



Cabinet report

Date	11 MAY 2023
Title	ADOPTION OF A NEW PLANNING ENFORCEMENT STRATEGY AND INTRODUCING A NEW APPROACH TO DELIVERING PLANNING ENFORCEMENT
Report of	CABINET MEMBER FOR PLANNING AND ENFORCEMENT

EXECUTIVE SUMMARY

1. Planning enforcement action is discretionary and government guidance sets out that Local Planning Authorities (LPA's) must only take planning enforcement action when they regard it expedient to do so. Action must be proportionate to the breach of planning control to which it relates.
2. The council's current Enforcement Policy was published in 2015. A peer review of Planning Services was independently undertaken by the Local Government Association (LGA) in May 2022, which made a number of recommendations in relation to planning enforcement. These included the implementation of a new Planning Enforcement Strategy.
3. The new strategy articulates the local planning authority's (LPA) planning enforcement work as a core offer focussed on dealing with key priorities (where alleged breaches relate to protected buildings, landscapes and trees) on an Island-wide basis. It sets out that the LPA will still investigate alleged breaches outside of these priorities, when the resources allow. There will then be the opportunity for parish, town and community councils to fund further capacity to be used in their area to address locally identified priorities should they wish to.
4. There is no legal requirement for there to be public consultation on a Planning Enforcement Strategy. However, the new Planning Enforcement Strategy (please see appendix 1) has been prepared following engagement with the Isle of Wight Association of Local Councils (IWALC) and the views of parish, town and community councils have been sought to inform the draft Strategy.
5. As well as implementing a new strategy and approach to planning enforcement, there are other aspects that will be brought forward, such as more real time information being made available on-line and more proactive use of the media to promote successful action.

RECOMMENDATION

6. To adopt the Planning Enforcement Strategy, introduce the approach to delivering planning enforcement as set out in the strategy and continue to collaborate with parish, town and community councils about the most appropriate models of delivering additional enforcement capacity.
- and
- To delegate to the Cabinet Member for Planning and Enforcement and the Strategic Manager for Planning and Infrastructure Delivery the ability to agree to make minor presentational, consequential and typographical changes to the Planning Enforcement Strategy, as long as any changes do not materially change the content of the strategy agreed by Cabinet.

BACKGROUND

7. Planning enforcement action is discretionary and government guidance sets out that Local Planning Authorities (LPA's) must only take planning enforcement action when they regard it expedient to do so. Action must be proportionate to the breach of planning control to which it relates.
8. However, it recognised that Planning Enforcement is an important tool available to the LPA and the wider council in contributing to delivering corporate and regeneration aspirations and meeting local expectations.
9. The council's current Enforcement Policy was published in 2015 (please see Appendix 2). It sets out the council's priorities for investigation, explains what will be investigated and what will not and outlines our general discretionary powers with regard to planning enforcement. The policy includes priorities for responses to complaints and clarifies the timescales for response by officers.
10. The Planning Enforcement Team has a core of 3.48FTE (full time equivalent) officers, consisting of 2 x senior officers and 2 x officers. One of the Enforcement Officer posts is a three-year fixed term post which started in November 2022.
11. The team reacts to all alleged breaches of planning reported to it, by triaging to understand whether a breach has occurred and, if so, the harm caused and the appropriate route to seek resolution. Not all alleged breaches are breaches, so a formal case is not opened.
12. The following table sets out the number of cases opened (so not including the alleged breaches where a triage assessment was made and a case wasn't opened) and number of cases closed.

	Cases opened	Cases closed
22/23	242	223
21/22	250	241
20/21	265	197
19/20	236	273
18/19	260	300

13. As set out in the Corporate Plan, the Administration recognises *‘the importance of enforcement in supporting the delivery of our planning policies and in helping to maintain the integrity of the Island’s environment and support its businesses. We want to ensure that people no longer aim to ‘game’ the system and undermine the policies we will have debated at length with our community. We will continuously review our enforcement activities and look to develop new approaches to their delivery and look to secure whenever possible additional powers and funding to support these aims’.*
14. A peer review of Planning Services was independently undertaken by the Local Government Association (LGA) in May 2022. In its report (please see the link in background papers for the full report) the Peer Review Group said:

The enforcement of planning is equally as important as the local plan and planning application process; without it the other processes are undermined. However, the expectations around effective enforcement need to be carefully managed through a clear strategy and clear processes. Town and parish councils’ expectations are not being met ... and a refreshed enforcement strategy will ensure that these resources are used effectively.
15. The Peer Review Group also recommended that:

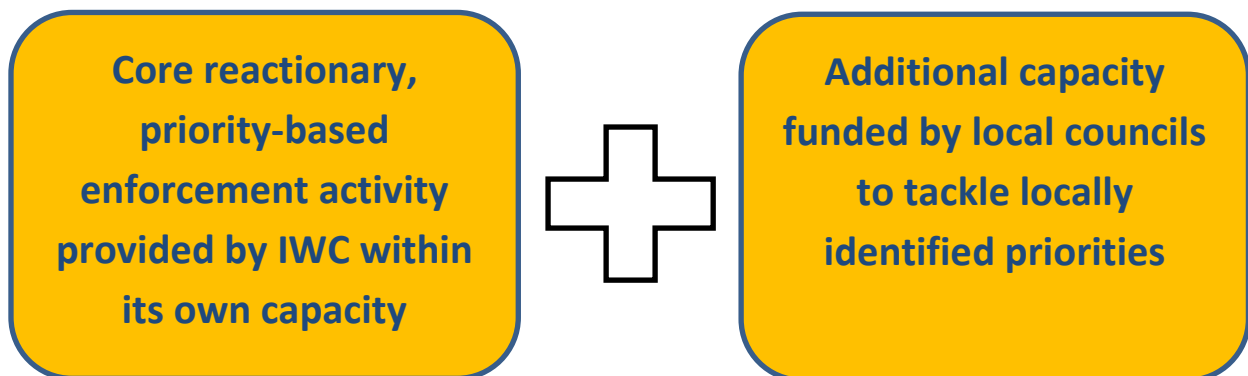
The service should also urgently review enforcement strategy to ensure better understanding for stakeholders of the powers available. It was not clear to the peer team whether the tests that apply to enforcement were being used to deliver the best outcomes nor whether customers understand the tools used and all the issues involved. Enforcement can be a cumbersome tool taking years to reach an outcome however, training in enforcement would help provide clarity on its limitations and help manage expectations.
16. The Planning Services Improvement Steering Group has been established to drive the improvements that need to be implemented in response to the report recommendations.
17. The Steering Group has identified four key work areas to prioritise action, which includes ‘Improving our Enforcement function’.

What is proposed in the new strategy?

18. Under the new strategy the Planning Enforcement team will continue to investigate every alleged breach across the Island and assess the level of harm to understand the appropriate way to proceed. Due to the current capacity issues cases that allege significant or irreparable harm to listed buildings, protected landscapes or protected trees will be the priority. This will still be on a reactionary basis, responding when we receive alleged breaches, and dealt with on a priority basis.
19. The proposed strategy facilitates further conversations with local parish, town and community councils about how the ‘core’ Island-wide enforcement service already provided by IWC (as identified in paragraphs 11 and 18) could be expanded by additional capacity funded by local councils.
20. This further capacity could enable IWC to undertake additional enforcement on a proactive basis working to a set of local identified priorities. Alternatively additional

capacity could enable IWC to deal with enforcement cases already received outside of the IWC core priorities more quickly than they would otherwise have been.

21. This approach has been trialled with Newport and Carisbrooke Community Council, and progress to date is considered to have been positive and successful. Officers and Community Councillors recently met to visit and discuss potential areas for action and the approaches to be taken. As a result the approach is now being finalised for agreement and the start of the agreed actions.
22. The new strategy consolidates the LPA's planning enforcement work into a core function focussed on dealing with key priorities on an Island-wide basis. There will then be the option for parish, town and community councils to fund further capacity.



23. This approach is not about passing responsibility to local councils, as the responsibility for Planning Enforcement sits with the Isle of Wight Council, but is about introducing the opportunity for a more collaborative approach of talking to local councils about what their priorities may be on behalf of their residents beyond the core enforcement activity. The Isle of Wight Council can then advise over approaches and realistic outcomes, so they are agreed in advance to be implemented when further capacity is funded.
24. As well as implementing a new strategy and approach to planning enforcement, there are other aspects that will be brought forward. There will be improvements to the enforcement information provided on the Council's website, including the intention to include real time performance statistics regarding how long investigations are taking.
25. It is also the intention to introduce proactive communication through social media and media outlets regarding the Enforcement Team's activity and publicising prosecutions to act as a deterrent. It is considered that positive use of the media can ensure that the general public is aware of the enforcement system and can actually see it working, and as a result any potential future offenders will think twice.
26. These changes will also be accompanied by an improved monitoring regime, with public facing information being made available through the Council's website.
27. Where local councils invest in capacity in the Enforcement Team there will be the opportunity to work alongside them on these wider approaches – a co-ordinated media approach showing the positive difference that action has resulted in.

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

28. Within the [Corporate Plan 2021 – 2025](#) there are key areas of activity that will be our main areas of focus for the lifetime of this plan which will need to be central to everything we do as a council.

Provision of affordable housing for Island Residents

29. Planning enforcement action can in some instances, especially when used in conjunction with other powers available to the council, can be used to bring back properties into meaningful use.

Responding to climate change and enhancing the biosphere

30. Ensuring that development is delivered correctly can contribute to responding to climate change and enhancing the biosphere, by making the best use of existing buildings.

Economic Recovery and Reducing Poverty

31. Effective planning enforcement can contribute to economic recovery and reducing poverty, particularly by facilitating visual improvements to an area which can stimulate both investment and civic pride. The proposed Planning Enforcement Strategy contributes to the delivery of the council's regeneration ambitions.

Impact on Young People and Future Generations

32. Effective planning enforcement can contribute significantly to a sense of place and civic pride. This can also have a positive impact on wellbeing. This contribution to the environment can have a positive impact on young people and seek to ensure the best possible environment for future generations.

Corporate Aims

33. The approach set out in the proposed Enforcement Strategy, is wider than the current Enforcement Policy as it links into other corporate plans and strategies (such as the Corporate Plan and the Empty Properties Strategy).

CONSULTATION

34. There is no legal requirement for there to be public consultation on a Planning Enforcement Strategy. However, the new Planning Enforcement Strategy has been prepared following engagement with the Isle of Wight Association of Local Councils (IWALC) and parish, town and community councils.
35. Officers presented the strategy to an IWALC meeting on Thursday 24 November 2022 and, as a result of requests at the meeting, a draft of the strategy was shared with all parish, town and community councils on Friday 3 February 2023, for a six-week period seeking feedback by Monday 13 March 2023. A summary of the responses received and how they have been considered can be found in Appendix 2.

36. A further session for parish, town and community councils, hosted by IWALC, was held in the Council Chamber on Thursday 23 February 2023.
37. The Strategic Manager for Planning and the Planning Team Leader responsible for Enforcement have also met with several local councils to discuss enforcement and the proposed approaches.
38. The feedback received, both verbally through these sessions and through written feedback has informed the attached strategy.

SCRUTINY COMMITTEE

39. An update on progressing the new Planning Enforcement Strategy and the introduction of a new approach delivering planning enforcement was given to the Policy and Scrutiny for Neighbourhoods and Regeneration on 5 January 2023, which the Committee noted.

FINANCIAL / BUDGET IMPLICATIONS

40. There are no financial implications for adopting a new Enforcement Strategy. In terms of parish, town or community councils contributing financially to create further capacity within the Enforcement Team, this will be cost neutral – capacity will only be brought in when there is the additional (external) resource has been committed. There is currently no capacity within Planning Services budget to fund further enforcement resources.

LEGAL IMPLICATIONS

41. The adoption of a planning enforcement policy or strategy is not, in itself, a legal requirement. However it is advisable to have a policy to provide an element of consistency in its approach to planning enforcement that takes account of the resources available to the council.
42. The exercise of the council's planning enforcement powers is discretionary and solely a matter of the council's judgement. However the judgement on the exercise of the discretion must be reasonable or it is open to scrutiny by the courts or local government ombudsman. On this basis the LPA must evaluate each allegation of a breach of planning control and make a decision on the particular circumstances of the case taking into the National Planning Policy Framework (NPPF), core strategy and other material consideration. This will include the public interest of how the finite enforcement resources are best allocated. The policy has been written to reflect this position.

EQUALITY AND DIVERSITY

43. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

44. An impact assessment has not been undertaken as the proposed policy provides a general overview of how the council will approach enforcement cases. Individual circumstances of each case will be taken into account so far as they are material in planning terms, and this may include giving weight to protected characteristics. However this decision will be made on a case-by-case basis in accordance with planning law.

PROPERTY IMPLICATIONS

45. It is considered that there are no direct property implications for the Council in adopting the strategy, unless planning enforcement action is taken against the Council as landowner.

OPTIONS

46. It is considered that there are three main options available to Cabinet:
1. To adopt the Planning Enforcement Strategy, introduce the approach to delivering planning enforcement as set out in the strategy and continue to collaborate with parish, town and community councils about the most appropriate models of delivering additional enforcement capacity.
 2. To amend and then adopt the Planning Enforcement Strategy, introduce the approach to delivering planning enforcement as set out in the strategy and continue to collaborate with parish, town and community councils about the most appropriate models of delivering additional enforcement capacity.
 3. Not to adopt the Planning Enforcement Strategy and continue to base the approach to planning enforcement on the 2015 Planning Enforcement Policy.
47. There is also the following option, should either option 1 or 2 be chosen:
4. To delegate to the Cabinet Member for Planning and Enforcement and the Strategic Manager for Planning and Infrastructure Delivery the ability to agree to make minor presentational, consequential and typographical changes to the Planning Enforcement Strategy, as long as any changes do not materially change the content of the strategy agreed by Cabinet.

RISK MANAGEMENT

48. Option 1 seeks to minimise the risk to the council by reviewing the current planning enforcement policy to reflect the restructure which has occurred. It also takes account of the legal position on enforcement.
49. Depending on what changes were proposed in line with option 2 may mean further consultation is necessary and/or may not produce a policy which can be delivered with the existing resources available. It would also impact on the timescale for delivering the improvements to the Planning Service recommended by the LGA Peer Review.
50. Option 3 would maintain the status quo of the approach to enforcement and the capacity to be able to deal with it. As with option 2 it would also impact on the

timescale for delivering the improvements to the Planning Service recommended by the LGA Peer Review.

EVALUATION

51. While the publication of an enforcement strategy is not a legal requirement, if the council fails to have such a strategy/policy, or adequately review its current approach the council will be open to criticism, in particular from those parties from whom the council seeks regulatory compliance. Option 1 would achieve a review of policy which would minimise risk to the council.
52. It is considered that option 3 would not result in improvements to the way the Council's Planning Enforcement is provided, and would maintain the status quo.
53. Conversely by implementing the new strategy the council demonstrates that it takes its regulatory role seriously and that it will work with the community to secure compliance. It creates transparency for all stakeholders, providing the manner in which the council intends to operate through promoting consistency and proportionality in regulation. It further provides the council with a basis for a robust defence to any challenges that may be encountered and demonstrates commitment to compliance with the Regulators' Compliance.

APPENDICES ATTACHED

54. Appendix 1 – New Planning Enforcement Strategy
Appendix 2 – Local council views on the draft new Planning Enforcement Strategy

BACKGROUND PAPERS

55. <https://iwc.iow.gov.uk/azservices/documents/2286-Enforcement-Policy-Aug-2015.pdf> Current Planning Enforcement Policy
<https://iow.moderngov.co.uk/ieListDocuments.aspx?CId=170&MId=1431> Minutes from the Policy and Scrutiny Committee for Neighbourhoods and Regeneration
<https://iow.moderngov.co.uk/documents/s10314/Planning%20Enforcement%20Update.pdf> Report to the Policy and Scrutiny Committee for Neighbourhoods and Regeneration 05/01/23
<https://www.iow.gov.uk/environment-and-planning/planning/lga-peer-review/peer-review-report/> LGA Peer Review Report
<https://www.local.gov.uk/sites/default/files/documents/stitch-time-managing-plan-49d.pdf> A stitch in time: managing planning enforcement, a Planning Advisory Service publication
<https://www.gov.uk/government/publications/regulators-code> The Regulators' Code

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