

TASK & FINISH GROUP: TERMS OF REFERENCE

Name of Group	Task & Finish Group – October 2021 (Planning Enforcement)
Decision making body to whom it will report	Overview & Scrutiny Committee(2) with recommendations made to Executive
Terms of reference	<p>The Government's National Planning Policy Framework states: <i>"Effective enforcement is important as a means of maintaining public confidence in the planning system."</i></p> <p>The group will ...</p> <ul style="list-style-type: none"> • Review TDC planning enforcement policy last updated in 2017. <i>This is necessary to ensure our local enforcement plan is up to date and to recommend amendments to improve the service.</i> • Review progress on promised additional enforcement resourcing. <i>This has not been delivered because of Covid. The group will review options and make a recommendation how best to take this forward given the situation now.</i> • Compare planning enforcement policy and outcomes with neighbouring councils. <i>Mid Devon council recently reviewed their enforcement process, and a detailed report is available dated 14th September 2020. This report includes comparison data on TDC and neighbours, which can be used to shape recommendations to TDC using recent data that is already available.</i> • Invite feedback and suggestions from Parish Councils. <i>The feedback and suggestions will need to focus on the effectiveness of the current enforcement processes and powers, and not an opportunity to comment on specific details of on individual enforcement cases.</i> <p><i>This section has been updated to reflect the officers' comments which appear below. The purpose of the work and the outcomes that are being sought have been more clearly defined. A proposal to Scrutinise example enforcement cases is dropped because of concern over confidentiality, and the objectivity of selecting such cases.</i></p>
Time limit for work and to whom report should be submitted	T&FG to report with final recommendations to Overview & Scrutiny Committee 2 in 6 months at the meeting of 26 April 2022.
Group Membership	4-6 members from OS2, By Volunteering in the meeting or group leader nomination.
Group chair	Chair to be selected by the T&FG or by OS2 when the T&FG is first set up.
Meeting dates	To be arranged as convenient with group membership
Resources	Data on neighbouring councils including data available through similar scrutiny work. Records of enforcement cases closed are already circulated monthly to members. Feedback should be invited from Parish councils. Expect one or two meeting with planning officers later in the period to discuss recommendations.

Lead Officer(s)	<i>It is recommended that a senior officer (from SLT or CMT) is appointed to support/generally advise the group.</i>
Consultees / interested parties to be invited to participate	Neighbouring councils Contact parish councils for feedback.
SLT/CMT Officer comments if any	<p><i>While the principal of scrutinising the performance of the Council's Planning Enforcement service is welcomed, the Terms of Reference and 'purpose' of the work need to be much more clearly defined, to understand what outcomes are being sought and to ensure that any agreed actions can be delivered upon.</i></p> <p><i>The Government's National Planning Policy Framework states:</i></p> <p><i>"Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so."</i></p> <p><i>This explanation needs to form the basis for the group's Terms of Reference, understanding the wider purpose and role of the enforcement function, rather than having a narrower focus on whether action is robust and fair.</i></p> <p><i>Members of the Committee should review the Government's own overview of purpose of Planning Enforcement before defining the Terms of Reference:</i> https://www.gov.uk/guidance/ensuring-effective-enforcement, in particular:</p> <p><i>"What is a breach of planning control?"</i> <i>A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:</i></p> <ul style="list-style-type: none"> <i>- the carrying out of development without the required planning permission; or</i> <i>- failing to comply with any condition or limitation subject to which planning permission has been granted.</i> <p><i>Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.</i></p> <p><i>Who can take enforcement action?</i> <i>Local planning authorities have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative areas.</i></p> <p><i>When should enforcement action be taken?</i> <i>There is a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.</i></p> <p><i>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."</i></p> <p><i>Taking each part of the ToR in turn:</i></p> <ul style="list-style-type: none"> • <i>Review TDC planning policy last updated in 2017.</i>

This is necessary to ensure our local enforcement plan is up to date.

- *Review progress on promised additional enforcement resourcing.*

This was a manifesto pledge by the Liberal Democrats 'to stop people 'getting away' with ignoring the proper processes'.

We need to be clear that enforcement isn't a punishment and taking no action is sometimes the appropriate route. In addition to this, there has been an increase in 'permitted development rights' which means more types of development do not require consent. These factors can make it seem like the service is not fair, robust or credible. On this basis, even with additional resources in the service, there is a likelihood that the perception will be negative.

Budget was identified for a temporary resource in 2020, but this was not taken forward due to the impact of the national lockdown on Council finances, and the restrictions on the ability to physically investigate breaches of planning control.

It is important for the group to be clear on what 'additional enforcement resourcing' will mean in practice, how 'success' will be measured, and whether 'additional resource' would be able to deal with perceptions of fairness, robustness and credibility.

- *Compare planning enforcement policy and outcomes with neighbouring councils.*

All Councils should have an enforcement policy, so it will be a beneficial exercise to compare approaches and see where improvements can be made.

We can compare data on the number of Planning Contravention Notices, Enforcement Notices, Stop Notices (including Temporary Stop Notices) and Breach of Condition Notices served annually, which are all collected nationally and published on the LG Inform website. However these are just the overall figures, with no information on the cases, such as scale, complexity, level of local negotiation, timescales taken, etc

We can seek to obtain locally held information from neighbouring Councils, for example on size of teams, number of cases per year, etc, but this will be reliant on what information those Councils collect. It will be essential before contacting neighbouring Councils to have a clear understanding of what type and level of information we are seeking, how we can make comparisons and how we intend to use that information to make any changes to the Council's service.

- *Scrutinise example enforcement cases*

Reflecting on the journey of an enforcement case may aid understand of the policies and processes within which enforcement is undertaken. Care will need to be taken to protect anonymity and confidentiality and consideration of the parameters for identifying example cases should be set out– new cases will more clearly reflect current ways of working and we would recommend a random sample of cases from 2021 is considered. Prior to undertaking any review it will need to be clear what the expected purpose and outcome of the review will be – what is being assessed?

- *Invite feedback and suggestions from Parish Councils.*

The feedback and suggestions will need to focus on the effectiveness of the current enforcement processes and powers, and not an opportunity to comment on specific details of on individual enforcement cases.