



Northumberland

County Council

COMMITTEE: CASTLE MORPETH LOCAL AREA COMMITTEE

DATE: 14 JUNE 2021

Issues raised by receipt of petition – “Enforcement in Lynemouth”

Report of: Rob Murfin, Director of Planning

Cabinet Member: Cllr Colin Horncastle

Purpose of report

To review the issues raised in a petition received setting out concerns about a series of Planning Enforcement cases in Lynemouth. This report sets out the background and matters arising in these cases and the specific circumstances.

Recommendations

1. The LAC Planning Committee is asked to note the issues raised in the petition.
2. The LAC Planning Committee is asked to note the Council’s approach to Planning Enforcement within the context of national legislation/duties and to further note that the County Council utilised suitable discretion in relation to this matter
3. That this issue and “Harm/Expediency” gateway requirements be included explicitly in the review of the Northumberland Local Enforcement Strategy

Link to Corporate Plan/National Legislation

This report is relevant to how the County Council discharges statutory duties,

Key issues

A petition has been received with 149 signatures. It states -

We regard the action taken by this council to impose planning enforcement procedures on over 60 residents in Lynemouth to be unfair and disproportionate. In the midst of a global pandemic, this action disregards this council's duty of care towards the health and wellbeing of its constituents.

Residents are already suffering financially and proceeding with this action at this time will cause not only further financial hardship for many, but also poses a threat to mental and physical wellbeing.

Whilst the action may be governed by national legislation, we ask this Council Administration to:

- 1. Consider whether there are any discretionary powers at local level to address the problem*
- 2. Recognise the financial pressure this puts on people at this current time*
- 3. Acknowledge that it has a duty of care to residents and at the very least extend the timescales on any enforcement until such times when residents can meet with any such professional bodies as they need to in order to produce the relevant applications, plans etc*

Background

The County Council, in its role as Local Planning Authority, is statutorily required to investigate all alleged breaches of planning regulations. It does not seek to interpret motive behind complaints, as assuming that matters are neighbour disputes would represent bias. All complaints are investigated. Currently in excess of 1,600 sites are investigated each year, and this figure has been rising progressively.

Before any contact with the alleged person(s) responsible for the breach, the following steps are followed;

- The planning history (effectively a formal part of the land registry) is checked to see if permission has been historically granted. If so, no further action is taken.
- A site visit takes place to check if the alleged breach appears to have actually taken place and to evaluate whether planning permission is required. In some cases, such as with reported Change of Use, a number of visits may be required to gather sufficient evidence. In many cases it becomes clear that no breach has taken place, as many minor physical developments are subject to Permitted Development Rights.
- Contact made with person in breach
- If it is demonstrated that the alleged breach took place more than four years previously (ten years for change of use) then the case is closed as the development is immune from action.
- A retrospective application is requested, or there are negotiations on how the breach is able to be resolved
- If application is approved – the case is closed
- If an application is not received/approved and breach is not resolved, then enforcement action may commence.

It is not always considered expedient to pursue formal action following the final step. When a breach of planning control is investigated, national guidance makes it clear that that

enforcement **action** is discretionary and Local Planning Authorities should act proportionately in responding to suspected breaches.

There is therefore a degree of subjectivity, but decisions are based taking into account local and national policy. In deciding whether it is expedient to take action, the LPA must consider the harm which the breach is causing and ultimately whether it is believed that the development would be supported in the event an application was submitted.

The County Council regularly receives formal complaints from 3rd parties if it makes the decision not to proceed with action,

Specific circumstances of case

Normally, a complaint is made against one alleged unauthorised development. Unusually in this case, a large number of complaints (35) were received from one member of the public about detached outbuildings/sheds located in front gardens of residential properties in Lymemouth. While visiting these properties, 25 adjacent properties were noted and cases set up for consistency (for instance some were directly adjacent to a reported address). Later 12 properties were reported by a 2nd member of the public. This gives the total of 72 cases for 'structures in front gardens'.

Following checking site histories, it became apparent that the structures did require planning permission. NB Permitted Development Rights for outbuildings do not include structures in front gardens. A copy of the letter sent to the residents is attached as Appendix #1

In line with the approach set out above, 64 of the 72 cases recorded against these properties have now been closed with no further action required and the residents/owners informed.

- 32 cases were closed as the structures have stood for in excess of 4 years and are now lawful.
- 20 cases were considered not expedient to pursue.
- 1 case was closed following the submission of a retrospective application, which has now been approved. 1 case was covered by a pre-existing permission
- 10 cases were closed with no further action taken following no breach found at the property - i.e, the structures did not constitute development.
- The remaining 8 cases are awaiting a formal expediency test.

Analysis of approach

Once the complaints had been lodged, the Council was statutorily obliged to investigate. It could not ignore related cases that became apparent during the site visit. It should be noted that the Local Government Ombudsman has recently followed up complaints in other parts of the County in relation to alleged “under enforcement” of structures in front gardens.

In this case it is considered that a “light touch” was taken, and that, as per the wording of the petition, discretion was taken over the use of enforcement powers and an extended timescale for responses given.

It can also be noted that recent case law (2020) further clarified that LPAs can reflect resources and priorities when deciding whether or not to take enforcement action. It has also been clarified that the LPAs can take the position on an individual case that they are not going to be drawn into acting as “proxies” in neighbour disputes.

Next Steps

The recent case law established above now gives the County Council great flexibility in how it sets out the local approach to enforcement. It has been agreed that a review of the Local Enforcement Strategy will take place in 2021; this can set out formally the circumstances where greater discretion will be utilised. This will enable the Council to defend decision where it is not decided to become involved in issues such as protracted neighbour disputes and allow resources to be focussed on more significant cases.

The draft replacement Local Enforcement Strategy will be circulated to all members for comment prior to a public consultation.

Implications

Policy	Review of Local Enforcement Strategy
Finance and value for money	Review of Local Enforcement Strategy will allow more focussed use of resources
Legal	Review of Local Enforcement Strategy will allow clarification of how expediency tests will be utilised

Procurement	NA
Human Resources	NA
Property	NA
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	NA
Risk Assessment	To be included in Review of Local Enforcement Strategy
Crime & Disorder	To be included in Review of Local Enforcement Strategy
Customer Consideration	To be included in Review of Local Enforcement Strategy
Carbon reduction	NA
Health and Wellbeing	To be included in Review of Local Enforcement Strategy
Wards	To be included in Review of Local Enforcement Strategy

Background papers:

Local Enforcement advice;

<https://www.northumberland.gov.uk/Planning/Planning-monitoring-and-enforcement.aspx>

Attached:

Letter sent to residents

Author and Contact Details

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