

Planning Enforcement In Teignbridge District Council

October 2022

A review by a task and finish group of
Overview and Scrutiny committee 2.

Final Report
Final version 1.0

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Abstract

A task and finish group has looked at the planning enforcement function in Teignbridge both the actual performance and the public perception of enforcement as an incentive to compliance. The work has included a review of neighbouring councils, Gathering evidence from Parish and Town councils in Teignbridge, Feedback from industry, and a review of the current Teignbridge Council operations. A number of recommendations have been identified.

Terms of reference

Terms of reference for this group can be found online at:

<https://democracy.teignbridge.gov.uk/documents/s14240/TNF%20Enforcement%20ToR%20v4.pdf>

Method

Review of neighbouring councils

A similar investigation was carried out in Mid Devon District Council MDDC about 18 months earlier than this work. This included evidence of the different approaches adopted by neighbouring councils and the up-to-date evidence and conclusions have been used to inform this work.

Documents from that review are available online:

<https://democracy.middevon.gov.uk/documents/s18374/Scrutiny%20Planning%20enforcement%20Sept%202020.pdf>

[Appendix 3 Other Council data.pdf \(middevon.gov.uk\)](#) contains details of the numbers of officers and cases for neighbouring councils. For comparison Teignbridge Council currently has around 300 cases open. This equates to 100-150 per enforcement officer. It is felt that Teignbridge Council performance in terms of staffing and caseload is broadly in line with other councils, especially after considering differences in reporting methods. Cornwall do not register trivial “no breach” cases, Teignbridge Council records all complaints that come in. This may mean a higher level of cases reported but is considered more accurate.

MDD has introducing [fees for compliance checks](#) similar to the fees charged by Teignbridge Council.

The final report is available at:

<https://democracy.middevon.gov.uk/documents/s22810/Planning%20Enforcement%20final%20report.pdf>

Community feedback

A request was sent to all parish and town councils in Teignbridge, including some background on the current approach and policies, and the scope of this task and finish group.

Responses were received from Newton Abbot Town Council, 2 other town councillors, and 9 parish councils.

Qualitative analysis has been used. This is appropriate, because sample size is small consisting of just 12 emails, but the responses are detailed and specific, in some cases a single email response represents the outcome of debate involving a parish council, and some include specific recommendations which we have considered. The results are analysed to identify helpful comments and suggestions and draw out repeating themes. These have fed directly into the recommendations offered by our group.

The following themes have been identified...

Positives

4 responses recognised the difficult job of carrying out enforcement in a constructive way, balancing sometimes conflicting needs, and remaining realistic and constructive.

e.g.

"...the hard-working staff within the Planning Department who have always been very courteous and professional in our interactions."

"[Teignbridge Council Enforcement policy] is a good document and should be publicised more widely."

Enforcement should be more robust

5 responses expressed concern that enforcement is not robust and effective.

e.g.

"The Councillors feel that a more robust approach in a speedier manner might achieve results"

"The community does not have trust that the Planning Enforcement will take action if a potential planning breach is reported."

"It was noted, that on occasion enforcement can be lacking."

Updates on specific cases

5 responses expressed concern and frustration that parish and town councils and the reporter are not kept informed of the progress of enforcement investigations, even though they may have raised the concern and have a duty to see that it is followed through.

e.g.

"It would be helpful for the Clerk to receive regular updates - especially on matters reported by themselves to Teignbridge Council."

"A recognition of parish council's role and the development of a Teignbridge Council/parish communication policy in this respect."

"There is virtually no emphasis on the complainant or reporter. I believe this policy needs a significant rewrite so that throughout, there is some consideration of the level of service we expect to offer to a community member who believes that harm is being done to the community through a planning breach and has taken the step of requesting action from the council."

This is a widely reported frustration. There is a clear tension between the quality of service in the form of updates to reporters, and the need for "innocent until proved guilty" confidentiality for the subject.

Slow

5 responses were concerned that the process is very slow.

e.g.

“This Policy also sets out ‘complaint’ priorities/timescales, with the ‘lowest priority having an investigation commenced and the complainant informed of progress within 25 working days. From the parish council’s experience and our local residents’ feedback, this clearly does not happen.”

It is noted that Enforcement inevitably works on long timescales. It must be established if a breach has occurred at all. If enforcement notices are issued time must be allowed for compliance, before court proceedings begin.

The long timescales coupled with the need for confidentiality, given that the subject may have done nothing wrong clearly leads to frustration.

Resolving cases quickly will clearly benefit all concerned.

Public confidence

5 responses referred to a lack of public confidence in the enforcement process.

e.g.

“Currently there is very little faith in the enforcement process and the system needs to be improved.”

“There are too many cases when conditions are not met and there are no consequences.”

While enforcement actions serve a purpose in rectifying an individual non-compliance, enforcement serves a wider purpose in incentivising compliance and maintaining public faith in the planning system. There is evidence that perception of the enforcement process needs improvement.

More enforcement resourcing needed

3 Responses indicated the view that further enforcement resourcing is needed.

e.g.

“My biggest concern is the lack of staff in this team and the underfunding that makes it extremely difficult to allow this Group to work effectively”

“There is not enough enforcement or planning officers.”

Resourcing is considered later after discussion with officers.

Teignbridge Council is too trusting

One response expressed concern that Teignbridge Council was too trusting of information from the developer, in assessing enforcement cases.

“in one of the cases the case officer was content with the developer’s answer that only a track was built in a forested area, even if the parish council sent several emails showing that there is a building there, with kitchen equipment having been delivered, a second building is being built, etc. The parish council’s emails were ignored.”

More information about policies and rights

3 responses asked for Teignbridge Council to provide more information about policies, processes and definitions of permitted development on the web site. These comments were specific to publishing the policies more freely, not expressing concern at the content of the policies.

e.g.

“Teignbridge Council to include a clause in 2.0 Objectives and General Principles that would make records of permitted development rights publicly available to inform wards and parishes.”

A Need for Planning decisions to anticipate enforcement needs

“The Enforcement team can only enforce what has been agreed by the Planning Permission documents issued”

It is noted that planning conditions are subject to 6 tests and should be...

- (i) Necessary.
- (ii) Relevant to planning.
- (iii) Relevant to the development.
- (iv) Enforceable.
- (v) Precise.
- (vi) Reasonable in all other respects.

Lack of cooperation with Building Control

2 responses were concerned at an apparent lack of cooperation between enforcement and building control.

Following Building Regulations is a requirement for any development and may not be explicitly referenced on any Planning Application. Developers have a separate duty to comply with building regulations, this is not the responsibility of planning enforcement.

Lack of cooperation with town and parish councils

In some cases, it was felt parish councils were under used.

e.g.

“The development of a consistent and valued working relationship between Teignbridge

Council's planning department management team and parish councils."

but in other cases, it was felt too much was asked of the parish council

"We are asked to provide photographs despite having told the department that this has led to physical and verbal intimidation. We were told that no action would be taken over this, but if it did become a dwelling, we were to report it. In view of [physical and verbal intimidation while] gathering evidence, this is not acceptable."

Parish and town councils currently have no special place or privilege in the enforcement policy, yet they are statutory consultees, democratic representatives of the community and typically have access to good local information. Parish councils can, if necessary, handle confidential information by invoking "part 2" during meetings.

Councils should be viewed as "valued colleagues" in the enforcement process, informed and listened to, but not placed at risk of harm. More clarity in this relationship would be welcome.

Confrontational Language

At times the language around enforcement is more confrontational than necessary, and what could be a simple enquiry can become a dispute.

"We do not and would not request enforcement action as we clearly understand that this is your statutory responsibility. Our requests for a 'determination' is intended as either a request for advice and guidance or to bring to your attention potential issues which have arisen. In either instance we would not consider these requests as being complaints."

There is a tendency to say, "Enforcement complaint" and "offender" when we could be saying "compliance enquiry" and "subject". If we can de-escalate the language around these cases, it becomes more acceptable to issue public updates on progress.

Amendments, deviations or non-completions in larger developments

"With one of the larger Developers [] we have footpaths shown on the original Plans connecting the new estate with the existing developments and providing a safe passage for those on foot with children to the centre of the town. It would appear that [the developers] have no intention of providing these footpaths!! This has been raised with Planning on multiple occasions, but we feel we are just being ignored."

"We see "Minor Amendments" being signed off just with a letter from Planning with no communication to those properties that it might affect and no opportunity for those residents to make any comments on these "Minor Amendments". Our local example was an original stone Barn to Garage / Games Room conversion that became a three-bedroom house. Walls originally were the original stone barn walls and now a two-story cement rendered wall facing the conservation area. None of the original Barn was preserved."

There are two issues here, amendments to the planning consent, and non-compliance with that consent. This seems to be a particular issue in larger developments and is considered in more detail later.

Other comments

“We also need to be a bit more relaxed on listed buildings where there is very little building change, like adding solar panel, and using different materials that last, but keep the same design. Thinking of climate change.”

"I understand the need to protect the anonymity and the innocence until proven otherwise of the subject of the complaint, but we must also offer some level of service to the complainant."

Feedback from industry

The group informally contacted 4 large developers. None were willing to offer formal written feedback to the council, but a general view was offered that enforcement has no teeth, no tools we can apply that have any impact. Developers can ride roughshod over the process and site managers do what they need to do, to get the site built. It was thought that site managers may be rebuked in public but congratulated in private for getting the job done.

Review of Teignbridge Council current operations

Privacy vs quality of service

Several of the themes raised by town and parish councils relate to the clear tension between the quality of service in the form of updates expected by reporters including parish councils and the need for "innocent until proved guilty" confidentiality for the subject, who may have done nothing wrong. This is a concern that comes out in a number of the themes and could be improved in several ways.

- Resolving cases more quickly, especially simple cases.
- Providing some limited and appropriate feedback to the reporter. Just a record that the case is still open would help.
- Calming of the language from "complaint" to "enquiry" will reduce the need for privacy and make it more acceptable to update reporters in more detail.

Resourcing

The Enforcement team under Ros Eastman is Steve Hobbs Snr enforcement officer. Peter Howell who has moved in from environmental health, and Maria Spragg. There is some crossover between enforcement and planning officers.

Additional resourcing for planning was promised by the current administration in 2019.

A two-year budget was identified but due to covid no progress was made for a year. By May 22 there was still no-one in post with less than a year of funding remaining. An additional member of planning team starting on 28/3/22 as a planning officer with a view to re-shaping the team to best advantage.

Unfortunately, some long-term sickness and a staff departure mean that little benefit has been seen in this area. It is felt that additional resource would still be helpful, but it may not be cost effective to aim for a new full-time officer, and there may be other methods can offer as much improvement.

Teignbridge Council Enforcement policy and process documents

These policies have been reviewed by the group. The intent laid out in the [Teignbridge Council](#)

[Enforcement policy](#) was considered good. The [Teignbridge Council enforcement process document](#) is a leaflet that summaries the policy in an accessible way. This is also considered helpful.

In the policy document...

1.1 States that this policy will be reviewed annually. The current policy available on the Teignbridge Council Website appears to be dated 2017 and is labelled Draft.

The planning enforcement process document on the website includes a flow chart. More could be made of indicative timescales in these documents. This would give a clear performance target to the team but would also manage expectations given the nature of the enforcement process which does inevitably take time if enforcement orders, and court action are needed.

Enforcement policy 1.3 and 1.4

“Maintaining public confidence in the planning system” is an important part of the enforcement process. This is well stated in the policy, but the public perception of performance in this area is poor.

It is noted that “keeping all interested parties updated” and “Takes action... that is timely” are good aspirations, but as noted elsewhere, these are areas for improvement.

Template Wording

Planning use template wording to advise about planning outcomes including possible future problems after "Breach no merit in pursuing". This wording was reviewed.

“The failure to submit a planning application in these circumstances is not of itself an offence. I must therefore consider whether it is expedient to take enforcement action to remedy the breach of planning control. In this instance, having considered the situation carefully and taking into account Government advice I am of the view that there is no enforcement action that I would recommend therefore no further action will be taken by the Authority and the case will be closed.”

“It should be noted that unless planning permission is obtained for the development, it may affect any future sale of the property.”

This wording was considered too mild and does not adequately convey that a breach has occurred. It is also noted that telling the subject in writing that no further action will be taken has in effect given them immunity from the very problem we are supposed to be warning them about. Other options include telling the applicant by phone that no further action will be taken, and charging them for written confirmation, or stating in a much more qualified way that action could follow in future, to make it clear that the option remains open and to avoid offering free documented immunity.

Completion issues on large sites

There are concerns about loose ends on larger sites, where planning conditions are removed or ignored.

Teignbridge Council are currently preparing a report on Major (>10 houses or 1000m2) section 73 applications. A section 73 application is to deliver a planning application without conditions that were previously imposed.

There is also a project to digitise S106 requirements making it easier for officers to check online if conditions are complied with.

A developer on a large site can be required to create a bond where funds are held by the council as security. If the developer fails to meet their commitments, the bond money can be used. Care is needed, in that planning rules are neutral and compliance with previous applications should not be considered. Bond setting must be transparent and fair. DCC Use bonds in some planning cases where highways development is involved. It may be that there is no legal provision for bond use where there is no highways development.

The enforcement policy was extended in 2017 to include a procedure for monitoring major development sites. Planning officers should organise periodic site tours with developers and the local Ward Councillor(s) to identify issues. This should be included as a planning condition.

It seems that this has not been happening during the pandemic, nor in the years leading up to it. This is being rectified now and a programme of visits in accordance with the policy is being established on the following sites:

- Hele Park, Newton Abbot
- Whitehill, Newton Abbot
- Bradley Barton, Newton Abbot
- Challabrook, Bovey Tracey
- Southwest Exeter
- Rocklands, Chudleigh
- Langdon Hospital, Dawlish
- TE3 West Higher Exeter Road, Teignmouth

Current Outcomes and Breach No Merit in pursuing

One trigger for undertaking this work is the monthly report of enforcement cases closed, which contains what was felt to be a high number of "Breach No Merit in pursuing" outcomes.

We have reviewed the outcomes for 4 months prior to March 2022 and grouped the outcomes into 3 categories by asking - was there actually a breach? and if so, was it remedied?

Breach remedied	Breach, not remedied	No breach
29.8%	20.6%	49.6%

Breach not remedied only accounts for 20% of the outcomes and it should be noted this includes

cases where enforcement is not possible because the breach was historic, and it includes cases where a breach has occurred, but permission would have been granted anyway.

Drones

Drone use has implications including Civil Aviation Authority (CAA) regulations (licensed pilots for drones over 250g in weight) Data Protection regulation, and Liability insurance and Safety issues, however these are all soluble, most easily by contracting a third-party operator with those things in place.

In October 2020 there were 24 local authorities registered with the CAA as commercial drone operators including Torridge District Council, Sandwell and Basildon. More councils are using third-party operators.

In other councils, flights are specific in their intended purpose, gathering evidence for open cases, not speculative or spying. Drones are a tool in the box, used where appropriate, e.g., untidy land, concealment.

Concealment

Recent changes in legislation bring in more powers on concealment. These powers are not reflected in our current enforcement policy. The new powers are detailed in the Government guidelines document <https://www.gov.uk/guidance/ensuring-effective-enforcement>

Pre-application advice

Enforcement policy 2.1 reads *“To reduce the need for enforcement by encouraging the public to seek pre-planning advice.”*

Teignbridge Council no longer offer free planning advice because of the cost in officer time of ensuring that advice is sound. This may lead to more breaches and more enforcement cases. People may be encouraged to take a chance which is likely to result in “Breach, no merit in pursuing” thereby undermining confidence in planning. It was considered if withdrawing free advice might be a false economy.

Offering free advice takes officer time and therefore cost. If advice is to be given, based on the exact case, it takes just as long to formulate as to research a certificate of lawfulness. More general advice can be offered but this is of less value to the enquirer and is likely to result in wrong answers in some cases, further frustration, and ultimately more enforcement. An hour of officer time is valued around £40 when considering chargeable services.

Some councils operate a duty telephone service, where people can pay a fee for a telephone appointment to discuss a case with officers. South Hams do this.

Teignbridge Council offers the Certificate of Lawful Proposed Use or Development (CLPUD also known as a CLOPUD) for £103 or a Certificate of Lawful Existing Use or Development (CLEUD).

There are two government digital programs BoPS (Back-office planning system) and RIPA (Reducing Invalid Planning Applications). These are expected to be accessible by applicants and will digitise the CLOPUD process. It is hoped this will help.

Recommendations

Recommendation 1: Review of enforcement policy and process documents

Teignbridge Council Should Update the enforcement policy as soon as possible, this is overdue. Current policy states it should be reviewed annually, but it appears to be as it was in 2017. We recommend it does not need annual review, but every 2 years, or in response to relevant changes in law, would be adequate.

We recommend some indicative timescales added to the Process document, to clarify the expected level of service for reporters, but also to manage expectations, in allowing for compliance periods, and legal processes where simple resolutions are not achievable.

We recommend where possible adjusting the language in the policy e.g., "enquiry" rather than "complaint", "subject" rather than "offender", and consider "compliance" rather than "enforcement".

We recommend the Policy should include or refer to the new national powers relating to concealment

We recommend reviewing the template wording for responses and especially strengthening that used to notify "breach no merit in pursuing". Wording should convey the risks that may result, following a breach, and should reserve the option of future action. The current wording states that Teignbridge Council will take no further action, thereby in effect, indemnifying the subject in writing.

Recommendation 2: Review of Teignbridge Council website content

We understand that a review of the web site is already anticipated. This is welcomed.

The web site does contain information on enforcement and permitted development. Where possible Teignbridge Council Signposts national information rather than repeating it (this avoids the burden of maintaining the information, and the risk of offering out of date advice) Signposted information needs to be clear and navigable to support people "self-serving" and to minimise "Failure load" where a user cannot find the information they need, so they contact officers or members instead.

Moving content from documents to inline in web pages makes accessing the content more direct and flexible. When a web page is edited, the previous version may be lost. We must be able to audit what advice Teignbridge Council was offering at any given time so take steps to ensure that archive information is retained.

Recommendation 3: Social media output.

Public perception of enforcement is important and social media is a good channel for this. We should consider offering planning and enforcement news on our social media channels. Members and community newsletters etc.

Where an enforcement notice has been raised, the privacy issues no longer apply. We should publish information about successful notices and good outcomes as we did recently for the

high-profile fly tipping incident. This will help build confidence that enforcement actions do happen, even if we don't see any in our immediate neighbourhood. That builds confidence in general and reinforces the deterrent.

Recommendation 4: Communication with reporters

The New online portal should include some mechanism for updating reporters, ward councillors and parish councils on compliance queries.

This should not offer any information that breaches confidentiality, and so information will be limited. We consider there is still significant value even in simply confirming that a case is still open, and it has not been forgotten.

Wherever possible simple cases should be resolved rapidly.

Teignbridge Council should consider making better use of parish and town councils. These are competent bodies and statutory consultees. They are often willing to assist. It would be helpful to clarify the role of parish and town councils within the enforcement policy.

We recommend some follow up contact to parish councils, sharing the revised policy, to build understanding of the process, and draw their attention to the timescales and other additions to manage expectations. Explain the CLOPUD and CLEUD processes and recommend their use to avoid enforcement problems.

Recommendation 5: Consider the use of bonds

Teignbridge Council should consider the use of bonds in large developments, considering the limitations set out above in the section “completion issues on larger sites”.

Recommendation 6: Quarterly meetings on larger sites

The policy of quarterly meetings on larger sites has been limited due to covid and priority settings. These meetings should be actioned to help eliminate post development completion issues.

District councillors should be made fully aware of this procedure and encouraged to ensure that the meetings happen.

Recommendation 7: Drone Trial

We Recommend Teignbridge Council look at possible benefits of drone use and consider identifying an operator to run a trial.

Recommendation 8: Planning training to reference enforcement

Some planning decisions are open to interpretation, some conditions are harder to enforce than others.

We should ensure that enforcement considerations are adequately reflected in the planning training for members so that planning decisions can be structured to reduce the likelihood of enforcement problems.

Training should also help members understand the limitations of enforcement and enable

them to represent to process positively and realistically to councils and the public.

Recommendation 9: Review progress

An Overview and Scrutiny committee should review the outcomes or progress of these recommendations 1 year after this report is adopted and if appropriate resolve to review again.

References

Terms of Reference for this group can be found online at:

<https://democracy.teignbridge.gov.uk/documents/s14240/TNF%20Enforcement%20ToR%20v4.pdf>

Current Teignbridge Council Enforcement policy:

https://www.teignbridge.gov.uk/media/1590/enforcement_policy-updated-30-june-2017.pdf

Current Teignbridge Council Enforcement process:

<https://www.teignbridge.gov.uk/media/1591/planning-enforcement-process.pdf>

Mid Devon Enforcement Investigation Documents:

<https://democracy.middevon.gov.uk/documents/s18374/Scrutiny%20Planning%20enforcement%20Sept%2020.pdf>

also: [Appendix 3 Other Council data.pdf \(middevon.gov.uk\)](#)

Final report:

<https://democracy.middevon.gov.uk/documents/s22810/Planning%20Enforcement%20final%20report.pdf>

Membership

The Task and finish group was composed of:

Cllr Andy Swain (chair)

Cllr Phil Bullivant

Cllr Chris Clarence

Cllr Rob Hayes

Cllr Colin Parker

and was assisted by

Cllr Lin Goodman Bradbury (chair of planning)

Ros Eastman (Planning officer)