

ENVIRONMENT AND ECONOMY OVERVIEW AND SCRUTINY COMMITTEE

Date of Meeting	Tuesday 9 th February 2021
Report Subject	Development Management - Enforcement
Cabinet Member	Portfolio holder for Planning and Public Protection
Report Author	Andrew Farrow Chief Officer (Planning, Environment and Economy)
Type of Report	Operational

EXECUTIVE SUMMARY

This report sets out the structure of the Planning Enforcement team and where it sits within the Development Management service and the Planning, Environment and Economy portfolio. The adopted Planning Enforcement Policy is attached; the report advises how that policy has been implemented and our performance against the Welsh Government Planning Enforcement indicators. The report outlines the implications of the Covid 19 pandemic on service delivery; the mitigating actions taken and further actions that are proposed.

RECOMMENDATIONS

1	Members note the report and support the further mitigating actions which are proposed.
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REPORT DETAILS

1.00	Explaining the Development Management – Enforcement Service
1.01	Introduction When the Forward Work Programme was produced with the Committee in the Autumn of 2020, it was agreed that a report examining performance of

	<p>the Planning Enforcement team should be prepared and timetabled. The production of the report was supported at a recent Group Leaders meeting.</p>
1.02	<p>Structure of the Enforcement Service Planning enforcement is part of the Development Management Service within the Planning, Environment and Economy portfolio. The service has 14 permanent officers split into two teams, one managing the North and the other the South of the County. The Enforcement Service is staffed by two full time officers, one in each team. A small amount of enforcement and/or compliance complaints are dealt with by other officers in the team, but those are limited to up to five cases which are normally compliance cases which that officer has historically dealt with.</p>
1.03	<p>Volume of complaints The service receives approximately 400 enforcement complaints a year and an enforcement officer will be dealing with approximately 80 to 100 live complaints at any one time. These levels are similar to Wrexham’s planning enforcement service, but much greater than other authorities in North Wales who receive approximately 150 to 180 cases a year and have officer caseloads of approximately 30 to 40 complaints.</p>
1.04	<p>Enforcement Policy update The service operates in accordance with the adopted Planning Enforcement Policy dated January 2019. This policy was developed in consultation with Planning Strategy Group, Environment Overview and Scrutiny Committee and was approved by Cabinet. The policy was adopted in January 2019. The policy sets out the priority criteria for the various types of complaint which may be investigated by the enforcement service. It also sets out what happens as part of that investigation. The document also includes guidance about what matters do not constitute a breach of planning regulation. A copy of the policy is attached at Appendix 1.</p>
1.05	<p>How performance of the Planning Enforcement team is measured The performance of planning enforcement is measured by Welsh Government since 2018 using two main indicators, firstly cases investigated in less or more than 84 days and secondly, where positive action has been taken in less or more than 84 days.</p> <p>ENFORCEMENT CASES</p> <p>The table lists the number of enforcement cases, including those where positive enforcement action has been taken, within the quarter.</p> <p>Welsh Government provide the following definitions:</p> <ul style="list-style-type: none"> • 'Investigated' means that the authority has considered the alleged breach of planning control and advised the complainant of the outcome of their investigation. • 'Positive Action' means that, following investigation, it is decided that a breach has occurred, and one of the following has also occurred:

	<p>(a) informal negotiation removes the breach; (b) an Enforcement Notice is issued; (c) planning permission is subsequently granted through an application or enforcement appeal; (d) prosecution is brought (with the date the case is first heard deemed as the "positive action" date); (e) direct action by the authority removes the breach of control.</p> <p>The date is measured from the date the complainant is notified that the case is expedient to take forward and to the case reaching one of points (a) to (e) above.</p>																								
1.06	<p>The performance statistics since these indicators were introduced are as follows;</p> <table border="1" data-bbox="320 723 1385 1171"> <thead> <tr> <th>Year</th> <th>2018/19</th> <th>2019/20</th> <th>2020/21 Q4 still to report</th> </tr> </thead> <tbody> <tr> <td>Number of cases investigated In 84 days or less</td> <td>98</td> <td>161</td> <td>73</td> </tr> <tr> <td>Number of cases investigated In more than 84 days</td> <td>61</td> <td>87</td> <td>61</td> </tr> <tr> <td>Total number of cases investigated</td> <td>159</td> <td>248</td> <td>134</td> </tr> <tr> <td>Average time taken to investigate Enforcement cases in days</td> <td>78</td> <td>131</td> <td>116</td> </tr> <tr> <td>Average time taken to take positive action in days</td> <td>110</td> <td>48</td> <td>79</td> </tr> </tbody> </table> <p>The years 2018/19 and 2019/20 are both fully completed and were unaffected by the pandemic, so they are good comparators in terms of workload and cases handled.</p>	Year	2018/19	2019/20	2020/21 Q4 still to report	Number of cases investigated In 84 days or less	98	161	73	Number of cases investigated In more than 84 days	61	87	61	Total number of cases investigated	159	248	134	Average time taken to investigate Enforcement cases in days	78	131	116	Average time taken to take positive action in days	110	48	79
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1.07	<p>There was a significant increase in the amount of cases investigated and closed in 2019/20. This can be attributed to the introduction of proper recording and administering of all enforcement complaints and the full appointment to posts in the new structure with the introduction of two full-time, dedicated enforcement officers embedded in Development Management Team.</p> <p>There was an increase in the average time taken to close a case following investigation, however, each case now has an expediency report and is signed off by a senior member of staff which takes more time than the previous Enforcement Team Leader's approach, where a case would be closed without any full audit trail. It is clear that the service is quicker to take positive action than previously recorded. This is evidence that the service now secures resolutions and outcomes quicker than previously.</p>																								
1.08	<p>The year 2020/21 is still not complete so there is no data yet for the final quarter, January to March 2021. The service was hugely impacted in the first quarter of 2020/21 when the first full lock-down occurred. There is more specific detail about what occurred during the first lockdown later in the report, but the performance statistics for the first quarter of 2020/21 show only 16 cases were closed compared to an average of 50 to 60</p>																								

	<p>cases closed normally within a quarter. Quarters 2 and 3 show how the mitigation measures which were put in place had a positive effect, along with officers being able to begin site visits again. As a result, 118 cases were closed in the six months up to the end of December 2020. This demonstrated how the service returned to more “normal” levels of performance with accelerated performance from September 2020 onwards.</p>
1.09	<p>To conclude, the performance statistics show that an increasing number of complaints are being recorded and investigated appropriately in accordance with the adopted policy. .</p>
1.10	<p>A further assessment of the complaints that are recorded shows that during 2020 approximately 70% of cases which are recorded have no breach of planning regulation and approximately 15% of cases are very minor breaches for which it is not considered expedient to take enforcement action. This means that only 15% of complaints made form a breach of planning control.</p>
1.11	<p>However, each case, regardless of whether it is a breach, is recorded, acknowledged, digitised, given a priority status and allocated to an officer. An investigation is undertaken; an expediency report prepared; a discussion with a senior officer takes place and then the case is either authorised for no further action; steps to regularise the breach; or to progress to take enforcement action. Some complaints have been significantly exaggerated and levels of concern and can be escalated to the Leader of the Council, Chief Executive, Cabinet Members, MS and MPs. When an emergency visit is undertaken, the works do not reflect the nature of the complaint made and the concern levels escalated. These incidents have a huge impact on resources and have a significant negative impact on service delivery.</p>
1.12	<p>What happened during the first lock-down Below sets out of time-line of the immediate impact of the pandemic:</p> <p>Timeline</p> <ul style="list-style-type: none"> • 23 March – Lock down commenced: Schools closed – staffing capacity at 58% due to officer caring responsibility • Development Management, including planning enforcement was not identified as a critical service by the Council in response to Covid 19. Development Management is not reflected as a priority in the Council Plan. • Welsh Government advised not to carry out site visits. • Whole service lifted to operate fully from home. All processes re-written (again) to accommodate this. ML continued to attend TDS, triage enforcement site visits, erect site notices and print neighbour notification letters for over 5 weeks to keep publication running. The only Council in North Wales to continue to do this. AF hand delivered the letters for the first Virtual Committee

- **1 April** –Reduced capacity to 53% following south team enforcement second family bereavement in a number of weeks. The service is now reduced to one full time officer who is at home schooling 3 children and unable to undertake site visits.
- **29 April** - Welsh Government announced could undertake site visits. Two month back-log of site visits. ML took 3 weeks to develop Risk Assessments (4 versions), get approval, obtain PPE and train all staff on new site visit procedures. These risk assessment were then shared across the Council and will DM managers across all Wales. One of the first Council's to formally commence site visits. Wrexham did not being visits until July in planning and building control.
- **14th June** – Eden Consulting employed to progress 120 outstanding enforcement cases
- **30 June** Reduced capacity to 44% following the sickness of a planner due stress
- **1 July** Reduced capacity to 36% following sickness of team leader due to stress. Senior Planning Officers step in to take over key duties of team leader, including allocation of work, casework meetings and sign off of planning applications. Service Manager deal with providing enforcement guidance and all complaints.
- **9th July** – Critical Management Team meeting – service on verge of closure. Re-deployed two officers full time from regional mineral and waste team (both to undertake casework and one officer to support appeal and specific enforcement work) and one officer from the Planning Strategy / LDP Team. 126 applications and enforcement existing cases were held by absent staff which were accommodated within the team.
- **1 August** South Team enforcement officer returned to post
- **25 August** Planner returned to post – back to 44% capacity
- **September.** Schools fully re-open. Senior Planner called on two weeks Jury Service. A month of recovery despite on-going personal criticism.
- **12th October** Appointed to additional DM Planner post and 12 month secondment post
- **14th October** North Team Leader returns on phased basis with an agreed plan to manage his behaviour and approach within the service
- **28th October.** North Team Leader resigns.
- **2nd November** recruitment process for North Team Leader starts

	<p>DM Team Leader post advertised in the first week of 2021 and interviews have taken place on 1st February 2021 and the successful candidate has accepted the role. That candidate is currently a senior officer at Flintshire and therefore their post will need to be filled to deal with significant strategic development sites such as Northern Gateway. The senior officers and the current Team Leader for the South team have been shouldering the responsibility of the North Team Leader post for seven months. The role of the senior planner is crucial in maintaining service levels in a service which has been described by the Leader and Chief Executive as under the most pressure and greatest scrutiny of the whole Council.</p>
1.13	<p>Pressures on the Service during lock down</p> <p>As outlined above, there was a significant lack of staff resource during the period of March to August 2020 until children returned to school for three months in September 2020.</p>
1.14	<p>During that time of the two members of staff dedicated to enforcement, the Enforcement officer for the South Team was absent due to immediate family bereavements in March and April 2020. The capacity of the remaining North Team enforcement officer was significantly reduced due to the schools shut-down. As the service capacity reduced the Service Manager prioritised the progression of planning applications which have a shorter statutory timescale for action and the requirement to pay back the fee if the application is not determined within the timescale. This was a deliberate managerial decision. The Service Manager triaged enforcement complaints and those cases which were urgent were continued to progress and notices served.</p>
1.15	<p>The officers were unable to undertake site visits for planning applications and enforcement activities for two months initially and then during the “firebreak”. Substantial criticism was made of officers, however, this was a clear and direct mandate from Welsh Government.</p>
1.16	<p>It is also critical to note the development management and enforcement process relies on internal and external consultees who have been struggling to work remotely and therefore there were and still continues to be delays in responses to consultations.</p>
1.17	<p>During a continuing period of heightened anxiety there was a consistent misunderstanding of our Planning Enforcement policy by interested parties, particularly when it became apparent that a complaint did not relate to planning enforcement, or that the development did not require planning permission. Planning officers were repeatedly accused of using the pandemic as an excuse not to progress matters or to take enforcement action. Throughout the pandemic we have sought to implement the Planning Enforcement policy on a consistent and transparent basis.</p>
1.18	<p>There was, and remains, restricted access to the main office in Ewloe for most officers, however, it is important to note that Development</p>

	Management were the first non-critical service within the Council to return to the work place.
1.19	Throughout the pandemic, and continuing to this day, new processes have had to be introduced and then refined. The service has depended on the remaining Team Leader who stayed in work to pro-actively drive these changes, with the Business Manager and the Service Manager.
1.20	Processes continue to be refined as the service increases in knowledge and experience about remote working and the Council provides increasing IT solutions. The service has managed remote working with a back-office system which was installed in 1996 and has significant limitations. Nevertheless, the service continues to register and process planning application, enforcement enquiries and appeals.
1.21	There has been significant, relentless pressure and complaint from Members and the Public regarding Virtual Planning Committee and site visits which continues and is unlike any other pressure experienced by other planning services throughout North Wales. A significant amount of time is given over each month by the Service Manager responding to claims that the service has deliberately reported an item to Planning Committee during this time to prevent a Planning Committee site visit taking place. Members will be aware that shortly before Christmas at a Planning Committee a member stated during a public meeting that the service should be investigated by North Wales Police. These are the same senior officers who are leading the enforcement element of the service which are subject to this unwarranted and unfounded public criticism.
1.22	<p>Some examples of Planning Enforcement action undertaken during first lock-down:</p> <ul style="list-style-type: none"> • First Planning Authority in North Wales to serve overt RIPA warning and commission a drone during lock-down to record footage of work at Dollar Park, Holywell. • Issued 11 S330 notices, four more than the same period last year • Issued 16 Planning Contravention Notices, eight more than the same period last year • Issued 21 Enforcement Warning Notices, 18 more than the same period last year. • Served Enforcement Notices on: <ul style="list-style-type: none"> Dollar Park 3 Tai Cochian Ty Melin Cae Newydd Manor Park Ty Cornel

	<ul style="list-style-type: none"> • Served 215 Notice Queen Street, Queensferry • Awaiting Prosecutions lodged with Legal Services <p>Ffrith Scotland Farm Stryt Isa Cheshire Tarmac - Spinney Thomas Plant Hire Groesffordd Bach</p> <ul style="list-style-type: none"> • Three appeals made against Enforcement Notices and a S215 Notice which were either upheld in full or with minor variation. Copies of the Inspectors decision relating to the Notices are attached in appendix three, four and five. Members will note, in the S215 appeal decision at Maes Mynan that the Inspector refers to four different grounds of appeal A,B, C and D. There are 6 different grounds of appeal against an enforcement notice and the appellants can appeal against everyone which makes the defence that the officer compiles complex and lengthy. It is important to note in the Maes Mynan decision in the opening paragraph the requirements of the breach. The enforcement officer has to very carefully describe the breach and a plan accompanies the Enforcement Notice which has to be very specific about which part of the plan the breach and requirements relate to. • The outcomes of the appeals against these Notices demonstrates that there is a high quality of decision making regarding Planning Enforcement.
1.23	<p>Mitigation Measures</p> <p>The mitigation measure which were put in place to help maintain service levels were to engage a planning consultant and to redeploy staff from within the PEE portfolio. Due to the impending and subsequent lockdowns and the sustained absence, and then sudden resignation of the Team Leader for the North, the service continues to engage the support of consultants. An application has been made to Welsh Government to refund the costs to the services. Due to bereavements and reduced capacity elsewhere in the service, the levels of redeployment have reduced. However, this is compensated for by the additional role of a permanent planner and fixed term planner for 12 months. When the appointment of the vacant Senior Planner role and planning assistant role is complete, the service will be in a stronger position again.</p>
1.24	<p>Future improvements of the service through 2021</p> <p>Due to ongoing concerns with difficulty of officer's responding to Councillor queries a dedicated email address for the use of Cabinet Members and Group Leaders will have access to a specific email for them to use when their colleagues have not received a response to their query within the prescribed timescales will be put in place. The email will be monitored by the Chief Officer's PA, Portfolio Business Manager and Development Manager to ensure the communication is dealt with in a timely fashion.</p>

	<p>The most significant improvement will be the implementation of the new back-office system. The contracts have been sealed and now the implementation framework can be formally planned and agreed. The software system will serve almost all areas within the portfolio so it is a comprehensive implementation. This will most likely to commence in smaller service areas before commencement of the Development Management Service but this service will be prioritised. Contact centre staff, support and planning officers will be trained to use the system together to ensure maximum knowledge and user ability. It is then planned to hold Councillor enforcement training and update session in the Autumn of 2021 and part of that will be to demonstrate greater access to information using the new software.</p>
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2.00	RESOURCE IMPLICATIONS
2.01	Revenue Implications: There will be continuing costs of an external consultant if recruitment of a Senior Planner is prevented.
2.02	Capital Implications: There are no capital implications.
2.03	Human Resources: There are implications for delivering the Development Management Service if recruitment of a Senior Planner is prevented.

3.00	IMPACT ASSESSMENT AND RISK MANAGEMENT
3.01	<p>Key mitigation measures undertaken, continuing and planned set out in main body of the report.</p> <p>Key risks are mainly reputational damage to the Council due a perception of planning enforcement failing.</p> <p>The mitigation of these risks are already in place due to Annual Performance Reporting regarding Planning Enforcement undertaken by Welsh Government of all Local Planning Authorities.</p>

4.00	CONSULTATIONS REQUIRED/CARRIED OUT
4.01	Consultation with other North Wales Local Planning Authorities regarding volume of enforcement complaints.

5.00	APPENDICES
5.01	<p>App 1 - Planning Enforcement Policy adopted 2019</p> <p>App 2 – Appeal Maes Mynan</p> <p>App 3 – Appeal Wood Farm</p> <p>App 4 – Appeal Suzie’s Car Wash</p>

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	

7.00	CONTACT OFFICER DETAILS
7.01	<p>Contact Officer: Mandy Lewis, Development Manager Telephone: 01352 703248 E-mail: Mandy.lewis@flintshire.gov.uk</p>

8.00	GLOSSARY OF TERMS
8.01	<p>RIPA: Regulation of Investigatory Powers Act 2000 regulates the powers of public bodies to carry out surveillance and investigation.</p> <p>EWN: Enforcement Warning Notice is intended for use where the Council considers that an unauthorised development could potentially be made acceptable with control such as planning conditions.</p> <p>S215 Notice: is a section of the Town and Country Planning Act 1990 which enables a Local Planning Authority to serve a notice if it is considered that an area of land is in such a poor condition it has an adverse impact on the amenity of an area.</p> <p>S330 Notice: is a section of the Town and Country Planning Act 1990 which enables a Local Planning Authority with the power to require information as to interests in land.</p> <p>Planning Contravention Notice: enable the Local Planning Authority to require detailed information about the suspected breaches of planning control.</p> <p>Enforcement Notice: enable the Local Planning Authority to require specific action to be taken to remedy a breach of planning control.</p>