

Report to: Communities Scrutiny Committee

Date of Meeting: 13 December 2018

Lead Member/Officer: Lead Member for Housing, Regulation and the Environment/
Head of Planning and Public Protection

Report Authors: Development Manager and Planning Officer

Title: Performance and Effectiveness of Planning Compliance

1. What is the Report About?

- 1.1 The purpose of the planning regime is to regulate the development and use of land in the public interest. It is important for local planning authorities (“LPAs”) to have an effective compliance function so that the integrity of the planning regime is safeguarded from development which would undermine it.¹ This is achieved by ensuring that the compliance function is equipped to: a) investigate alleged breaches in a timely way; and then b) as appropriate², apply local and national planning policies to have the harmful effects of unauthorised development remedied.
- 1.2 The purpose of this report is to provide Members with an overview of how the Service’s planning compliance function operates, how it is performing, how performance indicators are evolving, and how the compliance function could meet future challenges and improve.

2. What is the reason for making the Report?

This report will provide information to Members about the effectiveness and performance of the planning compliance function.

3. What are the recommendations?

That the Committee considers the contents of the report and provides any comments and suggestions thereon.

4. Report details

4.1 How the planning compliance function operates

¹ Appendix 1 contains a case study which demonstrates how planning compliance can regulate development in the public interest.

² The procedures the compliance function must follow are set out in the Welsh Government’s *Development Management Manual* (2017), available via <https://gov.wales/topics/planning/policy/development-management-manual/development-management-manual-without-annexes/?lang=en>.

- 4.1.1 The execution of planning compliance powers can be a time- and resource-intensive process³ which has limited potential to generate income for the Service. The Service has previously had to make budgetary savings as part of the Council's Freedoms and Flexibilities Process, resulting in a reduction in planning compliance officers. The one officer who now covers the entirety of the county handles around 240 reports of potential breaches of planning control (also referred to as 'complaints') each year.⁴
- 4.1.2 Cases are **prioritised** depending on the degree of **harm** being caused and are filtered through an on-line "complaint form". Accordingly, breaches which affect Listed Buildings, Conservation Areas, the Area of Outstanding Natural Beauty and protected trees will generally be afforded the highest priority. Similarly, breaches which conflict with the Council's Corporate Plan will usually be given precedence over other cases.
- 4.1.3 At present, the majority of resource is devoted to responding to reports of planning breaches. While this ensures that complainants' concerns are dealt with effectively, there is the possibility that some breaches go undetected.
- 4.1.4 The Service has recently created the post of a Planning Compliance Project Officer. This officer has been employed on a temporary, part-time basis to assist with the delivery of the Rhyl Town Centre Masterplan by proactively tackling the large number of existing breaches within the town. The long-standing issues of deprivation within Rhyl and the concerted regeneration efforts promoted by the Council have warranted the provision of this resource.
- 4.1.5 A given planning breach may also constitute a breach of a licence, building regulations, housing legislation and/or environmental health legislation. For example, an unsightly building—a planning issue—may also be dangerous—a building control issue. In these instances where there is a degree of overlap, planning compliance officers work alongside Service colleagues to lead or collaborate on the delivery of remedial action. If co-ordinated effectively, with an early identification of desired outcomes and the availability of legislative tools, this resource-pooling approach produces better results more efficiently. Consideration is therefore given to Service-wide approaches whenever a planning breach is reported.

4.2 *How the planning compliance function is performing*

- 4.2.1 Tables 2 and 3 in Appendix 2 demonstrate how the compliance function is performing across a number of indicators over a two-year period. The data shows the following:
- Throughout the period, the speed with which the Service investigates alleged breaches is good or fair by national standards. The percentage of cases investigated within 12 weeks has, however, moderately decreased

³ On overview of enforcement powers is provided within the Welsh Government's research briefing *The Planning Series: 07 – Enforcement* (2017), available at <http://www.assembly.wales/research%20documents/17-013%20the%20planning%20series%2007%20enforcement/17-013-web-english.pdf>.

⁴ Five-year average taken from the years 2013 to 2017 inclusive.

over time. The Service's performance during the first quarter of 2018 (the most recent quarter for which data on other authorities' performance is available) put it 16th out of the 22 Welsh authorities;

- The performance in relation to fully resolving cases in a timely manner is less good, having moderately declined in recent quarters. This element of performance is no longer measured across Wales⁵;
- 49 enforcement notices were issued during the past two years. This is more than were issued by comparable authorities such as Wrexham County Borough, Ceredigion and Conwy County Borough Council;
- Of the 49 notices issued, 12 have not been complied with. Of these 12, nine have not then been followed up with further action to either penalise the contravener and/or ensure that the effect of the unauthorised works is remedied.⁶ This compares poorly with other authorities; and
- Of the seven formal complaints (via the Corporate Complaints process) the Service received in regard to the compliance function, none were upheld.

4.2.2 While the consistency of the compliance function is not quantitatively measured, the Service acknowledges that Members have raised concerns about the function's capacity to take consistent decisions when, as happens now, breaches are chiefly investigated if and when they are reported. Potential solutions to this and other issues are explored in section 5 of this report.

4.3 *How performance indicators are evolving*

4.3.1 On the 17th October 2018 the Welsh Government ("WG") sent an open letter to chief planning officers to reiterate the importance of using enforcement powers in a timely way.⁷ Notably, it is stated within Annex A to the letter that formal enforcement action is no longer to be viewed as a last resort. In order to encourage LPAs to adopt their favoured approach, WG has revised how their performance indicators are to be interpreted by LPAs—that is; what it means to have investigated a breach, and what it means to have taken further ("positive") action. The resolution of breaches is no longer fully monitored.

4.3.2 Before the 17th October, a case would have been deemed investigated when an officer had a) decided whether it was expedient to take further action, b) taken action accordingly (formal or informal), and c) updated the complainant. The action taken could have comprised an informal instruction to cease the breach or a request for a retrospective planning application. Now, a case may only be deemed investigated when a formal enforcement notice has been issued or when a valid planning application has been *received*, not requested. Given that notices and certainly applications can take a long time—often weeks—to prepare, the recent revisions could have ramifications for the

⁵ See Appendix 2 for further information.

⁶ Typically this would involve the Service pursuing prosecution and/or, if practicable, carrying out the required remedial works 'in default'. This is the process by which the Council carries out the works required by an enforcement notice and then attaches a land charge to the property so that its financial outlay can be recovered upon the sale of the property.

⁷ Available via <https://gov.wales/topics/planning/policy/dear-cpo-letters/timely-use-of-enforcement-powers/?lang=en>.

performance of the compliance function.

4.4 *How the planning compliance function could meet challenges and improve*

4.4.1 Looking at sections 3 and 4 of this report, three main issues can be identified, as follows.

4.4.2 *Responding to WG's reinterpretation of performance indicators by increasing the speed with which cases are processed.*

4.4.2.1 The speed with which the Service handles cases largely depends on:

- Staff resource;
- The number of cases;
- The complexity of cases, which can be exacerbated by investigative impediments or by the stakeholders involved—complainants who persistently insist on action or recalcitrant contraveners; and
- The effectiveness of the mechanisms used to process cases.

4.4.2.2 In response to recent years' reductions in staff resource, the Service has streamlined case-handling processes using a number of mechanisms. These are listed in Appendix 3. The Service can identify four further mechanisms, short of increasing staff resource, through which the speed of case processing could be increased yet more. These are:

- Digitalisation of casework. At present, both electronic and paper files are created for each case, the latter for use during on-site inspections. This leads to a duplication of work which could be eliminated by equipping compliance officers with portable tablet computers and a means of data connection—but this would come at a financial cost;
- Adoption of a planning compliance charter. This document would provide stakeholders with detailed information about how the compliance function operates, and thereby act as a useful tool to manage the expectations of complainants and contraveners⁸;
- Stricter insistence on the use of the 'report a breach of planning' form by all complainants (i.e. both elected Members and members of the public). The compliance charter could furthermore make it within the gift of officers to refuse to investigate a report unless it contains sufficient information and evidence, e.g. photographs, video, etc. This would remove investigative impediments and likely reduce the number of reports received by the Service; and
- Stronger collaboration with other Council departments and community councils, who, through their specialist or local knowledge, could assist with the investigation and monitoring of planning breaches.

4.4.3 *The lack of resource and legal support to take cases to prosecution.*

⁸ Neath Port Talbot Council adopted a planning enforcement charter in January 2018. It can be viewed at <https://www.npt.gov.uk/media/8848/nptcbc-planning-enforcement-charter-approved-26118-v2.pdf>.

- 4.4.3.1 Both Members and complainants have expressed concern about the Service's lack of capacity to follow through on enforcement notices with further punitive action. At present, the task of compiling the statements and proofs of evidence which are necessary to pursue a prosecution falls upon planning compliance officers. This task can be exceptionally time-consuming and result in sizeable resource being diverted away from investigating and resolving other cases.
- 4.4.3.2 The issue is exacerbated by WG's overhaul of performance indicators, which has resulted in the resolution of cases no longer being fully monitored. Much greater emphasis is now given to the investigation phase, reducing the impetus for the Service to fully resolve compliance cases.
- 4.4.3.3 It is nonetheless very much in the public interest for compliance cases to be satisfactorily resolved. Moreover, pursuing planning compliance prosecutions can prove to be highly lucrative for local authorities, of whom many are now exploiting the Proceeds of Crime Act 2002 ("POCA") to obtain significant sums of money from offenders.⁹ Regrettably, it is currently unlikely that the Service in Denbighshire could pursue action under the provisions of POCA, given the lack of dedicated staff resource in both the Planning and Legal departments. Similarly, the prospects of bringing more cases to prosecution generally are largely reliant on reprioritisation of workloads and better collaboration between Planning and Legal.

4.4.4 *The need for greater consistency.*

- 4.4.4.1 As stated previously, the kind of proactive monitoring work which would deliver significant improvements to the consistency of the planning compliance function cannot be carried out at present resource levels. In the current context, the compliance function operates most efficiently and consistently when local stakeholders 'help us help them' by taking an active role in reporting unauthorised developments to the Service. Members may therefore wish to consider how they, community councils or other local organisations could assist the planning compliance function to become more consistent.
- 4.4.4.2 Otherwise, the Service may have to consider guidance-led intervention. For example, consideration is being given to producing guidance on planning controls and good design which could then be disseminated to businesses within Conservation Areas. This work could be undertaken in partnership with others (e.g. Town Councils) in order to mitigate the impact on the compliance function's capacity to handle day-to-day caseloads. It is not known how effective additional guidance could be, not least because unauthorised development is presently occurring even though the Service has produced publicly-available supplementary planning guidance on Conservation Areas, Listed Buildings, residential design and shopfronts.

4.4.4.3 Beyond the above, potential solutions which would require additional

⁹ For further information see Huw Morris (2017), *No hiding place: Planners and the Proceeds of Crime Act*, available at <https://www.theplanner.co.uk/features/no-hiding-place-planners-and-the-proceeds-of-crime-act>.

resource may not be feasible at this point in time.

5 How does the decision contribute to the corporate priorities?

Please see Appendix 2, paragraph A2.3.

6 What will it cost and how will it affect other services?

No additional resources required at this stage. No impact on other services.

7 What are the main conclusions of the Well-being Impact Assessment?

Not applicable.

8 What consultations have been carried out with Scrutiny and others?

None to date.

9 Chief Finance Officer Statement

There are no direct financial implications as a result of the recommendations of this report

10 What risks are there and is there anything we can do to reduce them?

The risks are operational and have been identified in the preceding report.

11 Power to make the decision

The planning compliance function is exercised in accordance with the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and other ancillary legislation.

Section 7.4.2(b) outlines Scrutiny's powers with respect of scrutinising the Council's performance in relation to policy objectives, performance targets and/or particular service areas.

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