



Planning Sub-Committee

Date:	Tuesday, 18 February 2020
Time:	6.00 p.m.
Venue:	Committee Room 3 - Wallasey Town Hall

Contact Officer: Katy Brown
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AGENDA

1. MINUTES (Pages 1 - 2)

The Director of Governance and Assurance submitted the minutes of the meeting held on 7th January 2020 for approval.

2. DECLARATIONS OF INTEREST

Members of the Sub Committee were asked whether they had any personal or prejudicial interests in connection with any application on the agenda and if so to declare them and state the nature of the interest.

3. COMMITTEE REPORT 4-2-20, (Pages 3 - 16)

4. COMMITTEE REPORT ENFORCEMENT POLICY 2020 (Pages 17 - 32)

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PLANNING SUB-COMMITTEE

Tuesday, 7 January 2020

<u>Present:</u>	Councillor	S Kelly (Chair)	
	Councillors	G Davies S Foulkes S Hayes	G Watt S Whittingham
<u>In attendance:</u>	Councillors	A Leech (Ex Officio)	
<u>Apologies</u>	Councillors	S Frost	A Gardner

16 MINUTES

The Director of Governance and Assurance submitted the minutes of the meeting held on 3 December 2019 for approval.

Resolved – That the minutes of the meeting held on 3 December 2019 be approved.

17 MEMBERS CODE OF CONDUCT - DECLARATIONS OF INTEREST

Councillor Steve Foulkes declared a personal interest in item 3 of the agenda by virtue of him being a member of the Magenta Living Board.

18 COMMITTEE REPORT 7-1-20

Report informed Planning Sub Committee of the Council's process in respect of preparation of policies for the Emerging Local Plan, which was scheduled for submission to the Secretary of State in November 2020.

Appendix 1 Working Draft Green Infrastructure Policies

Members of the Sub Committee discussed Policy CS30 – Requirements for Green Infrastructure. Members made suggestions that hedging planted around school buildings in built up areas be encouraged, and that where cross referencing policies; the title of each policy should be included for ease of understanding.

Members of the Sub Committee discussed Policy CS31 – Recreational Lands and Buildings. Designation of local green space was discussed in terms of developers having the ability to contribute to recreational spaces. It was

suggested that maintenance responsibilities be clarified within the policy. It was agreed that this policy be considered further prior to approval of the final draft Local Plan.

Members of the Sub Committee discussed Policy CS32 – Residential Open Space in New Residential Developments, Members suggested clarifications within the policy on the provision of sites.

Members of the Sub Committee discussed Policy CS33 – Biodiversity and Geodiversity. Suggestions were made for clarifications to the policy wording and it was agreed that this policy be considered further prior to approval of the final draft Local Plan.

The Chair informed the Committee of the upcoming work program for the next 2 months (February and March).

Resolved: That the content of the initial working draft policies; CS30, CS31, CS32 and CS33 set out in Appendix 1, be noted. The report was supported in principle but members requested that the detail of the policy be considered again once the Regulation 18 consultation has been completed.

WIRRAL COUNCIL

PLANNING SUB COMMITTEE

4 FEBRUARY 2020

TITLE	EMERGING WIRRAL LOCAL PLAN – WORKING DRAFT POLICIES: ENVIRONMENTAL PROTECTION & WASTE
REPORT OF	THE DIRECTOR OF REGENERATION & PLACE

1.0 REPORT SUMMARY

- 1.1 The Council is in the process of preparing policies for the emerging Local Plan, which is scheduled for submission to the Secretary of State in November 2020.
- 1.2 The Planning Sub Committee was established by Planning Committee on 18th July 2019 to make recommendations, in consultation with the relevant Overview and Scrutiny Committee, to the Cabinet on the policies that will be included in the Local Plan for the Borough.
- 1.3 A series of meetings have been scheduled to consider working draft policies for the emerging Local Plan.
- 1.4 The purpose of this meeting is for Members to consider the contents of the initial working draft policies for environmental protection that would include criteria for dealing with coastal defence, flood risk, drainage, pollution, contamination and waste, which are enclosed in Appendix 1.

RECOMMENDATION

1. That Planning Sub Committee considers the content of the initial working draft policies for Coastal Protection, Flood Risk, Sustainable Drainage & Natural Water Management, Pollution & Risk, Contamination & Instability and Waste Management set out in Appendix 1, and decide if there are matters that should be given further consideration by officers before reports for Cabinet are finalised.

SUPPORTING INFORMATION

2.0 REASON/S FOR RECOMMENDATION/S

2.1 To assist in the preparation of the Local Plan.

4.0 BACKGROUND INFORMATION

4.1 The Council is currently preparing its Local Plan for submission to the Secretary of State in November 2020. A key aspect of this work is the review and development of Development Management (DM) policies, which upon the adoption, will be used to determine planning applications.

4.2 There are a number of tasks, which include:

- 1 Reviewing existing DM policies.
- 2 Revising these policies to ensure that they are up to date and take account of current and emerging agendas, for example, climate change.
- 3 Writing new policies to ensure that the Council is able to effectively manage development in the Borough.
- 4 Regularly review policies to ensure they remain relevant, up to date and represent best practice.

4.3 These tasks are urgent and need to be completed within the timescales set out for the submission of the Local Plan as the council is still under threat of intervention by Government if it does not meet the timescales.

5.0 FINANCIAL IMPLICATIONS

5.1 There are no financial implications from this report.

6.0 LEGAL IMPLICATIONS

6.1 Local plans must be positively prepared, justified, effective and based on up to date relevant evidence about the economic, social, environmental characteristics and prospects for the area consistent with national policy in accordance with the Planning and Compulsory Purchase Act 2004 (as amended). The emerging Local Plan cannot be formally adopted as part of the statutory Development Plan unless it is found to be legally compliant and sound following independent examination.

6.2 Approval of the final Draft Local Plan will require a resolution of Council before it can be published and submitted to the Secretary of State for public examination.

7.0 RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS

7.1 This sub-committee will be supported by the Council's existing planning staff.

8.0 RELEVANT RISKS

8.1 If the work set out in this report is delayed, the Council may not be able to meet its timetable for submission of the Local Plan, which could result in Government intervention.

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APPENDICES

- 1. Initial Working Draft Policies:** Coastal Protection, Flood Risk, Sustainable Drainage & Natural Water Management, Pollution & Risk, Contamination & Instability and Waste Management.

BACKGROUND DOCUMENTS

None

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Planning Committee	18th July 2019
Planning Sub Committee	12th September 2019
Planning Sub Committee	1st October 2019
Planning Sub Committee	7th November 2019
Planning Sub Committee	3rd December 2019
Planning Sub Committee	7th January 2020

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Environmental Protection

Policy CS34 Coastal Protection, Flood Risk, Sustainable Drainage & Natural Water Management

Policy CS34A Coastal Defence and Erosion

1. Proposals for new coastal protection and sea defence works in line with the adopted Shoreline Management Plan and Wirral Coastal Strategy will be only permitted where it is demonstrated that there will be no adverse effects on coastal processes or designated biodiversity or geodiversity assets.
2. Areas identified for specific protection for flood defence or coast protection are identified on the Local Plan Proposals Map
3. Development proposals within areas likely to be affected by coastal erosion will only be permitted where it can be demonstrated that erosion or landslip are not likely to occur during the lifetime of the development

Policy CS34B Flood Risk

4. Development must be located in areas at lowest risk of flooding from all sources, unless the Sequential Test and where appropriate the Exception test set out in national policy have been passed. Within the site, uses with the greater vulnerability to flooding must be located in areas with lower risk of flooding, unless it is demonstrated that there are overriding reasons why this should not take place.
5. Development proposals must not increase flood risk from any sources within the site or elsewhere, must not have adverse effects on ordinary water courses, tidal and fluvial defences; and where possible should reduce the causes and impacts of flooding.
6. In addition to national requirements, a site-specific Flood Risk Assessment is required for developments of less than 1 hectare in flood zone 1 where specific flood risks are present. Surface water flood risk must be afforded equal importance and consideration as fluvial and tidal flood risk.
7. Development proposals must incorporate an integrated approach to the management of flood risk, surface water and foul drainage.
8. Ground floor and basement access levels of all development should be at least a minimum of 600mm above:
 - (i) the 1 in 100 annual probability fluvial flood level; or
 - (ii) the 1 in 200 annual probability tidal flood level; or
 - (iii) a minimum of 300mm above the 1 in 100 annual probability surface water flood level,of whichever is the highest with an allowance for climate change, taking into account the presence of defences and the residual risks of failure of those defences?

Policy CS34C Sustainable Drainage Systems (SuDS) and Natural Flood Management

9. Planning applications for major developments and other developments (where flood risk is likely to be an issue) must clearly demonstrate how sustainable drainage has been planned and evolved from the conception stage to manage surface water run off on the site in line with surface water drainage principles by integrating SuDS into the fabric of development using landscaped spaces and the construction profile of buildings having regard to technical guidance produced by the Local Lead Flood Authority; unless there is clear evidence that this would be inappropriate. Any communal components must be legally and physically accessible to those who will be served the system.
10. Where the SuDS system will not be adopted by the Water and Sewerage Company or other public body, proposals will need to show that suitable arrangements and legal heads of terms will be in place for the implementation, operation, maintenance, access to and management of sustainable drainage systems over the life time of the development.
11. Natural Flood Management techniques must be incorporated to aid with flood alleviation and implementation of suitable SuDS where appropriate.
12. SuDS design should be evolved through a master plan to mimic natural processes and enable full integration with neighbouring property without prejudicing comprehensive development of the area as an essential part of land use and development planning, and be considered in conjunction with other aspects of the design. Phasing of development must be carried out to avoid any cumulative impacts of flood risk and ensure that any sites at risk of causing flooding to other sites are developed first.
13. Surface water must be discharged in accordance with the following hierarchy:
 - Infiltration into the ground
 - Into a watercourse or surface water body
 - Into a surface water sewer
 - Into a combined sewer
14. Source control measures, such as rainwater harvesting and permeable paving must be incorporated to manage rainfall close to where it falls and treat frequent but smaller polluting events in accordance with Policy CS36.
15. SuDS schemes must be designed to manage surface water up to and including the 1 in 100 year six hour event and:
 - a) limit discharge rates and volumes to the greenfield equivalent for green field sites, and as close to greenfield rates and volume as reasonably practicable on brownfield sites; or
 - b) where it can be clearly demonstrated that it is not feasible to provide volume control through the provision of long term storage/infiltration, events up to the 1 in 100 year critical event must be attenuated and released at a rate no greater than the mean annual flood flow (Q_{bar}) to manage downstream flood risk;
 - c) include allowances for climate change and urban creep and assume 100% runoff from impermeable areas;
 - d) prevent flows from accumulating at low spots (except where designed as temporary storage);

- e) ensure surface pathways are linked together in the same way as conventional drainage networks to safely convey exceedance flows off site; and
 - f) ensure that materials and components are fit for purpose and when reasonably maintained, retain their structural integrity over the design life of the development, which will be independently confirmed through a verification report by a qualified practitioner at the time of installation.
16. To derive the maximum benefit, priority must be given to the use of soft SuDS, or where this is clearly not practical utilising a combination of hard and soft components, taking full account of site opportunities and constraints.
 17. The design of SuDS should have regard to the adoption standards of the Water & Sewage Company (or other adopting body) and ensure the system will operate as intended and manage flood risk for the lifetime of the development and that maintenance charges are economically proportionate.

Wirral is a low-lying peninsula, bounded by the River Mersey, the Irish Sea and the River Dee, with a comprehensive network of “ordinary watercourses”, many of which are culverted.

The main river catchments in the borough are the River Birket and the Dibbinsdale Brook and a sandstone ridge running from West Kirby to Heswall marks the watershed between the Mersey and Dee Estuaries, with much of the borough founded on sandstone that forms an aquifer.

Paragraphs 155 -162 of the NPPF cover directing development away from areas at risk of flooding considering cumulative impacts and taking a risk-based approach to development through application of the sequential and exception tests.

Sequential and exception tests may be required in flood zone 1 where development is proposed in locations identified as at risk of surface water flooding on Environment Agency flood risk maps or Wirral’s Strategic Flood Risk Assessment (SFRA)

Where the exception test is to be applied, consideration of wider sustainability benefits must include how the development would contribute to achieving the Broad Spatial Strategy in Policy CS2 and as per Wirral’s SFRA there must be a sequential approach to site allocation and site layout and no development within flood zone 3b unless in exceptional circumstances.

When assessing flood risk, surface water flood risk should be afforded equal standing in importance and consideration as fluvial and tidal flood risk, given the increase in rainfall intensities due to climate change and the increase in impermeable land use due to development. This includes possible withdrawal, redesign or relocation for sites at significant surface water risk

Wirral SFRA recommends that a site-specific Flood Risk Assessment is required where a site is:

1. within flood zone 1 and any part of the site is identified by the Risk of Surface Water Flooding Maps as being at risk of surface water flooding;
2. at risk of surface water flooding or on land which has been identified by the EA as having critical drainage problems;
3. situated in an area currently benefitting from defences;
4. situated over or within 8m of a culverted watercourse or where development will be required to control or influence the flow of any watercourse;

5. land identified as being at increased flood risk in the future;
6. at risk of flooding from other sources or at residual risk;
7. subject to a change of use to a higher vulnerability classification which may be subject to other sources of flooding.
8. within a council designated Critical Drainage Area; or
9. situated over a culverted watercourse or where development will require controlling the flow of any river or stream or the development could potentially change structures known to influence flood flow.

Furthermore, the SFRA recommends that planning permission for at-risk sites may only be granted where after consultation, the site-specific FRA demonstrates that the development will remain safe for its lifetime (with a suitable emergency plan) and has passed the exception test if required. The site-specific FRA must demonstrate no loss of floodplain storage, adverse effect on flood defences nor increase in off-site flood risk (taking into account climate change). SuDS need to be incorporated as appropriate and previously developed sites will achieve a discharge rate/volume as close to greenfield as reasonably practicable. The existing rate needs to be based on hydraulic assessment of the existing piped system and exclude overland flow.

Increased urbanisation impacts the water cycle and if not carefully managed can lead to increased risk of flooding. The SuDS approach to surface water management supports urban areas to better cope with severe rainfall both now and in future by slowing down and reducing the quantity of surface water runoff from a developed area to manage downstream flood risk and reduce the risk of that runoff causing pollution.

The National Planning Policy Framework (NPPF) requires SuDS to be multi-functional and by making water a visible and tangible part of the built environment SuDS can deliver and enhance the green space within developments and link to wider green networks, supporting the provision of habitats and places for wildlife and providing benefits to the community.

SuDS components can be “soft” (often referred to as “green or “landscaped”) or “hard” (often referred to as “grey” or “engineered”). To derive the maximum benefit from SuDS, priority must be given to soft SuDS or SUDS schemes utilising a combination of hard and soft components, fully taking into account site opportunities and constraints. SuDS should be used to achieve water quality improvements and amenity benefits as well as achieving compliance to the hydraulic criteria. Best practice in achieving water quality protection should be used.

SuDS can improve the quality of life in developments and urban spaces, making them more visually attractive, sustainable, resilient, improve air quality, regulate building temperatures, reduce noise and deliver recreation and education opportunities. High quality SuDS designs that are integrated into the overall design of the development can attract tourism and investment, driving economic growth for the local area

The main areas where SuDS can achieve benefits are water quantity, water quality, amenity, biodiversity and natural capital. Wirral SFRA recommends considering Natural Flood Management following consultation of the Council’s Green Infrastructure Strategy, national mapping and local investigation into suitability.

Paragraph 165 of the NPPF states that major developments should incorporate sustainable drainage systems unless there is clear evidence provided to the satisfaction of the LPA that this would be inappropriate.

The range of SuDS components and solutions available means that, with the timely engagement of the right expertise, effective SuDS schemes can be delivered for the overwhelming majority of developments including those challenged by high density, steep slopes, flat sites, high

groundwater, contaminated land, low infiltration capacity and unstable soils. Cost should not be a barrier, as where SuDS are designed to make efficient use of the space available, they can often cost less to implement than underground piped systems .

Source control components should be included on all new developments, managing rainfall close to where it falls to handle and treat some of the more frequent but smaller polluting events (at least 5mm), known as “interception storage”. Rainwater harvesting (water butts) and permeable paving (where paved areas are proposed) should be integrated into the design of new developments.

Wirral's SFRA recommends all SuDS must be designed to meet industry standards as specified below, including any replacement standards/documents:

- Technical Standards for Sustainable Drainage Systems (Defra)
- C753 The SuDS Manual
- Sewers for Adoption 8

Application of industry standards should give due regard to Wirral's local SuDS Design and Evaluation Guide and submission requirements.

Using a phased approach to development is recommended in the SFRA to ensure that any sites at risk of causing flooding to other sites are developed first ensuring that flood storage measures are in place and operational before other sites are developed, thus contributing to a sustainable approach to site development during all phases of construction. It may be possible that flood mitigation measures put in place at sites upstream could alleviate flooding at downstream or nearby sites.

Development phasing within large strategic sites of multiple developments should also be considered where parts of such sites are at flood risk.

Policy CS36 - Pollution and Risk

Development proposals likely to give rise to pollution to soil, air or water or from insects, noise or artificial light or increase the risk of accident hazard will not be permitted unless it can be demonstrated that:

- all practical measures have been taken to minimise potential risk and harm to human health and safety, property and the built and natural environment;
- all practical measures have been taken to minimise pollution levels and mitigate the impacts of the pollution, including exposure to air pollution; and
- the residual risk or harm to human health and the environment will be acceptable and will not cause unacceptable harm to the general amenity of neighbouring uses and the character of the area, either individually or cumulatively, or prejudice the delivery of the Broad Spatial Strategy in Policy CS2.

Development proposals that will result in an unacceptable increase in the risk to human health and the environment, impose significant restrictions on the continued operation of existing licenced or controlled processes, or that would lead to an existing use being classified as a statutory nuisance or designation of an Air Quality Management Area will not be permitted.

A number of industrial installations and processes in the Borough are controlled through other regulatory mechanisms to ensure that pollution and the risk of accidents are managed. While no Air Quality Management Zones have been identified with the Borough, it is a priority for the Authority to monitor air quality and as part of the wider strategy to introduce sustainable ways of traveling, walking and cycling etc. to ensure that concentrations are within the EU objectives.

Policy CS36, in line with national policy, is intended to complement these statutory processes to minimise the effects of development on public health and the local and natural environment. Practical measures to minimise the potential risk and harm will need to be considered at in conceptual stages of the design including the location and layout of the proposed scheme to ensure there are no unacceptable impacts throughout the construction stages and ongoing use over the lifetime of the development.

Development will not automatically be acceptable in planning terms simply because it meets statutory requirements under pollution control regimes or hazardous substance consents and proposals will need to incorporate measures that contribute to achieving sustainable development in line with Policy CS1A and Policy CS1B.

Legislation requires the maintenance of appropriate safety distances between hazardous installations and pipelines and residential areas, buildings and areas of public use, major transport routes and areas of particular natural sensitivity or interest. There is also a need to prevent the introduction of sensitive uses from constraining the continued operation of existing industrial uses. Consultation will, therefore, be undertaken with the Health and Safety Executive and/or the Environment Agency before development within notified consultation zones can be permitted.

The Water Cycle Study has highlighted that water supply is dependent on groundwater abstraction. As it is important to continue to protect areas that recharge groundwater through suitable management of surface activities, the agreement of the Environment Agency will, therefore, also be required before development over or close to Source Protection Zones or around abstraction boreholes and/or infiltration drainage systems, can be permitted. The Water Framework Directive Regulations also requires the prevention of deterioration of water quality in water bodies, with the aim of achieving Good Ecological Status.

Mitigation measures to reduce the potential impact of pollution or accident risk will normally be secured through controls over design and layout and/or legal agreement before permission will be granted.

Policy CS37 - Contamination and Instability

Development proposals likely to affect land known or suspected to be unstable or contaminated, including by invasive species, must be supported by an appropriate contamination and (or) ground stability assessments that identifies;

- the nature, level and extent of contamination or instability;
- the implications of contamination or instability for the development of the site and risk to human health, the natural environment, buildings and other property, including water bodies and water courses;
- a viable method of remediation which will safeguard users or occupiers of the proposed development, neighbouring land uses and the environment from significant risk, and will make the land suitable for the use proposed. Planning conditions or a legal agreement will be used where appropriate, to secure a proportionate site investigation and to secure and implement a suitable remediation strategy prior to development or as part of an agreed, phased programme.

Development proposals within areas likely to be affected by coastal erosion will only be permitted where it can be demonstrated that erosion or landslip are not likely to occur during the lifetime of the development.

The Borough's industrial heritage, including previous chemical processes and land reclamation, has resulted in a number of potentially contaminated sites. The development of contaminated sites without proper treatment can cause harm to public health and the natural environment, particularly for more sensitive uses such as a day nursery or housing. It is important that all opportunities are taken to identify and address contamination, which also includes the presence of invasive species through the development process and enable the reuse of previously developed land which can make a major contribution to urban regeneration.

Policy CS37 therefore seeks to promote the sustainable and beneficial use of land to ensure that proper account is taken of any likely environmental risks both now and in the future. To achieve this, proposals for the development of sites known or suspected to be contaminated must at least include a desk-based site investigation report, prepared by a competent person, identifying the previous uses of the site, the likely nature of any contamination and any potential significant risk. Where necessary, a suitable method of remediation must be identified, that as a minimum would result in the land not being determined as contaminated land under Part IIA of the Environmental Protection Act 1990.

Policy CS39 - Waste Management

New waste management development will be permitted in accordance with the spatial strategy, policy criteria and site allocations for new waste management development set out in the Joint Waste Local Plan for Merseyside and Halton adopted in July 2013.

All new development will be required to ensure that safe and adequate on-site provision is made for the storage, collection, recycling and management of waste and litter likely to be generated by the development.

Proposals that would support improvements in the minimisation, collection, re-use and recycling of waste generated at existing facilities within the site will normally be supported subject to Policy CS1A.

National policy seeks to promote sustainable waste management in accordance with a hierarchy which will encourage waste prevention and minimisation, re-use and recycling before treatment and disposal and to minimise landfill to meet European commitments.

The spatial strategy, criteria for development management and site allocations for new waste management development in Wirral, based on a resource recovery-led strategy and a sub-regional site approach, is set out in a separate, jointly prepared sub-regional Waste Local Plan for Merseyside and Halton.

The Joint Waste Local Plan identifies three additional sites for new waste management facilities; at Cammell Lairds in Tranmere and at Bidston adjacent to the existing recycling facilities at Wallasey Bridge Road; and areas of search for smaller scale facilities at Poulton and Tranmere, which reflect the scale and pattern of development anticipated in this Proposed Local Plan.

The delivery of the Joint Waste Local Plan strategy relies upon improved facilities for the minimisation, collection, re-use and recycling of waste on the site where the waste is generated, as an integral part of new development or through improvements to the facilities available at existing sites. Other off-site facilities for new waste management development will normally be expected to be provided in industrial locations away from residential property and other environmentally sensitive land uses, with good access to the Strategic Route Network or water access (wharfage) to encourage transport by water.

Additional guidance on the space that will be necessary to set aside to allow safe access for the on-site storage, collection and emptying of containers and on the control of litter is included in relevant Supplementary Planning Documents.

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WIRRAL COUNCIL

Planning Committee

16th January 2020

SUBJECT:	Planning Enforcement Policy January 2020
WARD/S AFFECTED:	All
REPORT OF:	Director Economic and Housing Growth
RESPONSIBLE PORTFOLIO HOLDER:	Councillor Stuart Whittingham
KEY DECISION? <i>(Defined in paragraph 13.3 of Article 13 'Decision Making' in the Council's Constitution.)</i>	Yes

1.0 EXECUTIVE SUMMARY

1.1 This report updates the Council's Planning Enforcement Policy.

2.0 RECOMMENDATION/S

2.1 It is recommended that Planning Committee recommend to Cabinet that the revised Planning Enforcement Policy be adopted.

3.0 REASON/S FOR RECOMMENDATION/S

3.1 The current Planning Enforcement Policy was adopted on 12th March 2009 and the policy is in need of updating.

4.0 BACKGROUND AND KEY ISSUES

4.1 The current enforcement policy was adopted on 12th March 2009.

4.2 The Council wants all applicants to comply with the requirements of the planning system. It takes seriously all breaches of planning control and will take the required actions to remedy any breaches so that Wirral has a well regulated planning system which manages development effectively for the benefit of local communities.

4.3 The revised policy seeks to set out clearly the process the Council follows when investigating allegations of breaches of planning control and the process involved in seeking a resolution when a breach is identified.

4.4 The revised policy aims to offer greater transparency and certainty for stakeholders, whilst also setting out a clear framework in which the Council will deliver its Planning Enforcement function.

4.5 The key revisions to the policy can be summarised as follows:

- Providing a clearer insight into what planning enforcement is and what it seeks to achieve.
- Providing a clearer picture to stakeholders as to what they can expect from the

Council when they are involved in a planning enforcement matter.

- Setting out in more detail the process to be followed where a criminal offence has been committed
- Providing an explanation as to why, in some circumstances, the Council might decide that it is not expedient to take formal action against a breach of planning control.
- Ensuring that the policy offers the Council the flexibility to exercise its enforcement powers in the most effective and appropriate way.

4.6 The Policy will be reviewed every three years and if updating is required this will be reported to Planning Committee for a decision.

4.7 From April 2020 a quarterly report on the Enforcement service and its performance will be presented to the Planning Committee.

5.0 RELEVANT RISKS

5.1 If the Council does not have an up to date Planning Enforcement Policy then it will be open to legal challenge and may not be able to enforce against breaches of planning control.

6.0 OTHER OPTIONS CONSIDERED

6.1 If the revised policy is not adopted, the 2009 policy will remain in force. However, the 2009 policy is considered to be outdated and not fit for purpose.

7.0 CONSULTATION

7.1 Not applicable.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

8.1 None.

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

9.1 The Council receives approximately 300 enforcement enquiries per year. The enforcement team currently consists of 4 permanent members of staff; a Principal Enforcement Officer, two Enforcement Officers and an Enforcement Assistant. The team is also supported by a Technical Clerk. This level of resource is considered to be sufficient to deal with the current level of demand on the service and to deliver the level of service set out in the revised enforcement policy attached to this report.

9.2 If either the resources available to the Council to deliver the enforcement service were to change, or if the volume of enforcement enquiries received were to increase significantly, a review of this enforcement policy would be undertaken and a report would be submitted to the Planning Committee for Members to consider the implications of either of these situations.

10.0 LEGAL IMPLICATIONS

10.1 It is good practice to have an up to date Planning Enforcement Policy to inform the public of the way in which the Council will deal with complaints relating to potential breaches of planning legislation.

11.0 EQUALITIES IMPLICATIONS

11.1 None.

11.2 Equality Impact Assessment (EIA)

- (a) Is an EIA required? No
(b) If 'yes', has one been completed?

12.0 CARBON REDUCTION IMPLICATIONS

12.1 None.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 The revised policy will facilitate the more effective delivery of the planning enforcement service.

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APPENDICES

Planning Enforcement Policy January 2020

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years)

Council Meeting	Date

SITE PLAN:

Not applicable.

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Planning Enforcement Policy

January 2020

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1. What is Planning Enforcement?

1.1 Planning enforcement is the process of investigating whether a breach of planning control has occurred and, if so, assessing whether it is expedient to take formal enforcement action to remedy the breach of planning control.

1.2 A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

1.3 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.

1.4 The National Planning Policy Framework sets out that effective enforcement is important to maintain 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.

2. Enquiring about a potential breach of planning control

2.1 Before making an enforcement enquiry, you may wish to refer to the Planning Portal website (https://www.planningportal.co.uk/info/200125/do_you_need_permission) to check whether the development is permitted development (development that does not require a planning application). You can also check via the Council's website whether the development benefits from planning permission (<https://www.wirral.gov.uk/planning-and-building/planning-permission>).

2.2 The simplest way to report an alleged breach of planning control is to complete the online form that can found on our website via the following link: <https://www.wirral.gov.uk/planning-and-building/planning/planning-enforcement>

2.3 If you do not wish to use the online form, the enquiry must be made in writing. Your correspondence can be sent to the address at the end of this policy and must clearly detail the following information:

- The address of the land or property where the alleged breach of planning control has occurred,
- The nature of the development or activity that has taken place,
- Your name, address and either phone number or email address,
- An indication as to the when the development took place or activity started,
- A brief explanation of the harm caused by the development.

2.4 If your enquiry relates to an alleged unauthorised change of use, we will require your help to collect evidence of the level and nature of activity involved. In order to help us and to substantiate your complaint you will be required to provide a log of the activities that you witness, including times and dates, over a period of two weeks. We will then be able to progress the case. Without that

assistance it may be difficult to build sufficient evidence to demonstrate whether a breach of planning control has occurred.

2.5 The resources available to Wirral Council to investigate breaches of planning control are limited. We therefore will not investigate anonymous enquiries and all complainants must provide their name, address and either a phone number or email address.

2.6 The source of the enquiry will not be disclosed by the Council during the investigation stage. However, you should be aware that in some cases where formal enforcement action is necessary the source of the enquiry may become apparent and where the process leads to Court proceedings, the Council may be obliged to disclose the source of the complaint.

3. How we will deal with your enquiry

3.1 We prioritise cases in order of their importance and effect into five distinct categories. They are:

Priority 1 (Statutory/Legislative Requirements)

- Licensing consultations
- Lawfulness of Existing Development Certificates
- Formal High Hedge Complaints
- Matters where an offence may have been committed- for example, unauthorised alterations to Listed Buildings, unauthorised works to protected trees, and non-compliance with existing enforcement notices.

Priority 2 (Controversial Development)

- Councillors Complaints/Concerns
- MP's Complaints/Concerns
- Committee Approvals (conditions/approved plan monitoring)
- Controversial sites with a wide community interest, such as development of a large scale that results unacceptable harm to amenity.

Priority 3 (Council Objectives)

- Concerns of other departments - risk to health, traffic hazard etc
- Delegated decisions (Conditions/approved plans monitoring)
- Advertisements
- Changes of use (substantial and/or contrary to policy)
- Development in sensitive areas i.e. Green Belt, Conservation areas
- Major commercial development (changes of use, buildings and extensions)

Priority 4 (development likely to be granted conditional consent)

- Significant domestic extensions (more than 3 metres in length, two storeys, balconies and dormers)
- Front walls and fences, and other means of enclosures.
- Changes in land levels more than 0.5 metre
- Changes of use (unsubstantiated and/or compliant with policy)
- Substantiated changes of use.
- Minor commercial development

Priority 5 (Development likely to be granted unconditional consent)

- Unsubstantiated complaints about changes of use.
- Minor domestic breaches of planning control, small sheds, radio antenna, small extension, window alterations etc
- Rear walls and fences

3.2 We will aim to send the complainant a letter (by email if one is provided) acknowledging your enquiry within 5 working days of the date on which the enquiry is made.

3.3 Where the enquiry relates to unauthorised works to a listed building or protected tree that are actively being carried out at the time of the enquiry, we will aim to visit the site that same day to speak with the people carrying out the works.

3.4 For all other forms of development, we will seek to conduct an initial site visit within 15 working days of the date on which the enquiry is made.

3.5 We will always notify complainants of the final outcome of the investigation. However, if you would like to know the progress of a case, then you can contact the case officer via the contact details set out in the acknowledgement letter. We would however respectfully request that you wait at least 20 working days before contacting the case officer to allow sufficient time to gather the initial information relevant to the enquiry. The case officer will contact you if we require any further information to progress the investigation.

3.6 Depending on the complexity and nature of the issue, planning enforcement cases can take a considerable time to resolve.

3.7 Please refer to the flow chart at appendix 1 on page 11 for an overview of the enforcement investigation process.

4. What if the enquiry is about me?

4.1 We recognise that most breaches of planning control are not intentional. However, the planning system seeks to ensure that unacceptable forms of development do not go unchecked, and we must therefore assess whether the development that has taken place complies with local and national planning policy (the expediency test).

4.2 Where a complaint is to be investigated, the case officer will normally visit the land or property where the alleged breach of planning control has taken place, usually unannounced. Visits are conducted unannounced both for time management reasons and to ensure that we obtain a true reflection of the facts on the ground when we visit.

4.3 Section 196A of the Town and Country Planning Act 1990 (as amended) affords the Local Planning Authority a right to enter any land without a warrant to gather any information necessary to establish whether there has been a breach of planning control. However, the Council would always wish to enter land without the need to exercise those powers and seeks the cooperation of the persons concerned in investigating the matters that have been brought to our attention.

4.4 Where a breach of planning control is identified, we will always seek to negotiate a resolution without the need for formal enforcement action. Where appropriate, opportunities will be given for a retrospective planning application to be submitted. However, applications must be submitted in a timely manner to avoid formal action being taken.

4.5 Please refer to the flow chart at appendix 1 on page 11 for an overview of the enforcement investigation process.

5. How cases are determined

5.1 The power to determine whether there has been a breach of planning control is delegated to the Development Control Manager and the Principal Enforcement Officer.

5.2 We aim to ensure that 80% of our enforcement investigations reach one of the following 6 milestones within 13 weeks of receiving the enquiry.

1. Establish that the development does not require planning permission.

Some changes of use and building works are not classed as development or are permitted by the Town & Country Planning (General Permitted Development) Order 2015. Therefore, they do not require planning consent and the Council has no control over the development.

2. Achieve a resolution to an identified breach of planning control by negotiation without the need for formal enforcement action.

3. Secure the submission of a retrospective planning application aimed at resolving the breach of planning control.

Where a retrospective planning application is submitted, the case officer will monitor the outcome of the application. Where a retrospective application is approved, normally there will be no further action necessary and the case will be closed. Where a retrospective planning application is refused, the case officer will continue to seek to resolve the breach of planning control, either through further negotiation or formal action.

4. Establish that the time limit has passed for the Local planning Authority to take action against the breach of planning control.

Section 171B of the Town and Country Planning Act sets out that a breach of planning control becomes immune from enforcement action:

- 4 years after the substantial completion of building works or engineering operations (referred to as operational development);
- 4 years after the unauthorised change of use of a building to a single dwelling house (this includes flats);
- After 10 years for any other breach of planning control (essentially other changes of use or failure to comply with the requirements of a condition attached to a planning permission).

After these periods of time, the development becomes lawful. However, where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired.

5. Determine that it is not expedient to take action

The Town and Country Planning Act sets out that it is not an offence to develop land without planning permission. National guidance also sets out that a Local Planning Authority should not take formal action against unauthorised development solely to remedy the absence of a planning application. Enforcement action should only be taken when it is expedient to do so and should be proportionate to the breach.

There will therefore be instances where acceptable forms of development that cause no harm to its surroundings (taking into consideration local and national planning policy and all other material planning considerations) are carried out without the benefit of planning permission. In these circumstances, it is not likely to be expedient to take enforcement action, even if the persons responsible fail to take steps to remedy the breach of planning control.

However, in instances where retrospective planning permission would only be granted for the development subject to conditions, or where planning permission would not be granted, it is likely to be considered to be expedient to take enforcement action.

The Council's Scheme of Delegation sets out the circumstances in which the decision as to whether it is expedient to take enforcement action is delegated to the Development Control Manager and the Principal Enforcement Officer, or alternatively where that decision must be made by Planning Committee.

Where the Council considers that it is not expedient to take enforcement action against a breach of planning control, the development remains unauthorised (until the time limits listed above have lapsed). That decision does not prevent the developer from submitting a retrospective planning application further down the line to regularise the breach of planning control.

Where the Council considers that it is not expedient to take enforcement action, the case officer will communicate the reasons for that decision to the complainant.

6. A formal Notice is issued.

There are a range of formal enforcement powers available to the local Planning Authority. The formal action taken will depend on the circumstances of each case.

[Please note that the Council's register of enforcement notices is held at the address listed at the end of this policy. You can contact the Department on (0151) 691 8215 to arrange an appointment to view the register. The electronic copy of enforcement notices held on the Council's website does not constitute the Council's register of enforcement notices.]

5.3 Please refer to the flow chart at appendix 1 on page 11 for an overview of the enforcement investigation process.

6. Action where an offence is committed

6.1 As set out above, the legislation establishes that it is not an offence to develop land without planning permission. However, where an enforcement notice is issued and that notice takes effect, the steps set out in the notice must be carried out within the timescales set out in the notice. Failure to comply with the requirements of an enforcement notice constitutes an offence and the person(s) responsible will be liable to prosecution.

6.2 Where a valid retrospective planning application is submitted after the Council have issued an enforcement notice, the Council reserves the right to hold any further prosecution proceedings in abeyance until the planning application has been determined. However, where the submission of a retrospective planning application is of no merit and appears to be a delay tactic, the Council may decide to pursue a prosecution in any event.

6.3 There are also a number of other scenarios whereby a criminal offence may be committed:

- Unauthorised works for the demolition of a **listed building**, or for its alteration or extension in any manner which affects its character as a building of special architectural or historical interest.
- Unauthorised work to a **tree** subject of a Tree Preservation Order or to a tree situated within a conservation area.
- The unauthorised display of **advertisements**.
- Failure to comply with the requirements of other **formal notices** such as a Planning Contravention Notice, a Breach of Condition Notice, or a High Hedge Remedial Notice.

6.4 As is the case with any offence that is committed, the Council must always consider whether it is in the public interest to pursue a prosecution. We will consider the most appropriate form of legal action depending on the circumstances of each case to ensure it is proportionate to the offence.

6.5 If a case has reached this stage, the defendant is likely to have disregarded all the warnings and notices served on them, which is a serious matter. These factors will be considered when deciding the most appropriate action.

6.6 We have the power to offer a caution or to prosecute offenders in the Courts, depending on the nature and severity of the offence.

Formal Caution

6.7 We will interview the defendant under caution, by way of a letter or in person. If they admit to the offence, we may offer a caution to those responsible for the offence on the first occasion and they will be asked to pay the costs incurred by the council.

Courts

6.8 Where it is considered to be in the public interest, we will prosecute those who commit a criminal offence in the courts.

Direct Action

6.9 Section 178 of the Town and Country planning Act 1990 (as amended) grants the Local Planning Authority the power to enter land to carry out the steps required by an enforcement notice.

6.10 Where somebody fails to comply with an enforcement notice, we will ordinarily pursue a prosecution through the Courts in the first instance.

6.11 Those that are found guilty of failing to comply with a Notice in the courts are still liable to undertake the works as required by the notice. If they do not comply with the Notice, we will either prosecute them for a second time and/or take direct action.

6.12 If we take direct action, we will do the works required by the Notice and recover the cost incurred by the council from the defendant or register a charge on the land. In some circumstances, we could force sale of the property to recoup the council's costs.

Proceeds of Crime

6.13 The Council will consider whether it is appropriate to seek the confiscation or recovery of any financial gain resulting from an offence through the Proceeds of Crime Act 2002.

7. Listed buildings and Conservation Areas

7.1 Wirral Council values its listed buildings and conservation areas and acknowledges the significant contribution they make to the character of the Borough.

7.2 In addition to considering any legal action in relation to any offence that may have been committed (see section 6 above), the Council will issue a Listed Building Enforcement Notice requiring the restoration of the listed building to its former condition where possible.

7.3 If a person undertakes works to demolish or alter a Listed Building, and it is impossible to restore, then an offence will be considered serious in nature. We will prosecute anyone responsible for works to Listed Buildings of a serious nature (See Section 6 above).

8. Monitoring development

8.1 Monitoring of development to ensure that it is built in accordance with approved plans and conditions is important to the Council. However, Wirral Council receive approximately 2000 planning applications per year and the resources available for the planning enforcement function do not enable us to systematically monitor every development as it is carried out.

8.2 Whilst we commit to taking a proactive approach to monitoring development where resources allow, we rely on others to report alleged breaches of planning control to us.

8.3 We will endeavour to be proactive in monitoring development. Any major planning application that is placed before the planning committee which is subsequently approved will be monitored. We will in those cases monitor compliance with any precedent conditions, which require details and works to be completed or submitted prior to the development commencing.

8.4 If the development is commenced without compliance with precedent conditions, then the works undertaken may not benefit from planning permission and it will be open to us to take enforcement action.

8.5 It is the responsibility of the applicant/ owner to ensure that development is carried out in accordance with any planning permissions granted, or in line with the limitations set out in the General Permitted Development Order.

9. Trees

9.1 If a person undertakes or causes works to a tree, which is protected by a Tree Preservation Order or is in a designated Conservation Area, without consent they will be guilty of an offence (see section 6).

9.2 Our action in response to any unauthorised work will be proportionate to the nature of the offence and the harm caused by the unauthorised works. Where individuals repeatedly carry out unauthorised works to protected trees, this will be taken into consideration when assessing the appropriate course of action.

9.3 If the tree has, as a result of unauthorised works, been destroyed, we will require a replacement tree. This can be achieved through negotiation or will be required by a formal Notice.

9.4 Enquiries relating to the removal of hedgerows will be assessed in the context of the provisions set out in The Hedgerows Regulations 1997.

9.5 The enforcement team is also responsible for determining formal complaints about High hedges made under Part 8 of the Anti-Social behaviour Act 2003.

10. Further information

Review

10.1 This policy will be reviewed every 3 years to ensure that it reflects any potential changes in legislation or fluctuations in demand on the service and the resources available to deliver the service.

Complaints procedure

10.2 If a person considers that we have not followed the procedures and policies contained in this document, and they feel they have been subject of maladministration, information about the Council's complaints procedure can be found on the Council's website via the following link:
<https://www.wirral.gov.uk/about-council/complaints-compliments-and-feedback/complain-or-give-compliment-wirral-council>

10.3 You can contact the enforcement team for further information as follows.

Email: Planningenforcement@wirral.gov.uk

10.4 Please send any postal correspondence to: **Development Management**
South Annex
Wallasey Town Hall
Brighton Street
Wallasey
CH44 8ED

10.5 Relevant legislation

Town and Country Planning Act 1990 (as amended)

Town & Country Planning (General Permitted Development) Order 2015 (as amended)

Town & Country Planning (Use Classes) Order 1987.

Town & Country Planning (Control of Advertisements) (England) Regulations 2007.

Planning (Listed Buildings and Conservation Areas) Act 1990

National Planning Policy Framework

Part 8 of the Anti-Social Behaviour Act 2003 (High Hedges)

Appendix 1

A.1 Flowchart- Planning Enforcement investigation process

