

Place Shaping Panel

Agenda

Date

Monday 26 October 2020

Members of the Place Shaping Panel

Cllr L H Hemsall
(Chairman)

Cllr S Lawn
(Vice Chairman)

Cllr N J Brennan
Cllr S M Clancy
Cllr N J Harpley
Cllr G K Nurden

Cllr L A Starling
Cllr D M Thomas
Cllr J L Thomas
Cllr J M Ward

Conservative Substitutes

Cllr A D Crotch
Cllr J F Fisher
Cllr R R Foulger
Cllr R M Grattan
Cllr D King
Cllr G F Peck
Cllr C E Ryman-Tubb

Liberal Democrat Substitutes

Cllr J A Neesam
Cllr S Riley

Labour Substitute

Cllr B Cook

Time

6.00pm

Place

To be hosted remotely at
Thorpe Lodge
1 Yarmouth Road
Thorpe St Andrew
Norwich

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If any Member wishes to clarify details relating to any matter on the agenda they are requested to contact the relevant Director / Assistant Director.



@BDCDemServices

Public Attendance

This meeting will be live streamed for public viewing via the following link:
<https://www.youtube.com/channel/UCZciRgwo84-iPyRlmsTCIng>.

If a member of the public would like to attend to ask a question, or make a statement on an agenda item, please email your request to committee.services@broadland.gov.uk no later than 5.00pm on 22 October 2020.

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Trevor Holden
Managing Director

DECLARATIONS OF INTEREST AT MEETINGS

When declaring an interest at a meeting Members are asked to indicate whether their interest in the matter is pecuniary, or if the matter relates to, or affects a pecuniary interest they have, or if it is another type of interest. Members are required to identify the nature of the interest and the agenda item to which it relates. In the case of other interests, the member may speak and vote. If it is a pecuniary interest, the member must withdraw from the meeting when it is discussed. If it affects or relates to a pecuniary interest the member has, they have the right to make representations to the meeting as a member of the public but must then withdraw from the meeting. Members are also requested when appropriate to make any declarations under the Code of Practice on Planning and Judicial matters.

Have you declared the interest in the register of interests as a pecuniary interest? If Yes, you will need to withdraw from the room when it is discussed.

Does the interest directly:

1. Affect yours, or your spouse / partner's financial position?
2. Relate to the determining of any approval, consent, licence, permission or registration in relation to you or your spouse / partner?
3. Relate to a contract you, or your spouse / partner have with the Council
4. Affect land you or your spouse / partner own
5. Affect a company that you or your partner own, or have a shareholding in

If the answer is "yes" to any of the above, it is likely to be pecuniary.

Please refer to the guidance given on declaring pecuniary interests in the register of interest forms. If you have a pecuniary interest, you will need to inform the meeting and then withdraw from the room when it is discussed. If it has not been previously declared, you will also need to notify the Monitoring Officer within 28 days.

Does the interest indirectly affect or relate any pecuniary interest you have already declared, or an interest you have identified at 1-5 above?

If yes, you need to inform the meeting. When it is discussed, you will have the right to make representations to the meeting as a member of the public, but must then withdraw from the meeting.

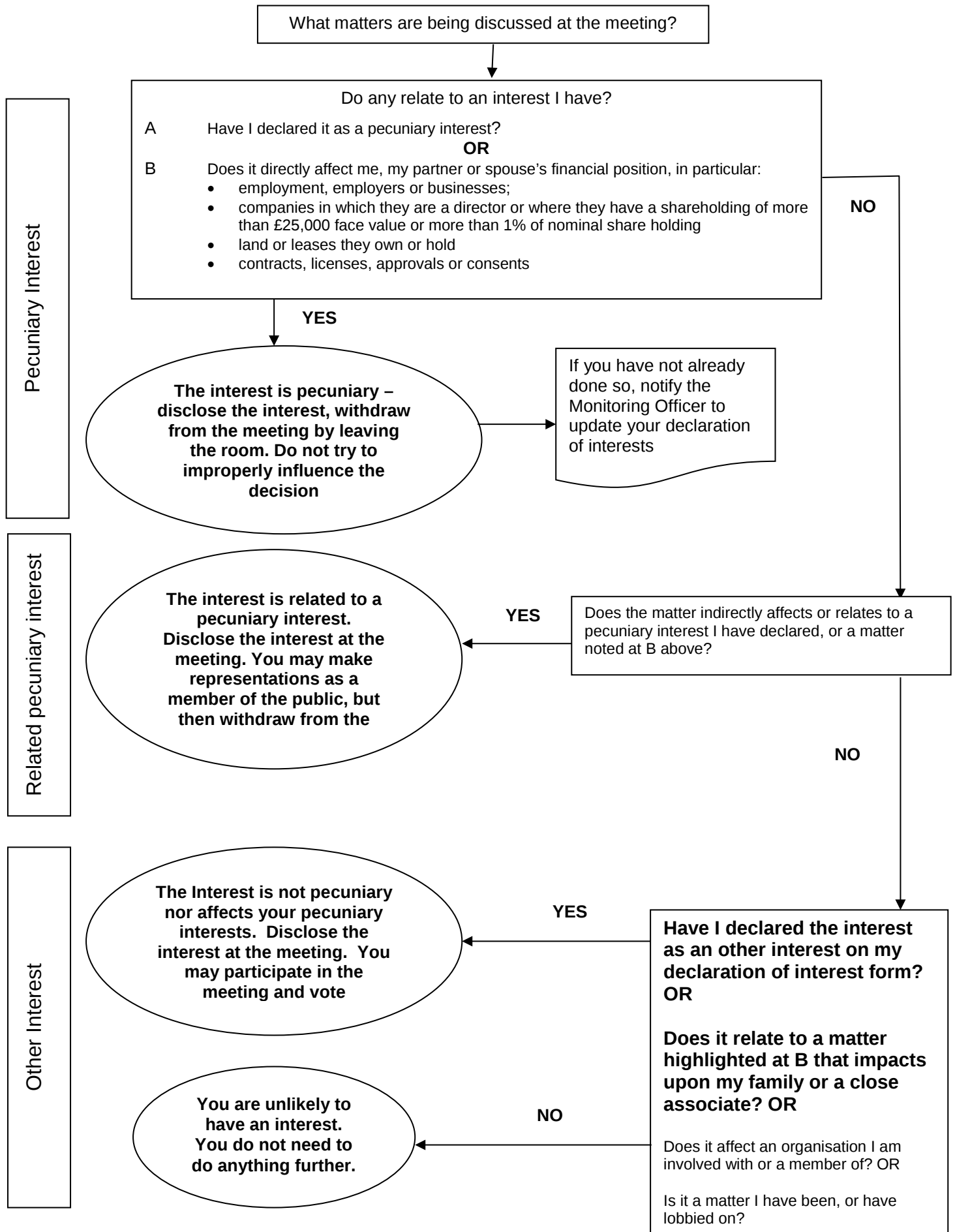
Is the interest not related to any of the above? If so, it is likely to be another interest. You will need to declare the interest, but may participate in discussion and voting on the item.

Have you made any statements or undertaken any actions that would indicate that you have a closed mind on a matter under discussion? If so, you may be predetermined on the issue; you will need to inform the meeting, and when it is discussed, you will have the right to make representations to the meeting as a member of the public, but must then withdraw from the meeting.

FOR GUIDANCE REFER TO THE FLOWCHART OVERLEAF

**PLEASE REFER ANY QUERIES TO THE MONITORING OFFICER
IN THE FIRST INSTANCE**

DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF



Minutes of a meeting of the **Place Shaping Panel** held by video link on **Friday 18 September 2020** at **9.00am** when there were present:

Cllr L H Hempsall – Chairman

Cllr N J Brennan
Cllr S Lawn

Cllr G K Nurden
Cllr DM Thomas

Cllr J L Thomas

Cllr S Catchpole, Cllr J Fisher and Cllr S Prutton also attended the meeting.

Also in attendance were the Director of Place, the Assistant Director Planning, the Housing Enabling Officer, the Democratic Services Officer (LA) and Democratic Services Officer (JO).

18 APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllr Starling and Cllr Ward.

19 MINUTES

The Minutes of the meeting held on 10 August 2020 were confirmed as a correct record.

20 RESPONSE TO MINISTRY OF HOUSING, COMMUNITIES AND LOCAL GOVERNMENT (MHCLG) CONSULTATIONS

The Assistant Director Planning introduced the report which informed Members of the key changes proposed by MHCLG on the future of the planning regime and proposed consultation responses to two planning related documents: a White Paper entitled 'Planning for the Future' and a consultation paper on 'changes to the planning system'.

In the White Paper the Government proposed the most radical changes to the planning system since 1947 and sought to simplify the role of Local Plans, so that they focused on identifying land under one of three categories: growth areas, renewal areas and protected areas.

Local Plans would set clear rules, rather than general policies for development. The proposed response to the frontloading of the local plan process was to ensure that there was significant community engagement at the development allocation stage.

In addition housing numbers would no longer be set locally, but by Government. The local plan process would be restricted to 30 months and would be based on a more digitally accessible format. It was also proposed to replace the Community Infrastructure Levy and S106 agreements with a new Infrastructure Levy.

The second key topic in the White Paper was Development Management, which was proposing that where land had been allocated in a more detailed way there would be a presumption in favour of planning permission. Whilst it was accepted that the principle of generic policies to cover the majority of subject areas was accepted, it was suggested in the Council response that consideration needed to be given to local characteristics and constraints as well.

Proposals for web based digitised local plans were welcomed, but the Council had also made the point in its response that not all members of the public had access to IT.

The White Paper proposed that the Community Infrastructure Levy be replaced by a nationally set Infrastructure Levy. This proposal was lacking in detail about how the transition between the two systems would work and this had been raised in the response as a concern.

The Planning reforms also included an emphasis on local authorities having strengthened powers of enforcement.

The consultation on the White Paper would run until 31 October 2020 and the Panel were requested to comment on the Council's proposed responses.

The second consultation: 'Changes to the current planning system', proposed changes to the standard methodology for assessing local housing need and introduced a new set of proposals to secure First Homes, which would be available at a 30 percent discount in perpetuity. It was also proposed to lift the small sites threshold, below which affordable housing was not required, from 10 homes to either 40 or 50 homes and extend the current Permission in Principle provisions to major developments.

The proposed changes to the standard methodology was a concern, as under the current system there was around 2000 homes being delivered in Greater Norwich per year, but if the revised methodology was adopted an additional 25,000 new homes would be required above what had been already allocated over five years. This figure was seen as unreasonable and it was hoped that the Government would modify this proposal in light of the rate of delivery already being achieved in Greater Norwich.

The paper proposed that 25 percent of all affordable housing should be First Homes, which would be homes for first-time buyers with a minimum 30 percent discount against market value in perpetuity.

Of particular concern was a proposal to temporarily raise the threshold for contributions to affordable housing from 10 dwellings to 40 or 50 homes. In Greater Norwich a significant percentage of affordable homes were delivered through small sites, whereas larger sites sometimes failed to deliver as many

affordable homes as infrastructure requirements could reduce viability and the number of affordable homes delivered. The officer response was, therefore, to object to this proposal.

The final change proposed in the paper was to extend the current Permission in Principle and comment had been made about controlling the impact of taller development proposals.

Question one in the White Paper 'what three words do you most associate with the Planning system in England?' had been left for Member's to answer.

In response to a query it was confirmed that the Local Plan had an affordable home target of 28 percent on developments over 10 dwellings and that in Broadland in excess of 30 percent of homes being delivered were affordable homes.

The Chairman noted that the proposed changes to the standard methodology for assessing housing need was deeply problematic and should be challenged.

The Assistant Director Planning confirmed that the current delivery target in Broadland was 2,000 homes per year, but under the new methodology this would increase to 3,256 per year. Overall in Greater Norwich 40,000 homes were to be delivered over the next five years this would increase that figure to 65,000, which was disproportionate to what was required.

Members noted that the District had extant planning permission for 10,600 homes that had not been started and that these should be used in the calculation of housing need, and it was confirmed that outstanding planning permissions had been raised in objection to the revised standard methodology.

in response to a query the Director of Place advised the meeting that it would be vitally important that communities were fully involved and engaged during the period when growth areas were considered for allocation, as once they had been allocated the whole area would effectively be given planning permission as the principle of development would have already been agreed. He also confirmed that different criteria could apply for different growth areas.

A Member suggested that a more holistic approach to planning should be taken and it was also suggested that health and education authorities should have greater input into large planning applications.

Following some discussion the top three priorities for planning (question 4) were suggested as:

1. Increasing the affordability of new housing.
2. The environment, biodiversity and action on climate change needs to be addressed as part of the design and location of new homes and places.
3. Supporting the local economy with more or better local infrastructure.

However, it was noted that the choice of priorities was from a prescribed list and that if only these were available when the online consultation was completed the priorities should be:

1. The environment, biodiversity and action on climate change.
2. Supporting the local economy.
3. Increasing the affordability of new housing.

For question 8a, page 107 it was agreed that figures would be included to show clearly that the increase in housing numbers in Broadland would not be deliverable, if the standard methodology for housing need was revised

In response to a question regarding timescales for parish councils to spend Community Infrastructure Levy (CIL) money the Director of Place confirmed that he would prefer not to see timescales extended, as they encouraged the prompt delivery of infrastructure, which if delayed would undermine the legitimacy of CIL. He also reminded Members that Broadland was one of only a few local authorities that had a dedicated resource to assist parishes spend their CIL receipts and to a access match funding where possible.

For question 1 of the Planning for the Future White Paper response it was suggested by the Panel that the three words they most associated with the planning system were: *fragmented, overly complicated and time-consuming*.

In response to a query about how site developments would be publicised in the future, the Assistant Director Planning advised the Panel that there was no detail on this available at the moment, but she thought it was possible that if a development met the criteria already agreed in a Growth Area it would only need limited publicity, such as notification to the planning authority.

The Panel were reminded that the changes to the planning system consultation ran until 1 October 2020 and the White Paper consultation ran until 29 October 2020. The Chairman advised Members that if they wished their parishes to take part in the consultation they should cascade down these matters to them.

It was confirmed that officer briefings for parishes could be held once the new regulations came into force, which was likely to be by the end of the year.

RECOMMENDED TO CABINET

To

1. Agree the draft responses to the following MHCLG consultation documents as outlined in appendices 2 and 3 of this report *and subject to the inclusion of the suggestions by the Panel above:*

Changes to the current planning system

White Paper: Planning for the future

2. Delegate any updates to these responses to the Director of Place in consultation with the Leader and Portfolio Holder for Planning

The meeting closed at 10.29am.

DRAFT

PLANNING ENFORCEMENT PLAN AND STRATEGY

Report Authors: Stuart Pontin
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Portfolio: Planning

Wards Affected: All

Purpose of the Report:

To outline the background to the review of the Planning Enforcement Service for Broadland Council to provide a high quality and customer focused service and to establish an Enforcement Plan which sets out details of the service for Members and customers.

Recommendations:

1. To agree the use of the Enforcement Plan at Appendix 1 for the Planning Enforcement Service at Broadland Council.
2. To agree the use of the Enforcement Strategy at Appendix 2 for the Planning Enforcement Service at Broadland Council.

1 SUMMARY

- 1.1 Following an internal review of the Planning Enforcement Service offered by Broadland District Council it is proposed to update the Enforcement Strategy used by BDC to form an Enforcement Plan to be used in order to provide a high quality and customer focused service. In conjunction with this it is also proposed to publish an "Enforcement Strategy" to support the Enforcement Plan which provides more information about the enforcement service for customers.

2 BACKGROUND

- 2.1 An Audit review was undertaken in early 2020 which identified a number of actions be taken to improve the completeness of enforcement records including correspondence to developers including timescales to address breach, together with an audit trail to provide an overview of the case including key dates such as dates of complaint received, dates of correspondence and site visits. In conjunction with this it was recommended to instigate the implementation of electronic files for the entire enforcement process, including filing of documents to the Document Management System. The audit also highlighted the need to review and update the Planning Enforcement Strategy.
- 2.2 The Development Plan also identifies the need to scope a review of the enforcement plan to be undertaken in Quarter 1. This review has been undertaken during July 2020 and has considered the Audit recommendations.
- 2.3 Broadland District Council currently has a stand-alone Planning Enforcement Strategy which was agreed in 2015.
- 2.4 The National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government sets out that: 'Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so'.
- 2.5 At present, Broadland Council does not have an "Enforcement Plan" and as part of the enforcement review it is proposed to develop a Planning Enforcement Plan which updates the current strategy to be used to provide a high quality, customer focused service.

3 CURRENT POSITION

- 3.1 The Enforcement Strategy currently seek as far as possible to achieve positive compliance with the law and to respond proportionately, taking account of the circumstances of the case, to provide a customer focussed service and work holistically with other service areas.
- 3.2 The Broadland service updates Members and Parish Councils on a monthly basis of progress on cases and updates the customer of the outcome of investigations. There is limited contact with the complainant during the investigation. Proactive enforcement is undertaken by monitoring the commencements of development for compliance with conditions attached to planning permissions.

4 PROPOSED ACTION

- 4.1 It is proposed to retain the key elements of the existing Enforcement Strategy and to enhance this by confirming the Council's priorities and service standards that the customer can expect in terms of the types of complaints that will be investigated and to define a timeline for the key actions, together with updates on how matters are progressing and to identify the next steps. These are set out in the Enforcement Plan and expanded on in the Enforcement Strategy, which will also form the basis of information available online for customers.
- 4.2 It is also proposed that a proactive approach is taken towards the monitoring of the commencement of developments which have planning permission.
- 4.3 To ensure that Members have an over view of current cases it is also proposed that a monthly report is provided to all members which highlights the key stages which have been undertaken. It is also suggested that these could be provided to Parish Council for their information. In association with the provision of this information, it is proposed that training is provided to ensure that this information is used appropriately.

5 OTHER OPTIONS

- 5.1 To continue to operate the current Enforcement Strategy.

6 ISSUES AND RISKS

- 6.1 This is an update to the existing enforcement strategy and does not raise any additional risks. Without an up to date enforcement plan our course of action in relation to enforcement cases could be challenged.
- 6.2 **Resource Implications**
- 6.3 Recommendations from the Audit report, together with remote working during Covid-19 have highlighted the need to work more electronically and for files to be available electronically.
- 6.4 As part of the review it is recommended that a proactive approach is taken towards the monitoring of the commencement of developments which have planning permission to ensure compliance with associated conditions. This monitoring can be linked with existing commencement monitoring which is undertaken in connection with Building Control, Community Infrastructure Levy, Section 106 legal agreements and Planning Policy, together with other teams in the Council (i.e. Council Tax).
- 6.5 **Legal Implications** – This is an update to the existing enforcement strategy / policy and does not raise any additional legal implications. We will take specific legal advice in relation to individual cases as appropriate.

- 6.6 **Equality Implications** – Where formal enforcement action is proposed in relation to specific cases an appropriate assessment will be undertaken at that time.
- 6.7 **Environmental Impact** – The proposals will have a positive environmental impact by ensuring that development does not have an adverse impact.
- 6.8 **Crime and Disorder** – The proposals will work in a positive way to ensure compliance with appropriate legislation.
- 6.9 **Other Risks** – No.

7 CONCLUSION

- 7.1 The review of the Planning Enforcement service has highlighted a number of enhancements to the current service. The proposed Enforcement Plan will develop the existing Enforcement Strategy to provide a high quality, customer focused service and will be supplemented by the Enforcement Strategy.

8 RECOMMENDATIONS

1. To agree the use of the Enforcement Plan at Appendix 1 for the Planning Enforcement Service at Broadland Council.
2. To agree the use of the Enforcement Strategy at Appendix 2 for the Planning Enforcement Service at Broadland Council.

Background Papers

Broadland District Council - Planning Enforcement Strategy

Planning enforcement plan

The purpose of this plan

This plan sets out how the authority will respond to suspected breaches of planning and related controls in its area; how it will monitor the implementation of permissions; investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

The Council is firmly committed to the effective enforcement of planning control. It views the harmful effects of any breach of planning control very seriously and has a compliance team based within the Planning Service area.

Introduction

The Town & Country Planning Act provides Local Authorities with the legislative background to exercise control over unauthorised development and non-compliance with any condition or limitation attached to a planning permission. Controls relating to advertisements, listed buildings, trees and conservation areas are found in separate legislation.

This document sets out the Council's plan for planning enforcement and the approach the Council will take in investigating and remedying breaches of planning control.

The National Planning Policy Framework (NPPF) states "*The purpose of planning is to help achieve sustainable development*". Enforcement is an integral part of the planning system and "*is important as a means of maintaining public confidence in the planning system*" (para. 207 of the NPPF).

There is a duty on planning authorities to investigate alleged breaches of planning controls and resolve issues effectively in accordance with the Development Plan, any Supplementary Planning Guidance and the National Planning Policy Framework (NPPF). However, any subsequent enforcement action is discretionary.

What is planning enforcement?

The overall objective of the planning enforcement function is to maintain the integrity of the planning system.

The main functions of planning enforcement are:-

- To maintain public confidence in the planning system:

The integrity of the Council's development management function depends on the Council's readiness to take enforcement action when it is considered expedient to do so. Parliament has given this Council the primary

responsibility for taking whatever enforcement action is necessary within the area for which it is Local Planning Authority.

The Broads Authority is the Local Planning Authority for enforcement matters within its area. The enforcement of matters relating to waste management and mineral workings is the responsibility of Norfolk County Council.

- To investigate alleged cases of unauthorised development both reactively and proactively:

The Planning enforcement team has both a proactive as well as a reactive role in monitoring the progress of development on sites and ensuring compliance with planning conditions. The team also responds to third party complaints and allegations about possible breaches of planning control.

- To act proportionately

Ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to cause no harm to amenity or the public interest.

- To take action where it is appropriate to do so

Although nothing in this plan should be taken as condoning a wilful breach of planning law, the Council's enforcement powers are discretionary and will only be exercised when it is considered expedient to do so.

The following principles underpin the functioning of the service:

An emphasis on customer focus

- Allegations of suspected breaches of planning control can be reported to the Compliance team in person, by telephone, by email, by letter or via the Council's website.
- All complaints will be acknowledged within 3 working days and the complainant given the name of the officer assigned to investigate the particular case
- The identity of persons reporting suspected breaches of planning control will be treated as confidential. However, where the success of an appeal or prosecution is dependent on evidence being provided by the person who reported the breach, the Council will discuss with the individual concerned whether they are willing to relinquish their confidentiality and provide the required evidence before proceeding with formal enforcement action or a prosecution.
- Parish and Town Councils and Ward members will be provided with an update on a monthly basis as to the progress made on all the complaints received and planning permissions monitored within their respective areas.

- Updates will be given to a complainant at key stages and of the outcome of an enforcement investigation when the matter reaches a conclusion.

Effective decision making

- Upon receipt of a complaint an assessment will be made as to whether a breach of planning control exists. This may involve carrying out a site visit.
- We will prioritise:
 - Unauthorised development which is causing or threatening significant harm to public health and safety.
 - Cases where there is ongoing or immediate threat of irreversible harm to amenity or the environment.
 - Harm to areas protected by statutory designations such as Sites of Special Scientific Interest (SSIs), Conservation Areas Archaeological sites.
 - Harm to listed buildings and their setting.
 - Harm to trees and hedges, especially where protected by Tree Preservation Orders (TPO's) or Regulations.
 - Unauthorised development likely to harm protected species or habitats.
 - Monitoring of major developments.
- The Council's enforcement powers are discretionary and will only be exercised when it is considered expedient to do so.
- The majority of decisions as to whether and how to proceed with an enforcement investigation are vested in the Officers with only a very few cases being reported to members for consideration and for a course of action to be agreed.
- Development Plan policies, appeal decisions, case law, individual site circumstances and the level of harm likely to be caused will all be taken into account in respect of an individual case in order to ensure consistency in decision making.

Flexibility in applying procedures

- In most instances an attempt to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development will be made. We will aim for this to be undertaken within 6 weeks of the initial site visit
- Lengthy negotiations however will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop
- In seeking to remedy a breach by negotiation regard is had to the statutory time limits beyond which the Council would be precluded from taking enforcement action together with relevant planning policies and other material considerations

- Each case is progressed as far as possible with the information available at that time
- Where a retrospective planning application is refused relating to an existing breach of the planning regulations the associated planning decision notice will be accompanied by an enforcement notice setting out what needs to be done to remedy the breach of planning control

Applying the most appropriate measures

- The council has a range of enforcement measures available and will have regard to which power (or mix of powers) is best suited to dealing with any particular breach of control to achieve a satisfactory, lasting and cost-effective remedy. This may result in some instances in letting the legislative powers of colleagues from other departments or even other agencies taking precedence to resolve issues which cross departmental boundaries.
- Wherever possible and appropriate the Council will seek to remedy breaches of planning control through negotiation and mediation.

Proactive enforcement

- The Compliance team proactively monitors planning conditions imposed on planning and other permissions both at the time of commencement of development and where appropriate at subsequent development stages
- The Compliance , in conjunction with colleagues in other departments, will explore avenues of collaborative working which could include the issuing of fixed penalty notices to secure the remedying of breaches of planning and other related offences which cause harm to the public realm.
- The Compliance team will, when called upon to do so, provide advice to prospective and newly established businesses to ensure that they will not fall foul of planning and related legislation.

Planning Enforcement Strategy

This Enforcement Strategy supports the Enforcement Plan and explains the planning enforcement function. It will clarify the various breaches of planning control and criminal offences that planning enforcement can address and detail the powers given to the Council and how and when these powers may be employed.

The strategy gives clear guidance on what we can do and how complaints are prioritized. It explains how complaints can be made, and sets out what can reasonably be expected from the Council once a complaint has been made.

The document has been prepared in accordance with the advice contained in the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which states: 'Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so'.

What will we investigate...?

A breach of planning control is defined in the Town and Country Planning Act 1990 as "the carrying out of the development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted". Whether something requires planning permission is not straightforward and while there are some fairly obvious breaches, such as building a new house without planning permission, many others are more difficult to define or less well known.

For example:

- Building work, engineering operations and material changes of use that are carried out without first obtaining planning permission;
- Development that has planning permission but is not carried out in accordance with the approved plans;
- Failure to comply with conditions or the terms of a legal agreement attached to a permission or consent;
- The unauthorised demolition of a building within a conservation area without planning permission;
- Works carried out to a listed building (both internal as well as external), which affect its historic character or setting, without listed building consent being granted;
- The unauthorised felling or carrying out of works to a tree which is protected by a Tree Preservation Order (TPO) or which is within a Conservation Area (CA);
- Unauthorised Advertisements;
- Failure to properly maintain land so that it detrimentally affects the amenity of the area;

- Failure to comply with the requirements of enforcement notices, breach of conditions notices and stop notices.

It should be noted that a breach of planning control becomes immune from enforcement action if no formal action has been taken within the time limits set out in the Town and Country Planning Act 1990 (as amended).

Essentially these time limits are: Four years from the substantial completion of a building or other operational development and for the change of use of any building to a dwelling house; and ten years for a continued use of land or breach of planning condition

Similarly, planning enforcement action can only be pursued where works have taken place without the benefit of, or are inconsistent with, planning permission. Therefore, domestic extensions, regardless of their impact on neighbours, are immune from planning enforcement action if they fall within permitted development rights; and those commenced with permission and built as approved also are beyond further control, even though a neighbour, perhaps new to the area, was not consulted.

In addition to investigating complaints which we receive relating to breaches of planning control, we will also undertake proactive investigations to ensure that development is built in accordance with its planning approval and associated conditional requirements.

Whilst it is not possible to check all developments, the combination of responsive and a proactive approach should raise awareness of the need for compliance, so maintaining a culture of compliance. This is likely to involve working more closely with other Council departments to ensure a co-ordinated and targeted approach which has the maximum impact.

What will we not investigate...?

What is not a breach of planning control?

Many issues that arise the council cannot get involved in as they are issues that are between two private parties, as those are considered to be civil matters. Other matters may be covered by other legislation but are not issues that the council as Local Planning Authority can get involved with. Some of these are:

- Internal works to a non-listed building;
- Matters controlled by other legislation such as Building Regulations / public nuisance / Highways / or the Environment Agency;
- Competition from another business;
- On street parking of commercial vehicles in residential areas;
- Obstruction of a highway or public right of way (the Police or Highways Authority may be able to get involved);
- Parking a caravan within the residential boundary of a property provided that its use is ancillary to the dwelling;
- Clearing land of undergrowth, bushes and trees (provided they are not subject to Tree Preservation Order, within a Conservation Area or owned by the council);
- Operating a business from home where the residential use remains the primary use;
- Boundary disputes – disputes about ownership are a private matter and cannot be controlled under planning legislation;

- Deeds and covenants which are a private matter between the signatories to the documents;
- Loss of value to a neighbouring property;
- Insertion of windows in dwellings – once a building has been occupied windows can normally be inserted into existing walls provided that there is not a planning condition to prevent the insertion of additional windows;
- Where development is 'permitted development' under the Town and Country Planning (General Permitted Development)(England) Order 2015.

How will the matter be investigated..?

Allegations about suspected breaches of planning control will be investigated thoroughly and accurately in accordance with the principles of Good Enforcement set out within the Local Government Concordat, and the principles contained within the Regulators Code.

The five principles of good regulation are:

- Transparency
- Accountability and Openness
- Proportionality
- Consistency
- Targeted (at cases where action is needed)

The integrity of the process depends on the Council's readiness to take proportionate enforcement action when it is required to do so. Parliament has given local planning authorities the primary responsibility for taking whatever enforcement action is necessary within their area and the council will exercise its planning enforcement powers rigorously when it is considered expedient to do so. This means that any action taken must be in the wider public interest and the action must be proportionate to the level of the breach. We will consider this by thorough assessment of the relevant facts in each case. Our consideration will be no different to those when considering the merits of an application for planning permission before the development started. For instance, if a development would have received planning permission, it will not be enforced against simply because it was carried out before planning permission was granted. Formal enforcement powers will not be used against trivial or technical breaches of planning control which cause no harm. The Council will always seek to 'remedy' a breach before considering formal action, often breaches can be resolved through negotiation, for example by working with the developer to alter a building so that it no longer requires consent, or by the submission of a retrospective application to seek consent.

When would formal action be considered?

- Where the breach presents significant harm to amenity, or the existing use of the land and buildings merits protection in the public interest.
- Where attempts to negotiate regularisation of the breach have failed, and the harmful effects of the development require enforcement action to make the development acceptable.
- Where planning permission for the development has been refused and the development is not acceptable in terms of planning policies or other material considerations.

Where formal planning enforcement action is taken, we will take steps to publicise this to act as a deterrent to other offenders.

The council has delegated authority to its officers to exercise the legislative powers available to it for breaches of planning control, the tools available are :

- **Planning Contravention Notice** – this requires persons to provide information in respect of the development and/or activities taking place on the land. These notices are often served as a first step to gain information from the person carrying out the development and/or activity before determining whether other notices should be served.
- **Enforcement Notice** – this is the principal tool to remedy a breach of planning control. It will specify what the alleged breach is, the steps that must be taken to remedy it, and a time period in which to carry out those steps.
- **Listed Building Enforcement Notice**- This is the equivalent Notice available under the listed building legislation
- **Breach of Condition Notice** – this is used to require full or part compliance with the conditions on the grant of a planning permission.
- **Stop Notice/Temporary Stop Notice** –these Notices requires activities to stop immediately on the land and are most commonly used to deal with breaches of planning control that are seriously affecting the amenity of nearby residents or to prevent serious or irreversible harm to the environment.
- **Untidy Land (s.215) Notice** – where the condition of buildings or land causes serious harm to the visual amenity of an area, the Council can serve a Notice on the owner and occupier, under Section 215 of the Town and Country Planning Act 1990, to remedy the condition of the land and buildings.
- **Court Injunction** – Although they are rarely used, legal powers are available for the council to apply to the High Court or the County Court for an injunction to stop an actual or alleged breach of planning control.
- **Prosecution** – the council can pursue prosecution proceedings against any person who carries out unauthorised works to trees that are protected by a Tree Preservation Order or are within a Conservation Area, unauthorised works to Listed Buildings, and certain unauthorised works of demolition works within Conservation Areas. Additionally, offenders may be prosecuted for non-compliance with a temporary stop notice, stop notice, enforcement notice and breach of condition notice.
- **Direct Action (with costs recovery)** – failure to comply with the requirements of a Notice may result in the council using powers available to it to enter land and carry out such works that are required by an Enforcement Notice. All costs incurred in carrying out such works can be recovered from the landowner. Where costs are not recovered, they can be registered as a charge on the land.
- **Advertisements** – the legislation (Town and Country Planning (Control of Advertisements) Regulations 2007) which deals with advertisements is separate from that dealing with general planning matters. The display of an advertisement without formal consent is an offence, and the council does have the power to prosecute the person displaying it, if it considered that it harms the amenity of the area or public safety. There is no need for an enforcement notice, or similar, to be served. If a person is found guilty of an offence, he or she could be liable to a fine.

Priorities

It is usually necessary to give priority to those issues where the greatest harm is being caused, as it would be inappropriate to investigate and pursue all allegations with equal priority and intensity. Therefore each case is prioritised according to the seriousness of the alleged breach. This priority is decided by officers, and subsequently reviewed after an initial site visit.

We will prioritise:

- Unauthorised development which is causing or threatening significant harm to public health and safety.
- Cases where there is ongoing or immediate threat of irreversible harm to amenity or the environment.
- Harm to areas protected by statutory designations such as Sites of Special Scientific Interest (SSIs), Conservation Areas Archaeological sites.
- Harm to listed buildings and their setting.
- Harm to trees and hedges, especially where protected by Tree Preservation Orders (TPO's) or Regulations.
- Unauthorised development likely to harm protected species or habitats.
- Monitoring of major developments.

What level of service can a complainant expect..?

We will promptly register every case and acknowledge receipt either by letter or by email within three working days. You will be given the name of the Compliance Officer dealing with your complaint so you know who to contact, together with a reference number.

We will then carry out some initial checks (usually including a site visit) in accordance with the priority given to the case, but in any event within ten working days.

Complainants will be updated by telephone, email, or by letter on completion of the site visit and/or initial assessment investigations as to whether -

- No breach was identified
- That there is a need for further investigations
- That a breach of planning control has occurred

Where there is an identified breach of planning control the following assessment will be made –

- What is the planning harm – how serious is it ?
- Would it be likely to be granted planning permission (with or without conditions)?
- Is it a minor breach (technical) or more serious?
- Can we resolve it simply by negotiation or modification?
- Is action needed quickly because the development or activity is harmful and not acceptable?

The decided actions will need to be proportional to the breach and balanced with the available resources. Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. Where cases take a long time to resolve we will ensure complainants are updated at each significant stage of the process. For instance, complainants will be advised if a retrospective planning application is submitted and will be notified if an enforcement notice is issued and the relevant dates for compliance.

If the investigations indicate that a breach of control has occurred that justifies enforcement action an Enforcement Notice will be served. The Notice takes a minimum period of 1 month to come into effect during which time the person(s) served with the notice can appeal against it to the Secretary of State for Housing, Communities & Local Government via the Planning Inspectorate. An Enforcement Notice may be quashed or revised by the Planning Inspector appointed by the Secretary of State.

Where an appeal is lodged the Council can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months. If a person decides to appeal against an enforcement notice; this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.

Where a Breach of Planning control causes serious harm the Council can seek immediate remedial action. This action may involve the serving of a Stop Notice when an Enforcement Notice has already been issued. Temporary Stop Notices may be served when an immediate cessation of the harmful activity is required, usually before an enforcement notice comes into effect. They can only last a maximum of 28 days and may only be served once. These should only be served to prohibit what is essential to safeguard amenity of public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

Notwithstanding the above we will regularly review all our cases to ensure the most effective action plan is in place to secure a satisfactory outcome as quickly as possible. Complainants will be advised when cases are closed, and the reason. We will endeavour to resolve enquiries within six months of their receipt. However should further action be required, such as the issue of Enforcement Notices, clearly this timescale will not be possible.

What happens when someone complains about you ?

If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, as such we will always seek to work with you to understand the true facts of the case.

Initially a council officer will visit the site. This is usually without any prior warning to the owner or any tenants / employees at the site. Officers are authorised to visit a site to investigate and will show identification when they arrive.

Council officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the council officer. However, we are required to give

24 hours notice to insist on entry to a residential house but if you are happy to allow us access then we will usually take up that offer.

In the event of a breach being established, your co-operation will be sought to correct the breach either by removing or modifying the unauthorised development or by ceasing the unauthorised use or activity prohibited by a planning condition. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this.

In some circumstances you may be invited to submit a retrospective planning application or other appropriate application if it is considered that consent may be granted, or an application for a Certificate of Lawfulness of Use or Development may be invited in the event that you can show that the breach is immune from enforcement action and therefore lawful. You may be served with a Planning Contravention Notice which requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that we can determine whether a breach of control has occurred and whether formal action is appropriate. The implications of not completing and returning the Notice will be explained to you, and the officer dealing with the case will be available to answer any questions you have on the matter.

If you are running a business which is threatened by enforcement action, you will be directed to our Economic Development section to see whether alternative premises can be found to minimise the possible impact on the business, this does not mean that the enforcement action will be delayed or stopped.

If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance. You will also be advised of your right to appeal any notice issued.

The Compliance officers aim is to resolve breaches of planning control and they will work with you to achieve this in a positive and pragmatic way. Most breaches are resolved through negotiation and discussion, and we encourage you to cooperate positively. It is in the interests of all parties if an identified breach can be addressed and then resolved at an early stage.

What to do if you are unhappy with our service

The council aims to provide an efficient and effective service for everyone it deals with and to maintain good relations with those who use our services. Planning enforcement is a complicated area of law and care must be taken to arrive at a correct and appropriate course of action related to alleged breaches of planning control. If you are aggrieved with the service offered to you, there is a complaints procedure, where complaints can be investigated. Details of this procedure are available on the council's website. If you remain dissatisfied, the matter can be investigated by the Local Government Ombudsman. They will make an independent investigation of whether maladministration has occurred by the district council and if it has, recommend what remedy ought to take place. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and deals only with aspects concerning the conduct of the investigation.

We always welcome constructive feedback and any ideas on how we can improve our services. Please contact us if you can suggest ways of improving the service.

Links

https://www.planningportal.co.uk/info/200125/do_you_need_permission

https://www.planningportal.co.uk/info/200130/common_projects/9/change_of_use

<https://www.gov.uk/government/publications/regulators-code>