

REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

SUBJECT: PLANNING ENFORCEMENT UPDATE 2015

Purpose of Report

Some members of the Authority have asked for an update on the Enforcement function and to receive information on output/performance. The purpose of this report is therefore to provide an overview of the Authority's Planning Enforcement Function, changes to the Welsh Government Performance Indicators in relation to Enforcement as well as recent action taken by the Authority.

Structure of the Planning Enforcement Team

Historically the Enforcement function was delivered by 3 Enforcement Officers occupying areas throughout the National Park (North, West and South). In 2011 a Principal Planner was appointed to oversee the function with direct line management responsibility and to provide workload allocation and technical planning advice and assistance. The Principal Planner reported directly to the Head of Development Management at the time. This proved to result in reductions in the time taken to take action and resolve cases.

On the retirement of an Enforcement Officer in 2013 as well as the loss of a Planning Assistant within the Development Management Team it was decided to recruit for 2 x Planning Assistants to cover the two vacant positions. Both roles would involve an element of enforcement case work alongside planning application work.

The two new Planning Assistants predominantly worked on planning application caseload which was the priority. The loss of the Principal Planner position in November 2014 following a promotion of the post holder to Head of Development Management resulted in less staff being directly responsible for planning enforcement.

Notwithstanding this the team now comprises of 2 No. Planning Enforcement Officers and 2 No. Planning Assistants who report directly to the Head of Development Management. Alongside these officers there are 3 No. Senior Planners within the Development Management Team.

Our Policy & Delegation

In June 2011 the Authority Adopted a 'Planning Enforcement & Compliance Policy'. The purpose of the document was to set out a clear vision regarding the process of investigating complaints and the taking or not of enforcement action against breaches of planning control.

The Policy provides priorities for certain types of alleged breaches of planning control, identifies how complaints will be accepted, the decision making process and identifies the enforcement measures available to the Authority. This Policy has helped both officers and the public.

On 1st February 2012 the National Park Authority introduced a Scheme of Delegation for the majority of planning enforcement matters. This scheme granted authority to senior officers to take enforcement action against breaches of planning control without having to direct the matter before a full planning committee.

As a result of introduction of the scheme officers have been able to ensure speedier decisions have been taken on enforcement cases in line with the advice set out by Welsh Government.

The scheme appears to be working and since 2011 there have not been any issues or areas of concern raised with this scheme of delegation.

Current Processes

In terms of processes enforcement case work relates to determining whether there has been a breach of planning control and establishing the appropriate mechanism to deal with the breach. This can sometimes result in inviting a planning application to resolve a breach or taking enforcement action where expedient to resolve a breach. In certain circumstances the Authority can determine that the taking of enforcement action would not be expedient and the tests for this are set out in Welsh Government Technical Advice Notice 9 – Enforcement of Planning Control.

Officers receive complaints regarding development by post, in person and over the telephone and in order to ensure a clear process there are standard complaint forms available on the website for the public to use when submitting a complaint. Officers will require full information to be forthcoming in this way in order to be clear on the alleged breach.

Following receipt of a complaint and a new case being opened with a unique reference number (i.e. EC/15/0100) the officer will carry out an investigation by visiting the site and speaking to the owner/persons concerned. Photographs will likely be taken and evidence collated in order to establish whether a breach of planning control has taken place.

The next step is to establish one of the following two outcomes:

- There is a breach of planning control
- There is not a breach of planning control (i.e. not considered to be development or is permitted development)

If the officer is clear that there is no breach of planning control the enforcement case file will be closed and the informant notified of this outcome.

If there is a breach of planning control the owner/persons concerned will be written to advising of the breach and requesting either removal/cessation of the breach or submission of a retrospective application proposing retention of the works carried out. Where it is clear to officers that a development would not receive officer support and is contrary to the Local Development Plan the owner will be advised during the investigation.

Where an application is submitted the Authority will deal with this in accordance with its delegated procedures unless triggered to be determined by the Development Management Committee.

Where no planning application is received and the owner is not preparing to submit a planning application the Authority will have two options:

1. To take formal enforcement action to remove the breach of planning control;
- or
2. To determine that it is not expedient to take enforcement action.

In connection with (1) above officers will prepare their reasons and draft a formal Notice to be issued in connection with the breach. A time period for compliance will be given and the owner will have a right to appeal to the Planning Inspectorate.

In connection with (2) above officers will only take enforcement action where it is expedient to do so. For example, if an application had been sought retrospectively and it was likely that the development would be acceptable without any conditions, and can be retained as completed, and is in accordance with the policies contained within the Local Development Plan then it would not be expedient in the public interest to take enforcement action.

Where a formal Enforcement Notice has been issued and not complied with the Authority has to consider the next suitable course of action. The initial action will be a letter to the owner. Where requests to comply with a breach are not complied with officers will report the matter to the Development Management Committee seeking authorisation to prosecute the owner/persons concerned.

Performance

Up until recently Welsh Government judged Authorities across Wales on their speed in dealing with complaints received as opposed to the processing technique or number of formal notices served. As such the number of Notices served is not usually a good benchmark of performance. The Welsh Government performance indicators suggested that initial complaints should be dealt with within 12 weeks.

This measure of a complaint being 'closed' was taken as being when one of the following measures has been taken in the investigation;

- Deciding there is no breach
- Deciding the breach had ceased following officer negotiation
- Deciding there is a breach but it is not expedient to take formal action
- Receipt of a valid planning application for the breach
- Service of an Enforcement Notice to remedy breach

This year Welsh Government alongside the Planning Officers Society for Wales (POSW) has been trialling the introduction of a new Planning Performance Framework. This Framework will effectively monitor the performance across Wales

with indicators and targets and includes the following five categories: *Plan Making, Efficiency, Quality, Engagement and Enforcement*.

In respect of Enforcement the Framework now seeks to measure the following four indicators per quarter:

- Percentage of enforcement cases investigated within 84 days
- Average time taken to investigate enforcement cases
- Percentage of enforcement cases resolved within 180 days
- Average time taken to take resolve enforcement cases

As a result of this the definitions have bene amended as follows:

Investigated means that the Authority has considered the alleged breach of planning control and advised the complainant of their investigation. The clock stops when the LPA has concluded and notified the complainant that:

- no breach of planning control has occurred;
- a breach has occurred but planning enforcement action is not expedient;
- a breach has occurred and planning enforcement action will need to be pursued

Resolved means there has been a breach of planning control identified and that one of the following has occurred:

- planning permission is subsequently granted through an application or enforcement appeal;
- an enforcement or breach of condition notice is complied with;
- the breach of control is ceased by the developer;
- direct action by the authority removes the breach of control.

The Guidance presented within the Planning Performance Framework on recording of this information is identified as below:

INDICATOR 15. Percentage of enforcement cases investigated within 84 days

An 'enforcement case' is defined as any number of complaints relating to a single alleged breach of planning control brought to the attention of the local planning authority by any party by whatever means of communication.

Investigated" means that the LPA has considered an alleged breach of planning control and advised the complainant of their investigation, as below.

The clock starts on the day that the enforcement complaint is received by the Local Planning Authority from the complainant or via a Councillor or another body/department. This could be by letter, email or telephone call. The clock stops when the LPA has concluded and notified the complainant that:

- no breach of planning control has occurred;

- a breach has occurred but planning enforcement action is not expedient;
- a breach has occurred and planning enforcement action will need to be pursued

INDICATOR 16. Average time taken to investigate enforcement cases

This indicator is calculated by dividing the total number of days taken to investigate all enforcement cases in the reporting period, by the total number of enforcement cases investigated.

The “average time taken” is calculated by combining the four quarterly averages for this figure, and dividing that total by four. The figure published in the Performance Framework table should be seen as indicative, and it is open to LPAs to provide a more accurate figure in their APRs by showing the total number of cases per year, showing the overall time taken to investigate those cases, and dividing the overall time by the overall number of cases.

INDICATOR 17. Percentage of enforcement cases resolved within 180 days

This indicator identifies the end-to-end response to confirmed breaches of planning control, following their initial investigation to their final resolution. The LPA should, within 180 days of receipt of the initial complaint of breach of planning control, have reached one of the following positions:

- planning permission is subsequently granted through an application or enforcement appeal;
- an enforcement or breach of condition notice is complied with;
- the breach of control is ceased by the developer;
- direct action by the authority removes the breach of control.

INDICATOR 18. Average time taken to take resolve enforcement cases

This indicator is calculated by dividing the total number of days taken to resolve all confirmed breaches of control in the reporting period, by the total number of enforcement cases resolved.

The “average time taken” is calculated by combining the four quarterly averages for this figure, and dividing that total by four. The figure published in the Performance Framework table should be seen as indicative, and it is open to LPAs to provide a more accurate figure in their APRs by showing the total number of cases per year, showing the overall time taken to resolve those cases, and dividing the overall time by the overall number of cases.

Understanding this in practice

Clearly the recording of this information will give a good indication of speed of decision making. It may be seen that the target resolution of cases to actually take and resolve an enforcement breach has been extended to 180 days (25 weeks, 5 days), and this is a positive step to represent the truly inherent lengthy process than

can take place, however, the case will only be finally resolved when the breach is removed.

The measure of resolving a case previously would have been the ‘taking of enforcement action’ and now the Authority may be judged on matters which are often outside of their control i.e. having to await an appeal decision, having to await compliance from the offender, having to pursue formal court action. These concerns have been reported back to POSW and WG.

From the Enforcement Team’s perspective the focus will be on making early decisions within the 84 days (12 weeks) of opening a case to decide on the relevant outcome. This being that no breach of planning control has occurred, a breach has occurred but planning enforcement action is not expedient or that a breach has occurred and planning enforcement action will need to be pursued or an application is invited to resolve that breach.

Performance Statistics

It is difficult to measure the performance of ‘enforcement’ as a lot will depend upon the facts of the individual cases being investigated and whether the case has reached a satisfactory outcome. For example the indicators mentioned above rely on certain definitions of when a case is ‘investigated’ or ‘resolved’. The Authority has clear processes in place to undertake enforcement work and so it is considered that making early decisions on individual cases is a good measure of the performance of the team. Also making sure that the backlog of older cases is addressed is a priority particularly to ensure that cases reach outcomes and do not sit unresolved.

The Authority has been fairly consistent in terms of number of enforcement cases received and the active caseloads being investigated by individual officers. Table 1 below sets out the number of complaints received (per year) showing that this averages between 120 and 160 investigations per year. Table 2 identifies the current level of backlog of enforcement cases being dealt with. You will note that the majority of these cases are cases received within the last two years and these will usually be cases involving complex planning issues. It can be noted that the number of cases being investigated is currently 121 although this constantly changes with new cases being received and other cases being closed. It is of relevance that in January 2013 in a similar report to members it was reported that there were 117 active cases under investigation at that time.

Table 1. No. of Enforcement Complaints received

2015 (to date)	118
2014	127
2013	156

Table 2. Backlog of current enforcement cases by year received

2015 (to date)	60
2014	33
2013	11
2012	5
2011	10
2010	2
TOTAL number of cases (Oct 2015)	121

In terms of statistics Welsh Government has been recording the data across Wales for the periods set out below. Whilst the data is unlikely to be a true record due to the definitions recently changing, what it does show is that approximately 70% of enforcement cases are being investigated within the initial 12 week period.

Table 3 – Statistics derived from Welsh Government Planning Performance Framework

Period	Percentage investigated within 84 days	Percentage of cases where enforcement action is taken or retrospective application received within 180 days
July 2014 to June 2015	72.9 (Wales average = 71.2)	75 (Wales average = 76.3)
April 2014 – March 2015	66.2 (Wales Average = 65.8)	74.2 (Wales average = 76.8)

Table 4 - No. of Retrospective Planning Applications Received & fee generated

Year	No of Retrospective planning applications received as a result of Enforcement Work	Fee generated from retrospective planning applications
2015 (to date)	18	£28,557
2014	22	£20,025
2013	11	£1777

The above table demonstrates the value that the Enforcement function has in way of both bringing unauthorised developments within planning control (and subject to any necessary planning conditions), that would otherwise obtain lawfulness and immunity from action, and bringing in planning fees to assist the section and Authority.

The planning fees associated with individual applications do vary although the figures represented above do include applications which had relatively large individual application fees. For example this years to date has included £22,770 at Trewern (NP/15/0417) and £1,264 at Slebech Park (NP/15/0243), in 2014 this included fees of

£9,240 at Velindre (NP/14/0311), £1,980 at Bluestone (NP/14/0495) and £3,300 at Coedwynog (NP/14/0622).

Enforcement Notices

Serving a formal Enforcement Notice should be seen as a last resort for the Authority after all modes of negotiation have been exhausted. As such it is not usually a good benchmark for performance. Notwithstanding this the Authority does pursue enforcement action for breaches of planning control where no resolution is achieved and development does not benefit from the relevant permission.

In 2015 to date the Authority has issued 6 Enforcement Notices in relation to unauthorised development. In addition officers are currently in the process of drafting 5 Notices over the coming weeks. 1 of these notices is in respect of unauthorised building works whilst 4 are in relation to outstanding Listed Building breaches.

The following table shows the actions taken by the Authority under delegated powers and indicates the position with each of these cases.

Ref. No.	Address	Breach	Date Served	Compliance Date	Other
EC15/0104	Cadwalader Ice Cream, Cheltenham House, Tudor Square, Tenby, SA70 7AD	Unauthorised removal and replacement of a shop front on a listed building.	15/10/15	14/3/16	Awaiting next stage.
EC15/0079/COU	Land off the Ridgeway, Manorbier Newton	Material change in use of the Land to a mixed use for agriculture, the keeping of horses and for gypsy/traveller and/or residential purposes through the siting of a static caravan used for residential occupation, the siting of a touring caravan, the siting of a timber domestic type shed, the siting of dog kennels and a chicken shed, storage of building materials and storage of vehicles and trailers.	24/7/15	24/2/16	Appeal has been received. Initial papers have been forwarded to Planning Inspectorate with an appeal hearing scheduled for March 2016.
EC15/0079/OP	Land off the Ridgeway, Manorbier Newton	Alteration of existing grounds levels, construction of hardstandings, creation of earth bunding and the erection of a timber domestic shed and erection of a chicken shed and dog kennels.	24/7/15	24/2/16	Appeal has been received. Initial papers have been forwarded to Planning Inspectorate with an appeal hearing scheduled for March 2016.
EC14/0106	Fforest Farm, Fishguard Road, Newport	Breach of Condition Notice – Non-compliance with conditions 2, 3, 4, 6, 7, 8 and 9 of Planning Permission NP/14/0229.	2/4/15	2/6/15	No compliance with Notice achieved. Matter now subject to authorisation for prosecution for failure to comply.
EC13/0053	Land at Mead	Without Planning Permission the	26/1/15	10/2/15	Planning appeal

	Meadow, The Ridgeway, Manorbier	erection of a timber built single storey dwellinghouse with surrounding decking, change of use of the land to use for storage of a touring caravan, domestic garden furniture and children's play equipment used ancillary to the unauthorised dwellinghouse.			received and dealt with by a Hearing on 22 September 2015. Appeal decision awaited.
EC13/0023	Land at Tresissillt, St Nicholas, Goodwick	Without Planning Permission the erection of two stable buildings on the land.	08/1/15	10/2/15	No compliance with notice achieved. Authority granted to pursue prosecution. In the interim an application was received for the development and refused under delegated powers on 21 October 2015.

Summary

The above report gives an overview of the service, the changing ways of recording performance related statistics and a current update on enforcement action taken. It is considered that this work underpins and forms an important foundation to a successful Development Management Service and where available relevant resources should be used to strengthen this service.

Recommendation

That members note the content of the report.