

## Report to Cabinet

23<sup>rd</sup> September 2021

By Lynn Lambert, the Cabinet Member for Planning & Development

**DECISION REQUIRED**



**Horsham  
District  
Council**

Not Exempt

### **Local Enforcement Plan and CIL Enforcement Policy**

#### **Executive Summary**

The purpose of this report is to set out the reasons for the Council adopting an updated Local Enforcement Plan and a new Community Infrastructure Levy (CIL) Enforcement Policy.

#### Local Enforcement Plan

Paragraph 59 of the National Planning Policy Framework states that it is important to maintain public confidence in the planning system. It advises that enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. We 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 we will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.

#### CIL Enforcement Policy

The Community Infrastructure Levy (CIL) is a charge on development, calculated on a £ per square metre (sq.m) basis of development. CIL is to be used to help fund infrastructure which is needed to support development in our District. The Councils CIL Schedule was adopted on 1<sup>st</sup> October 2017.

The CIL Regulations 2010 (as amended) contain enforcement provisions, aimed at ensuring that the collection process runs smoothly, by giving collecting authorities the power to issue a range of surcharges, stop notices, and if necessary, to recover funds by appropriate legal action. Collection and enforcement arrangements are supported by the right to appeal certain decisions.

#### **Recommendations**

That the Cabinet is recommended:

- i) To adopt the Local Enforcement Plan
- ii) To adopt the CIL Enforcement Policy

## **Reasons for Recommendations**

### Local Enforcement Plan

It is necessary to update the adopted March 2016 Local Enforcement Plan to take account of current legislation and the review of the Planning Compliance service which was undertaken by the Planning Advisory Service in 2019.

### CIL Enforcement Policy

In order to publicise the penalties for non-payment of the CIL charges and to ensure that the Council does not lose out financially by non-payment and having to carry out additional tasks as a result of non-payment.

## **Background Papers**

Local Enforcement Plan adopted March 2016

**Wards affected:** All wards

**Contact:** Madeleine Hartley, Planning Compliance Team Leader, 01403 215168

## **Background Information**

### **1 Introduction and Background**

- 1.1 The current Local Enforcement Plan was approved by the Council in March 2016 and requires an update to reflect current legislation and the review of the Planning Compliance service.
- 1.2 The Council does not currently have an approved CIL Enforcement Policy, therefore it may not be clear to those liable to pay the levy, the likely consequences for non-payment or late payment.

### **2 Relevant Council policy**

- 2.1 The Corporate Plan identifies key priorities that have been grouped and presented under five broad headings which cover our economic, environmental, social and organisational responsibilities.

- A great place to live - creating well balanced communities that meet residents' needs

By ensuring effective enforcement, the Council will ensure that both our built and natural environments are highly valued and well managed, and will ensure that our District remains an attractive place to live where new development sits well with the natural environment

- A thriving economy - Increase economic growth and create new local jobs

By ensuring effective enforcement we will be supporting towns, high streets and villages to thrive by encouraging new businesses to want to come to the District

- A strong, safe and healthy community - Ensure Horsham District remains one of the best places in Sussex to live

By ensuring effective enforcement we will ensure that we provide high quality neighbourhoods that our residents will want to live and work in

- A cared-for environment - Prioritise the protection of our environment as we move to a low-carbon future

By ensuring effective enforcement, the Council can ensure that matters such as conditions on planning permissions to ensure mitigation measures are undertaken are complied with

- A modern and flexible Council - Make it easy for our residents to access the services that they need.

By having an up to date Local Enforcement Plan and CIL Enforcement Policy available online, the Council can ensure that our services are available whenever members of the public need them

### 3 Details

#### Local Enforcement Plan

- 3.1 The Council's existing Local Enforcement Plan was adopted by the Council in March 2016. The NPPF states that the purpose of the Plan should be to manage enforcement proactively, in a way that is appropriate to our area. This should set out how we will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.
- 3.2 A revised version of the Plan is required to take account of changes in legislation and also of the outcome of the review of the Planning Compliance service which was undertaken by the Planning Advisory Service in 2019. Part of the recommendations made by the review team was that the existing Plan was 'a missed opportunity to outline the service's priorities within the document, the plan being currently focused primarily on procedure.' Furthermore, the review team felt that document's structure and style do not make it easy to read and as a result it feels unnecessarily long. The review team concluded that the Plan would benefit from being redesigned to 'direct readers more easily to the information they need. The redesign should result in a document that is more effective when being read online enabling readers to access the information they need, rather than them having to read the entire document'.
- 3.3 In light of this, the Plan has been re-written with a particular emphasis on priorities and on making it easier to read, in order to enable the reader to access the information they need more easily. The Plan will no longer be in a PDF document available on the website but will become a webpage with a handy contents list to enable readers to direct themselves to specific sections, and to access it from all types of devices.
- 3.4 The Council is committed to the protection and enhancement of the natural and built environments at all stages of the planning process, and we will not condone wilful breaches of planning control. It is though important to note that the taking of enforcement action will always need to be proportionate, and wherever possible an investigation should be resolved without the need to take formal action. This is reflected in the statistics over the past 6 years.
- 3.5 The number of cases received annually over the past 6 years has remained relatively consistent, ranging from 581 in 2018 to 670 in 2019, with an average of 623 new cases per annum. So far this year, we appear to be on target to reflect this average figure.
- 3.6 It is important to be aware that often in planning enforcement, the work involved in reaching a conclusion on a case is not accurately reflected in the statistics. The investigation involved in many cases can be lengthy and protracted, involving considerable negotiation, with the end result simply being recorded as a 'breach ceased' statistic. Files can remain open and being worked on for several years, whilst still remaining an active live case. It will also be seen from the statistics that only a relatively small percentage of the overall cases received each year are considered to be not expedient to pursue, meaning that the other investigations undertaken were resolved either as no breach was identified, the breach ceased, or a retrospective planning application was received.

3.7 Below are the 'reasons for closure' statistics for the past two years.

| Year | Complaints Closed | No Breach | Breach Ceased | Plan App. Received | Not Expedient | Closed within 90 days | Closed over 90 days | % Closed within 90 days |
|------|-------------------|-----------|---------------|--------------------|---------------|-----------------------|---------------------|-------------------------|
| 2019 | 670               | 255       | 150           | 144                | 119           | 462                   | 208                 | 68.96%                  |
| 2020 | 600               | 246       | 153           | 124                | 73            | 464                   | 136                 | 77.33%                  |

3.8 So far this year, the number of cases received reflects those numbers from previous years, although the number of formal Notices issued has already exceeded the total number of Notices issued in any of the five previous years. This is considered to be due to an increase in complex cases, which could be as a result of landowners seeking to diversify due to Covid. Additional resources were also recruited to the team as a result of the findings of the PAS Review. The Council do not have a backlog of planning enforcement cases, and the team have the appropriate knowledge and skills required to provide effective enforcement in the District.

3.9 The following table shows the number and type of Notices issued over the last 6 years.

| Year issued   | Enforcement Notice | Breach of Condition Notice | Stop Notice | Temporary Stop Notice | S215 Notice | Removal of hedgerow |
|---------------|--------------------|----------------------------|-------------|-----------------------|-------------|---------------------|
| 2016          | 15                 | 1                          | 3           | 2                     | 1           | 0                   |
| 2017          | 14                 | 0                          | 0           | 2                     | 1           | 0                   |
| 2018          | 10                 | 1                          | 0           | 3                     | 0           | 0                   |
| 2019          | 12                 | 4                          | 0           | 3                     | 1           | 0                   |
| 2020          | 8                  | 1                          | 0           | 3                     | 0           | 1                   |
| 2021 (so far) | 20                 | 1                          | 0           | 3                     | 0           | 0                   |

3.9 The PAS Review Team felt that overall, the compliance service is performing well, and no serious issues were found around the Council's approach to compliance or in terms of performance. They were generally satisfied that the Council was taking a reasonable approach in terms of what is enforced and what is not, which they found to be well aligned to government guidance. No evidence was found that cases were not being pursued that justified enforcement action.

3.10 The expectations of our customers remain high and is sometimes beyond the scope of the NPPF and national guidance. The revised Enforcement Plan is an opportunity to review our approach, but also how we can better communicate our approach to our customers. The current Plan focusses primarily on procedure, whereas the revised Plan focusses more on service priorities and standards. It has reduced the four levels of priority for site visits to be undertaken to two levels (the Priority 1 category for immediate action represents those matters that should be given highest priority, whilst the rest are Priority 2). Service standards have also been introduced to cover other stages of the investigation, for instance the number of days to close a file within 15 working days of an initial visit where no breach of planning control is identified. The current Plan is also unnecessarily long, making it

difficult to read, therefore the Plan has been re-designed in order to direct readers more easily to the information they need, rather than the reader having to read the entire document.

### CIL Enforcement Policy

- 3.11 Almost all parties liable to pay the levy are likely to pay their liabilities without problem or delay, guided by the information sent by the collecting authority in the liability notice. However, where there are problems in collecting the levy, it is important that collecting authorities are able to penalise late payment and discourage future non-compliance. Where the Council's CIL payment procedure is not followed, the CIL Regulations include a number of provisions to enable the application of surcharges and ensure the effective enforcement to recover CIL monies where there is a delay within the collecting process. This policy note sets out the penalties and enforcement powers that will be taken by the District Council.

## **4 Next Steps**

- 4.1 Once adopted, both policies will be implemented, and there will be annual monitoring undertaken of the service, with statistics provided for Members. Members and Parish Councils will continue to receive weekly information of Planning Compliance cases received over the preceding week.

## **5 Views of the Policy Development Advisory Group and Outcome of Consultations**

- 5.1 The proposed revised Local Enforcement Plan and CIL Enforcement Policy were discussed at the Policy Development Advisory Group (PDAG) on 13 September 2021. Members were supportive of both documents, and their comments with regards the Local Enforcement Plan have been updated at Paragraphs 6.10 and 14.2 of the document.
- 5.2 Comments from the Monitoring Officer are incorporated into the report.

## **6 Other Courses of Action Considered but Rejected**

- 6.1 The other courses of action which were considered, but were rejected, were not to update the Local Enforcement Plan, and not to have a CIL Enforcement Policy.
- 6.2 The option of not updating the Local Enforcement Plan following the review of the Planning Advisory Service in 2019 was considered, but this would result in retaining a plan which may be difficult for our customers to understand and which does not set out our service standards.
- 6.3 The option of not producing a CIL Enforcement Policy was also considered, and it is noted that the penalties are already set out in the CIL Regulations 2010. However the CIL Regulations are difficult to navigate and interpret. The Councils approach may therefore be unclear. It was considered necessary to set out an approach so our residents and developers understand how Horsham District Council as the

Charging and Collecting Authority for the Community Infrastructure Levy (CIL) as adopted in October 2017, responds to breaches of the Regulations.

## **7.0 Resource Consequences**

7.1 The implementation of the two new policies will be contained within existing resources.

## **8 Legal Considerations and Implications**

8.1 The Town and Country Planning Act 1990 and the other legislation which empowers the Council to take enforcement action are cited in the Policy Statement.

8.2 The Council's scheme of delegation within the Constitution requires the Monitoring Officer to issue or serve statutory notices on behalf of the Council.

## **9 Risk Assessment**

9.1 Revising the existing Local Enforcement Plan and adopting a CIL Enforcement Policy will reduce the risk of challenge to decisions made on Planning Compliance matters. In addition, the review and updated information will give residents improved information relating to the service, and reduce the risk of formal complaint.

## **10 Procurement implications**

10.1 There are no procurement implications of the proposed decision.

## **11. Equalities and Human Rights implications / Public Sector Equality Duty**

11.1 Under equality legislation, the Council has a legal duty to pay 'due regard' to the need to eliminate discrimination and promote equality in relation to Race, Disability, Gender including gender reassignment, Age, Sexual Orientation, Pregnancy and maternity, Religion or belief. The Council also has a duty to foster good relations, and to consider the impact of its decisions on human rights. The law requires that this duty to pay 'due regard' is demonstrated in the decision-making process.

11.2 It is not considered that the proposals have an impact on any of the above groups and no Equalities Impact Assessment is required.

## **12 Environmental Implications**

12.1 It is not considered that the proposals have any impact on the environment such as on the use of natural resources (for example energy, water, raw materials); quality of environment (contribution to safe and supportive environments for living, recreation and working); biodiversity (protection and improvement of wildlife and habitats); waste and pollution (effects on air, land and water from waste and emissions).

### **13 Other Considerations**

13.1 The consequences of any action proposed in respect of GDPR/Data Protection and Crime & Disorder have been considered as part of the preparation of this report, and it is not considered that there will be any adverse impact on them.

### **APPENDICES TO REPORT**

Local Enforcement Plan  
CIL Enforcement Policy