

Planning Enforcement Protocol

Executive Portfolio Holder: Tony Lock, *Protecting Core Services*
Directors: Netta Meadows, *Service Delivery*
Lead Officer: Simon Fox, *Lead Specialist (Planning), Service Delivery*
Contact Details: Simon.fox@southsomerset.gov.uk

Purpose of the Report

1. Members' support is sought to adopt a new Planning Enforcement Protocol to support the investigation of breaches of planning regulations.

Forward Plan

2. This report appeared on the District Executive Forward Plan with an anticipated Committee date of 4 June 2020.

Public Interest

3. An Enforcement Policy or Protocol sets out how the Council will approach the enforcement of breaches of planning control, setting out the principles and standards of service which can be expected by the public. Enforcement is a discretionary power and action is only used when negotiations have failed to resolve the breach, or, the breach is so serious as to warrant immediate action in the public interest to protect the amenity of the environment or safety of the public.

Recommendation

4. That the District Executive adopt the Planning Enforcement Protocol.

Background

5. Along with its age and obvious need for a refresh the 2007 Policy sets out a level of service that simply cannot be delivered with the current resources available. At that time a dedicated Planning Enforcement Team existed. Our current enforcement offer is led by one members of staff within the Planning Team, with assistance from one corporate enforcement specialist and several planning case officers. There is a growing expectation to deliver enforcement beyond the current resources allocated to this function. This new document seeks to clearly set out expectations regarding what we can achieve and by when.
6. In parallel to the creation of this document we have been working to design a new Civica process for planning enforcement cases which at the moment are operated wholly through paper files. By the time this report is presented the process will have gone 'live' and the protocol dovetails with the stages we have designed in it. The 'innovation' is to relate to colour coded stages to keep the complainant up to date and so everyone knows what is likely to happen next in terms of compliance.
7. The additional instructions and training to officers around the digital approach and the protocol will be to relaunch the way we approach enforcement by getting to a result/decision much quicker than in the past. Historically the policy was to try and resolve complaints through cooperation and cohesion in written correspondence over extensive time periods but avoiding using the power that exists through legal notices. Our new approach will be to give the person who have "breached" a chance to rectify their breach and if that cooperation is not forthcoming to start moving to the legal stages of a 330 notice and formal enforcement notice much sooner.
8. It is important officers retain independent assessment of the expediency of carrying out action.

9. The enforcement function hereon also relies on important inputs from Locality and Customer Connect, as well as of course from Support Services (Legal). The newly designed website pages will allow online reporting. In time we hope to publish statistics there regarding the number of notices served as a deterrent to future perpetrators.
10. Internal consultation amongst the team indicates it is a welcome document which will have a very positive impact on the enforcement function alongside the digital process.

Considerations and Feedback

11. After an initial presentation to SLT on 20 April a two-week public consultation period was launched online on 28 April. Email's signposting to the online consultation were sent to all Town/Parish Council's, District Councillors and those applicants/agents who had submitted an application to SSDC over the last 18 month and had provided an email address. The consultation included a survey to complete so focused feedback could be sought. One point of concern was the unknown number of agents who were on furlough during this period.
12. The survey yielded 9 respondents including 1 agent and 4 parish councillors, 1 district councillor and 3 members of the public. The number of contributors is low but the range of points made were extensive.

The key outcomes are analysed as:

- The document left the reader with on average a good understanding of enforcement in the planning system.
 - 85% felt the stages of dealing with a compliant are clear in the document.
 - 85% found the website links useful.
 - Answers to the question – *Please let us know the areas within this document that you feel are the most useful and why?* included:
 - The stages and the powers and toolkit to act
 - Answers to the question – *Please outline any areas with the document which you feel are unclear, or could be improved and why?* attracted a great deal of feedback and those comments plus the additional comments contributors made are set out with a response to each comment in **Table 1** attached.
13. The overall themes that emerge is the change in format and the colour coding of the stages did on the whole make sense to those who contributed.
 14. One contributor felt the document could be clearer regarding emergency incidents (Element 4 in Table 1). This is clearer on our website and so the protocol has been amended to include that information as well.
 15. The issue of timescales is also raised and is a valid point. The Protocol sets out specific timescales for the first few stages as these can be more predictable, however as a matter reaches formal action then the timescales are often not within the Council's gift and as such cannot be a performance indicator. The efficiency of the system is also predicated on resources available at the time and the number of complaints being dealt with.
 16. It is intended that a review of enforcement procedures take place every 12 months.

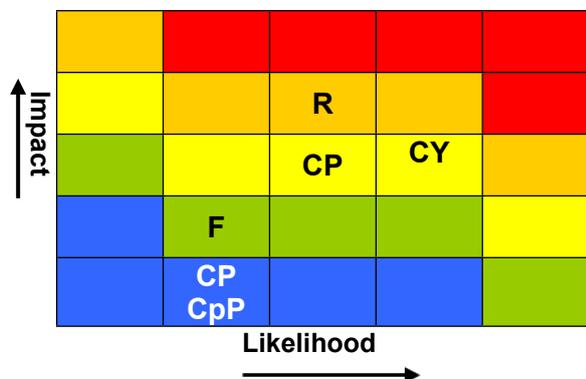
Financial Implications

17. The essence of the protocol is to make the process more efficient and ensure decisions on complaints are made more quickly. This will means some matters that might have otherwise been resolved by prolonged correspondence and a retrospective application over a very long period of time might now be subject to an enforcement notice. This might otherwise require more resource

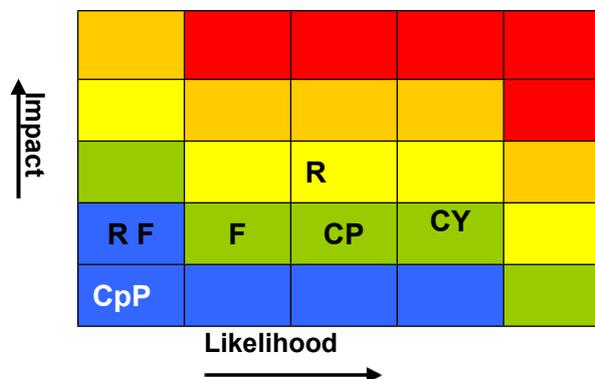
from the legal team but we would wish to put in place templates and training so planning officers can progress simple matters with only a final check being made by legal.

Risk Matrix

Risk Profile before officer recommendations



Risk Profile after officer recommendations



Key

Categories	Colours (for further detail please refer to Risk management strategy)
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability

Council Plan Implications

18. The Validation Guide is a key part of the planning process which underpins many of the Council Plan themes.

Carbon Emissions and Climate Change Implications

19. The Enforcement Protocol Guide in itself has no direct implications, other than encouraging the submission of complaints.

Equality and Diversity Implications

20. Enforcement is an embedded part of the planning process and is not considered to raise any particular equality and diversity implications.

Privacy Impact Assessment

21. The identity of a complainant is typically confidential but can be disclosed under certain circumstances, i.e.: the matter goes to court and witness are called. Well practiced protocols used at this time will continue to be implemented and would not be affected by the adoption of this Enforcement Protocol.

Background Papers

22. The 2007 Enforcement Policy and the proposed 2020 Enforcement Protocol are attached as Background papers.

Table 1 – summary of comments received and an officer response.

1	The use of colours for stages confused me. They are not in an intuitive order, Why not use numbers?
	<i>Response: This is a valid opinion, the use of colours links to our new Civica process which we felt gives the complainant and the (alleged) perpetrator a clear way of identifying the stage the Council has reached with the complaint. We are also minded that the protocol is rather wordy and so some colour adds interest and recognition.</i>
2	Further advice needs to be given on those matters which will be taken into account in deciding whether it is expedient to take enforcement action. For example highway safety, visual amenity, noise. It is not appropriate in many cases for officers to visit sites unannounced to deal with enforcement matters. It is placing the officers at risk and could result in the enforcement situation escalating.
	<i>Response: Agreed that approaching site dealing with enforcement complaints is a risk for officers, nobody wants to hear that a neighbour has complained 'anonymously' and caused the Council to visit. Our triaging of complaints will ensure that only valid complaints are investigated and our Locality Team have experience dealing with customers 'in the field' and are being given extra planning enforcement training.</i>
3	Appendix C – Powers of officers to enter land. What does the statement 'Rights to take any other persons as may be necessary for the purposes of the investigation' mean?
	<i>Response: The power extends to council officers so a particular complaint may need another expert from outside the council to provide advice on the impact of works and the necessity for action. Officers will rarely overtly use the power instead seeking consensual entry.</i>
4	How are emergency incidents reported needing instant enforcement?
	<i>Response: Cases that cause immediate, serious or irreversible harm to a listed building, protected tree or conservation area can be called through to our Customer Connect Team via 01935 462462. This is clear on our website but could be better reflected in the protocol.</i>
5	Enforcement on deliberate attempts to mislead at application stage? As there is no obligation for the Council to monitor development, include details of time and order specific activity on Decision notices so community can monitor for you.
	<i>Response: All decision notices set out clearly the triggers for certain works.</i>
6	Publish surveys requested post determination to aid in monitoring compliance
	<i>Response: All surveys are published.</i>
7	Timescale for the replacement of the South Somerset District Councils Regulatory Services Enforcement Policy (2016-2020)?
	<i>Response: The corporate Enforcement Specialist has the updating of this document within his current work plan with the aim of adopting a new version by the end of the year.</i>
8	For the layman a lot of the document is heavy going and maybe could be less wordy however because of the various legal complexities I can understand why this is so. This said it is laid out well and is at least easy to follow if not fully comprehensible.
	<i>Response: We have tried to make it as readable as possible whilst getting key message across in what is a legalistic process.</i>
9	As long as everyone is treated the same, No matter who they are then that's fine. As for the timescale in dealing with an enforcement issue, it will be interesting to see whether you can keep to it. Past experience would say not. And surely you should keep the complainant informed as to what if any action you have taken. This has not been done in the past.
	<i>Response: Part of this comment was not repeated as it contained prejudicial language. Everyone will be treated the same in accordance with the planning policies that exist. Timescale will always be an issue as Enforcement work is very involved; the timescales set out here are achievable with adequate resourcing.</i>
10	I do not understand why, especially in the current climate, it is being rushed through. SSDC's record in planning matters is abysmally slow - the ""consultation"" is just the opposite

	<i>Response: The document has been long in the planning and this coincides with the online process which went live on 15 May 2020.</i>
11	The 'objective' will never be carried out in practice. The Council has a laissez-faire attitude and some developers don't bother to apply for planning permission. The document does not deal with the enforcement of conditions.
	<i>The process we wish to put in place and the realigning of the culture regarding enforcement is part of making enforcement, a discretionary function of the Council, more efficient and effective within the current Council model. The Council is current pursuing several prosecutions and has served many enforcement notices over the last 18 months.</i>
12	Why is an account needed to register a complaint?
	<i>Response: The need for an account to be set up aligns with the corporate approach to accessing Council Services, allows verification and the outcome of a complaint or enquiry to be found via self-service. Setting up an account is simple and accesses a range of services.</i>