

## PLYMOUTH CITY COUNCIL

**Subject:** Planning Compliance  
**Committee:** Planning Committee  
**Date:** 13 December 2018  
**Cabinet Member:** Councillor Mark Coker  
**CMT Member:** Anthony Payne (Director for Place)  
**Author:** Paul Barnard - Service Director for Strategic Planning and Infrastructure  
**Contact details** Tel: 01752 304077  
email: paul.barnard@plymouth.gov.uk  
**Ref:** SPI/DM/CR/CWI  
**Key Decision:** No  
**Part:** I

---

### **Purpose of the report:**

The purpose of this report is update Plymouth City Council's Planning Committee Members on the statutory background to the Council's planning enforcement activities, and to summarise the extent and type of planning compliance activities currently being carried out by the Council. The report has also been prepared to assist Members in their understanding of the planning compliance process, and how this vital activity is being carried out in Plymouth. The report also updates Members of the Committee on the key planning compliance statistics as at November 2018, and contains a specific case study outlining how planning compliance action can assist in maintaining an acceptable level of residential amenity while development takes place near their homes. The prompt and effective enforcement of planning rules is essential to protect the quality of the City's environment, and ensure public confidence is maintained in the planning system.

---

### **Corporate Plan**

The prompt and effective enforcement of planning rules is essential to protect the quality of the City's environment, and ensure public confidence is maintained in the planning system, and this supports the objectives of the Council's Corporate Plan and the South West Devon & Plymouth Joint Local Plan. Effective planning enforcement helps to achieve the City Vision, values, Objectives and outcomes contained within the plan, for, Pioneering Plymouth, Growing Plymouth, Caring Plymouth and Confident Plymouth.

---

### **Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land**

There are no additional resource implications arising from this planning enforcement update report.

---

### **Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:**

- Community Safety - effective planning enforcement is essential to support the Council's role in this field.
- Health and Safety - effective planning enforcement assist in meeting health and safety objectives.
- Risk Management – effective planning enforcement assist in minimising risk from complaints and subsequent possible legal challenges to decision.

### Equality and Diversity

Has an Equality Impact Assessment been undertaken? This mainly information disseminating report has an entirely neutral impact in terms of Equality & Diversity considerations.

### Recommendations and Reasons for recommended action: The contents of this report to be noted by Members of the Planning Committee.

### Alternative options considered and rejected:

The Council is required to carry out planning enforcement investigations and follow up actions.

### Published work / information:

National and local planning policy guidance as set out in the report.

### Background papers:

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	
National Planning Policy Framework 2018										
National Planning Practice Guidance 2016										

### Sign off:

Fin	pl.18. 19.16 5.	Leg	lt/31 633/ 0412	Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member													
Has the Cabinet Member(s) agreed the contents of the report? Yes													

## **1.0 Introduction;**

1.1 The purpose of this report is update Plymouth City Council's Planning Committee Members on the statutory background to the Council's planning enforcement activities, and to summarise the extent and type of planning compliance activities currently being carried out by the Council. The prompt and effective enforcement of planning rules is essential to protect the quality of the City's environment, and ensure public confidence is maintained in the planning system.

## **2.0 Planning Compliance Powers;**

2.1 Section 171 of the Town & Country Planning Act 1990, the primary national planning legislation currently, gives Local Planning Authorities the necessary powers to enforce planning legislation in all its forms.

2.2 National guidance on planning enforcement is summarised on one relatively brief paragraph (number 58) in the National Planning Policy Framework 2018, which states as follows;

'Effective enforcement is important to maintain 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. They 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 appropriate'.

2.3 More detailed guidance regarding planning enforcement, and how this should be carried out in practice, is contained in the National Planning Practice Guidance 2016 (last updated on 22/11/18) which contains a section devoted to planning enforcement and states in its introduction as follows;

'There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. This includes a local enforcement plan, where it is not part of the development plan.

In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework, in particular paragraph 207 (now paragraph 58 in 2018 NPPF)'.

2.4 At the local level, and in line with the advice contained in the national guidance, Plymouth City Council adopted its own Planning Enforcement Policy in January 2017.

This document has a helpful role in setting out how the Council enforces planning rules at the local level. Significantly, given the resource intensive nature of the activity and the limited number of planning officers available for the activity (currently the equivalent of approximately 3.0 full time planning officer posts), it also identifies the Council's planning enforcement priorities, and provides targets for the investigation of different types of planning breach.

2.5 The Planning Enforcement Policy also highlights the importance of protecting the special built heritage of Plymouth, and in particular its many listed buildings, and the fourteen designated conservation areas. These assets in particular have been the subject of a number of proactive coordinated planning compliance initiatives, including most recently action against eight of the most neglected and untidy buildings in Union Street in November. These types of proactive initiatives are important in supporting and encouraging responsible owners who invest in their land and buildings, and helps maintain public confidence in the effectiveness of the planning system.

2.6 An audit of Plymouth City Council's planning enforcement service was carried out by Devon Audit in 2016. This found that the service was operating well, but recommended a series of changes to improve the service further. These included the adoption of an enforcement policy, the increased use of technology to improve customer service, and the identification of priorities to guide the allocation of resources. These changes have been implemented. In December 2017, planning compliance officers also visited Hounslow Borough Council to study and learn best practices from what is generally regarded to be an exemplar compliance service. Several new initiatives have since been introduced in Plymouth as a result of this.

**(Appendix C I – copy of the Plymouth City Council Planning Enforcement Policy)**

### **3.0 What planning compliance can and cannot do;**

3.1 Through a combination of national guidance, the legal framework, and a whole raft of case law on the subject, we have arrived a situation where planning enforcement can be seen to have several key characteristics as follows;

- **Planning enforcement is essentially a remedial activity not punitive.**  
This means that the primary purpose of the activity is to remedy the harm being caused by a planning breach, in whatever the form that planning harm takes, and not necessarily to punish those responsible for the breach.

This is not to say that there are no punitive powers available to LPA's to address planning breaches, though, as patently there are, but these are normally reserved for situations where an absolute offence has occurred causing irreparable harm, or where a remedy cannot be secured through negotiation and discussions, and/or where a planning enforcement notice has been issued but has not been complied with.

- **Planning enforcement action is a discretionary activity and should be pursued only where this is considered to be expedient**

The Council is under a duty to investigate suspected, and reported, planning breaches, and not to do so would result in potentially punitive and costly intervention by the Local Government Ombudsman. However, where a breach of planning control is subsequently identified, enforcement action does not automatically follow, as the Council must consider whether it is expedient to pursue action based on the extent of any planning harm caused by the breach. For this reason, it is not uncommon for Councils not to pursue enforcement action where for example a very minor and inconsequential change is made from an approved scheme, or if a development only very slightly exceeds a permitted development allowance, with no planning harm being caused by this as a result.

- **Failure to obtain planning permission where this is required is not an offence in law.** Nor indeed, is failure to comply with planning conditions attached to a planning permission that has been issued by the Council, nor conditions attached to a permission granted under the nationally applicable General Permitted Development Orders.

It is clearly most unwise, however, for any person or organisation to carry out any development, either knowingly or unknowingly, without first obtaining the required planning permission, or fail to comply with planning conditions attached to a planning permission. This is because the Council has very robust planning enforcement powers it can take where unauthorised development causes planning harm, and where planning conditions are not being complied with.

These powers include the issuing of enforcement notices, of various types, which if not complied with, will result in the Council prosecuting the person(s)/organisation responsible, and or carrying out remedial works in the the form of direct action ie taking steps required and recovering the costs of this from the contravenor(s). Where found guilty in the Magistrate Court the maximum penalty on summary conviction is £20,000 per offence, with unlimited fines, and potentially custodial sentences, available to the higher Crown Court if required.

Where an absolute planning offence occurs, which applies to a small number potentially irreparable harm situations, such as the felling of a protected tree, or damage to a listed building, then immediate prosecution can take place, as these are examples of so called direct planning law offences.

- **Any planning enforcement action taken should be proportionate to the effect of the breach.**

There is a range of robust formal planning enforcement actions that can be pursued, starting with initial notices, then progressing to enforcement and stop notices, and then in extreme cases, injunction actions. The principle here is that the form of action taken should reflect the seriousness of the breach, and/ or extent of the planning harm being caused by it.

- **Any planning enforcement action that is taken should not duplicate, or seek to take the place of, any other legal action that could be taken under any parallel legislation.**

Some planning breaches can involve an activity which also contravenes some other form of environmental legislation, and national guidance makes it clear that planning enforcement should not replace another form of enforcement action, if this is applicable, and it can be pursued by the appropriate enforcing authority. Each situation needs to be carefully considered to determine which actions should be applied, and whether another form of enforcement action may achieve a more instant and/or effective remedy, or where parallel actions may be beneficial.

#### **4.0 The role of Councillors and their constituents in this process;**

4.1 Some breaches of planning control are identified by planning officers, in the normal course of their work, and are always recorded on the Council's planning compliance recording system, and followed up with appropriate action being taken as required.

4.2 The great majority of planning compliance cases, of which the Council records between 350 and 450 per year on average, are reported to the Council by members of the public, or by councillors, or by councillors on behalf of their constituents.

4.3 All reports of suspected planning breaches are recorded on the Council's recording system regardless of the means by which they are reported. All reports are treated in the strictest confidence, and in carrying out the necessary investigations the planning case officer will not divulge the sources of their information at any stage. This is clearly vital in terms of preventing any possible personal repercussions, and encouraging members of the public and councillors to report useful information.

4.4 To encourage members of the public to report suspected planning breaches quickly, and conveniently, an on-line reporting form has been available for use on the Council's website. This is located within the 'How we deal with Unauthorised Development' part of the website, which also contains useful information about how suspected breaches are investigated, and includes access to the adopted Planning Enforcement Policy.

4.5 City Councillors can report suspected breaches direct by phone, email, or letter, but also can use the Firmstep reporting system if they prefer. Councillors also now have access to a separate recently installed specific form for reporting Untidy Land & Buildings, and councillors are actively using this form to report cases for investigation.

4.6 Case officers will keep members of the public & councillors who have reported suspected planning breaches, updated on significant stages of their investigations, for example confirming if a breach of planning control has occurred and then outlining action which is considered expedient to pursue to remedy planning harm, and will also notify them of formal notices that have been served, and provide details of any appeal that is lodged. Councillors are also invited to participate in the appeal process, similar to participating in an appeal against a refusal of planning permission, by submitting their views to the Planning Inspectorate should they wish to do so.

4.7 City Councillors also play a key role in identifying subjects for proactive planning compliance initiatives, and the latest of these to be undertaken has involved action to secure improvements to eight significantly untidy buildings in Union Street. Members have been aware of growing concerns from Union Street residents about the buildings in question, and are keen to see improvements to the area to supplement the programme of improvements underway in the locality as part of the Millbay Boulevard development.

## **5.0 Types of planning enforcement notices;**

In the event of a planning breach being identified, and where some form of remedial action is considered to be expedient, the following types of enforcement notices are available to the Council to utilise depending upon the type of planning breach being actioned;

**(i). Breaches of planning permission** ie development without necessary planning permission, development not in accord with details approved in a planning permission, failure to comply with conditions attached to a planning permission (granted either by the Council or by the General Permitted Development Order);

**Planning Contravention Notice (PCN)** - Requires persons to divulge information in respect of land and activities. This is often undertaken to determine if there is a breach of control and to inform the appropriate course of action.

**Breach of Condition Notice (BCN)** - To require compliance with conditions specified within a planning permission.

**Enforcement Notice\* (EN)** - To require steps to be taken to remedy the breach of planning control.

**Enforcement Order\* (EO)** – Issued where there is evidence that a planning breach has been knowingly concealed, or hidden, by the contravenor, in a deliberate attempt to gain immunity from conventional enforcement action by virtue of the 4 year or 10 year enforcement immunity rule. Needs to be authorised by the Magistrates Court.

**Stop Notice\*/Temporary Stop Notice** - To require unauthorised activities to cease.

**Injunction** - To prevent unauthorised development and only used in a very limited number of specific circumstances. Needs to be authorised by a Crown Court judge and is only applicable in respect of the most serious types of planning breach, and where severe planning harm would otherwise result.

**(ii) Listed Buildings Enforcement** – Specifically applicable where unauthorised alterations are made to a listed building;

**Listed Building Enforcement Notice\*** - Requires remedial works to restore damage caused by unauthorised alterations, or changes, and normally where irreparable damage has not been caused.

**(iii). Untidy Land or Buildings** ie land and/or buildings which are so significantly untidy that they are considered to be adversely affecting the amenity of the area;

**Section 215 Untidy Land Notice\*** – Specifies steps needed to be taken to improve a significantly untidy area of land, or a building, up to an acceptable level of appearance.

**(iv). Unauthorised advertisements** ie outdoor signs and adverts which lack the necessary consent from the Council; including flyposting on private property;

**Removal Notice** – Requires an unauthorised advertisement to be removed

\* there is a right of appeal against all notices marked in this way, the appeal lodged with either the Planning Inspectorate, or the Magistrates Court, depending on the type of notice.

## **6.0 Breakdown by type of current compliance caseload;**

6.1 The Council records on average between 350 and 450 planning compliance reports per year. Each recorded case is carefully investigated to determine if a breach of planning law has occurred, and to determine what action should be pursued.

6.2 By the end of November 2018, a total of 366 compliance cases had been recorded this calendar year. The subject matter of these cases cover a wide range of different environmental issues, but the majority fall within the following broad categories;

- development without planning permission
- development not in accordance with approved details
- development not complying with planning conditions
- unauthorised advertisements and signs
- untidy land and buildings

**(Appendix C2 – Chart showing current outstanding cases in December 2018 by breach type)**

6.3 In October 2018, a report was presented to Planning Committee summarising in table form the planning compliance details for that month. This was the first such report and was designed to illustrate the key information in a very simple way. The report for November 2018 is attached to this report.

6.4 During November, the pro-active coordinated special initiative was also carried out to require improvement to eight severely neglected buildings in the Union Street area. These notices related to;

- 1. Former C103 Nightclub – 103-113 Union Street**
- 2. Palace Theatre/Great Western Hotel 119 – 123 Union Street**
- 3. Phoenix Tavern – 9 Phoenix Street**
- 4. Former Choo Choo Nightclub/British Legion – 71 Union Street**
- 5. Hot Diggity Dog Building – 65 Union Street**
- 6. Dragon Inn Building– 93 Union Street**
- 7. Devon and Cornwall Furniture Reuse Project Building – 97 Union Street**
- 8. 148 Union Street (Vacant shop unit) - opposite the Palace Theatre.**

6.5 In addition to these, a ninth Untidy Land Notice was issued in November on the owner of a severely neglected building in Grenville Road, St Judes, after they failed to respond to an informal request for urgent improvements.

**(Appendix C3 - Table showing summary of planning compliance cases & actions by Plymouth City Council in November 2018)**

## **7.0 Case study example – construction site parking problems - planning compliance in practice;**

7.1 Planning compliance can play a key role in ensuring approved development does not unreasonably impact on neighbouring residents during the construction stage of the development. A particular problem that causes a significant number of complaints from residents currently relates to construction vehicle parking, and the problem this causes where vehicles are parked inconsiderately, and even illegally ie where on-street parking restrictions exist for example.



7.2 The Council's Code of Construction Practice sets out to ensure construction work is carried out with minimal impact on neighbouring residents. This makes only limited reference to the issue of inconvenient and/or unsafe parking by contractors/delivery vehicles, and would benefit by modification to make explicit reference to provision being made on site and retained for this purpose where this is physically possible. Where space constraints mean this cannot be provided on site, an off-site parking plan will be required to be submitted for approval, and subsequent implementation.

7.3 In addition to the generic Code of Practice, the Council typically attach a planning condition to larger scale planning permissions requiring the submission of a specific tailored Code of Practice for the development site for approval before any work commences on site. To address these parking concerns the condition will be modified to require the submission of a detailed construction parking plan, including details of on-site parking spaces, vehicle turning areas, and materials delivery spaces, and it is proposed that planning permission is granted subject to strict adherence to the approved plan. Evidence of failure to comply with the approved details will result in enforcement action being pursued to secure compliance.

**(Appendix C4 – Plymouth City Council's Code of Practice for Construction and Demolition Sites)**

## **8.0 Summary;**

8.1 This report has been prepared to assist Planning Committee Members in their understanding of the planning compliance process, and how this vital activity is being carried out in Plymouth. The report also updates Members of the Committee on the key planning compliance statistics as at November 2018, and contains a specific case study outlining how planning compliance action can assist in maintaining an acceptable level of residential amenity while development takes place near their homes.

DM/PC&C/CW/18.12.04