 1A

PRIORITY POLICY

1 PURPOSE

- 1.1 To provide an effective system of prioritisation for officers for dealing with investigations and alleged breaches of planning control and thereafter a system to prioritise case work where a breach has been identified from the initial site visit.

2 SCOPE

- 2.1 This Procedure is to be applied to all complaints/allegations recorded on the local planning authorities Enforcement System, giving a fair and consistent approach to both initial investigations and the follow up action.

3 RESPONSIBILITIES

- 3.1 The Head of Planning & Building Control (HPBC) shall be responsible for the relevance and application of the procedure and any subsequent revision and amendments.
- 3.2 All investigations and preparatory work will be undertaken by the Planning Enforcement Officer (PEO) in consultation with the Development Control Manager (DCM), the HPBC and Planning Officer, unless the PEO has declared an interest relating to the matter whereupon the DCM will instruct a PO to deal with the matter.
- 3.3 All authorised officers shall be responsible for acting in accordance with this procedure.

4 GENERAL

- 4.1 This Procedure forms part of the Planning Enforcement Policy, the objectives of that Policy shall be considered and adhered to throughout the implementation of this Procedure.
- 4.2 When following this Procedure, in addition to 4.1 above, all officers must comply with the requirements of the Act but specifically, sections 171E to 171H and sections 183 and 184 of the Act, and all other relevant primary and secondary legislation and specifically the following:
DETR Circular 10/97: Enforcing Planning Control
The Human Rights Act 1998
The Data Protection Act 1998
The Regulation of Investigative Powers Act 2000
The Police & Criminal Evidence Act 1984
- 4.3 When following this Procedure, all officers must comply with the authority's adopted procedures, specifically the:-
Corporate Enforcement Policy.
Human Resources Policies – eg Lone Working, Health & Safety, Race Relations, Equalities and Diversity, Disability Discrimination.

5 PRIORITY SYSTEM FOR INITIAL SITE VISITS

- 5.1 Once the authority has received a complaint/allegation the information will have been recorded using the case form (attached at Appendix A) and passed to the PEO in order to input the data into the computer system.
- 5.2 The PEO using the system outlined in 5.6 below will identify the category of alleged breach and undertake the site visit within the timescale provided.
- 5.3 Site visit notes will be made on the file at the time of the visit or immediately afterward. Photographs will be taken to record the level of development etc at the time of the site visit. Where a file has not been prepared full notes must be taken in the PEO's notebook and then transferred to the file as soon as

possible. The information should then be recorded on the computer case file as soon as possible.

5.4 The PEO or visiting PO must ensure that they have the necessary authorisation to enter to hand should they be asked to produce it.

5.5 A full risk assessment should be undertaken before entering any site and where appropriate safety equipment must be worn. If there is any threat to the safety of the officer, the site visit should be postponed and a note recorded. If the PEO or other officers have prior knowledge of the site which may help in carrying out the risk assessment this should be made known.

5.6 Prioritisation Of Site Visits

Priority 1 - Works to listed Buildings

- Works to trees/hedgerows
- Demolition in Conservation Areas

Site visit required within 24 hours

Priority 2 Development causing immediate and irremediable harm in locality, likely to include:-

- Road and public safety issues;
- Severe effects on residential amenity of several properties;
- Significant effects on the character of an important area eg. Conservation Area, setting of Listed Building or Ancient Monument;
- Serious harm to the aims of the Development Plan.

Site visit required within 5 working days

Priority 3 - Advertisements,

- Untidy sites,
- all other unauthorised development.

Site visit required within 10 working days

6 ASSESSMENT OF BREACH

- 6.1 Following the site visit, the PEO will make an assessment of the alleged breach and the planning history for the site and will using the Enforcement Determination form (Attached at Appendix B) report the findings to the appropriate Planning Officer for determination of whether there is a breach and whether the LPA would likely grant permission for the said breach. A copy of the form must be recorded on the file.
- 6.2 When an alleged breach of planning control has been identified, the PEO will then score the case file to determine a system of priority for the next action using the draft system outlined at 6.4 below.
- 6.3 For an initial period the points system will be used to asses how cases are scored in order that a category system can then be added to prioritise case work. The draft system will during the initial period be a working draft and will be amended where necessary.

6.4 Prioritisation of case work

(once site visit undertaken and a breach of planning control identified)

Point scoring system, re-introducing low priority cases after file 2 months old.

Code	Breach	Points	
P1	Unauthorised works to protected trees (ie covered by TPO and/or Conservation area) Unauthorised works to Listed Buildings or Ancient Monuments of SSSI's	10	
P2	Severe harm to residential amenity or public health	8	
P3	Severe harm to visual amenity	6	
P4	Unauthorised works affecting a Conservation Area or AONB	2	
P5	Development contrary to established policies (examples): 1. New dwelling in countryside (inc caravans/mobile homes) 2. Retail outside settlement limits	2	
P6	Breach of planning conditions or s.52 Agreements or 106 Obligation Agreements	2	
P6A	Departure from approved scheme	Minor	1
		Significant	2
P7	Development likely to become immune from enforcement within 12 months	2	
P8	Repeated breach	1	
P9	Advertisements	3	
	Flyposting	3	
P10	Aging file - 2 months	1	
	- each month thereafter	1	
P11	Refusal of planning permission or other consent	6	
P12	Highway safety issues	3	
P13	Causing widespread harm	1	

P14	Irreversible harm	2
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High priority cases - score between 13+

Medium priority cases – score between 6-12

Low priority cases – score between 0-5

7 ASSESSMENT OF SYSTEMS

7.1 It is the intention to implement the systems outlined in sections 5 and 6 above for an initial trial period in which to assess whether the systems will be effective and to monitor the scoring system in order to amend/improve either where necessary. The trial period will be three months and thereafter the system will be operated informally for a further 3 months to enable further improvements to be made.