Adoption of an Enforcement Policy and Enforcement Document Management Module

SYNOPSIS
This report seeks approval to adopt a targeted enforcement policy based on a “HARMS” process in line with recommended national guidance and the Council’s Corporate Plan. This will provide clarity for members, officers and customers in the delivery of an important but discretionary function.

1. Relevant Background Details
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”.

Following the withdrawal of PPG18: Enforcing Planning Control; in 2012 the Department of Communities and Local Government (DCLG) issuing planning technical guidance on planning enforcement, the main principles are as follows;

a) LPAs use of enforcement powers is discretionary
b) The carrying out of development without planning permission is not an offence, it may be unauthorised but is not illegal
c) Planning permission may be sought retrospectively
d) Investigations into alleged breaches should be investigated rapidly and the majority of complaints should be resolved without resorting to formal action
e) LPAs need to consider whether it is expedient or in the public interest to undertake formal action and;
f) An action should be commensurate with the breach

THE LGA/Planning Advisory Service also published a ‘Stitch in Time’ to establish good practice in planning enforcement. It recommends;

• The establishment of an policy framework for enforcement to be endorsed by Members
• A charter for planning enforcement which sets out a formula for prioritising casework.
• The introduction of management arrangements, including performance standards and information systems, and regular progress reports
• a pro-active approach, including monitoring developments for compliance with approved plans and conditions and negotiated solutions, leaving formal action as a last resort

The National Planning Policy Framework (NPPF) recommending the preparation of local enforcement policies and states;
“Effective enforcement is important as a means of maintaining 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.

It recommends;

“Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is proportionate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action there it is appropriate to do so.”

2. Report

Rationale for Introduction of an Enforcement Policy

The nature of planning enforcement work is diverse and actions often dependent on varying factors. Cases vary and processes can go on for a number of years. Some enforcement cases are high profile complex cases.

Effective enforcement relies on the consistent application of procedures and foundation of a good service is having a robust, proportionate and transparent system that allows the service to focus its resources on those breaches of planning control which cause most harm.

It is anticipated complaints and investigations will continue to rise as the population of Corby grows and development continues. However as it stands the Council currently has no formal policy and assessment procedure and therefore needs to review its current working practices given the growth of complaints.

Enforcement Cases Profile

In 2015/16 the Enforcement Section received 62 complaints of which 16 related to unauthorised works, 6 to breaches of conditions, 5 to untidy land, 2 to illegal advertisements and 33 to a material change of use. Of those cases, 32 were either permitted development or not considered a breach of planning control, 28 were pursued and resolved, 2 resulted in formal enforcement action.

In 2016/17 the Enforcement Section received 87 complaints of which 46 related to unauthorised works, 5 to breaches of conditions, 1 to untidy land, 5 to illegal advertisements, 28 to a material change of use and 2 to illegal works to listed buildings. Of those cases, 37 were either permitted development or not a breach of planning control, 16 were pursued and resolved and 2 resulted in formal enforcement action.

As of March 2018 the planning enforcement team has received 130 complaints and currently has 14 outstanding cases for 2017/18, a full breakdown will be provided at Committee following further analysis.

Service Resources

The Planning Service currently employs 1 permanent part time planning enforcement officer for 3 days a week and a split role Planning Assistant with Development Control. This equates to 1 FTE officer dealing with enforcement matters on a day to day basis.

Specialist support for heritage and conservation advice is provided via a consultancy service procured through the Council’s HR Framework Service. Environmental support is provided via a Service Level Agreement with Northamptonshire County Council wildlife officers.

Tree preservation matters are dealt with via an intra service arrangement with Environmental Services with breaches enforced by the Planning Service in conjunction with Legal Services. Planning Officers in the Development Control team also provide support.

Other agencies such as Natural England, Historic England and the Environment Agency and Northamptonshire Police Wildlife Unit can be involved and are informed whenever it’s appropriate to do so.
Software Provision

Currently whilst the Service has enforcement module within its Idox/Uniform package, it does not have an Enforcement Document Management Service (EDMS). This means whilst officers can create enforcement cases in Uniform all the correspondence and relevant documents/evidence for enforcement are held separately off system in manual files. This raised ongoing issues over data protection, document management and data retrieval. It is also inefficient, with document sourcing difficult and time consuming.

The aim for the planning enforcement team therefore is to provide a new focused prioritisation system supported by EMDS software which is fit for purpose, will deliver clear improvements and focus resources on those breaches which are causing harm.

Proposed HARM Policy

This policy is based on an assessment of harm arising from the alleged breach of control which then enables a score to be given. Where there is no breach of planning control the case will be closed. This scoring system is based on appropriate Government guidance and gives due consideration to appropriate legislation and legal rulings.

The procedure will ensure that an enforcement officer makes an initial site visit within 5 working days of receipt of a complaint.

Every complaint that relates to a breach of planning control would be scored using a Prioritisation Scoring Schedule (Appendix 1). Only complaints which score 5 or above will be then be investigated further. Those with a lesser score will be informed of the breach and invited to regularise but no further action will be taken.

In all cases the complainant will be notified of actions and in the case where no investigation is to be made, a consistent explanation of the reasoning behind the decision can be given.

All retrospective refusals of planning applications, together with complaints regarding criminal works such as damage to listed buildings, damage to wildlife, protected trees and hedgerows and non compliance with legal notices would automatically receive a full investigation.

An alleged case will then be either closed or allocated for further action within 5 working days of the initial site visit.

In the case of an alleged material change of use, further site visits will be required to assess the harm and to gather evidence, after which the case will either be closed or allocated for further action within 5 working days of the final site visit.

Options to be considered

As the enforcement activity is discretionary the Council does have a number of options to consider;

- It could withdraw from providing an Enforcement Service
- It could as have some other LPAs provide an Enforcement Service through its development control functions
- It could continue the Service as present without an assessment process
- It could adopt a light touch process of assessment based on officer judgement though a traffic light Red/Amber/Green (RAG) system

Officers have investigated a number of ways of improving the Service given our resources and conclude a standard prioritisation policy using our existing resources with an enforcement document management system will meet recommended national guidance and best practice. It would ensure the process is balanced, transparency and robust. It would also ensure the continued quality of delivery, consistency and continuity of service.

Corporate Policy Considerations

The draft policy proposed supports the Council’s Corporate Plan, it is consistent with delivering excellence, providing value for money and delivery of the best services we can.
3. **Financial**

The cost of providing the Enforcement Service remains as contained in the Planning Service 2018/19 budget and the Medium Term Financial Strategy. No proposals relating to changing the establishment are proposed.

The policy would be publicised through the Council’s and Planning Services website page and social media. Costs associated with the EMDS can be met through the Planning Services 2018/19 budget.

4. **Risks**

The Harms policy and purchase of the EDMS tool will minimise the risk of challenge by the operation of a transparent and auditable system.

5. **Legal & Data Management**

The adoption of a Harms policy meets national policy and regulatory requirements. Data management will be undertaken in accordance with the General Data Protection Regulations (GDPR), which comes into force in May this year. The Council’s data protection policy is available on the internet.

6. **Best Value**

The proposed Harms policy and purchase of EDMS tool would support the provision of efficient and effectively working practices as required under the Local Government Act 1999.

7. **Equality Questionnaire**

To be attached

8. **Conclusion**

Against the context outlined in this report, the Planning Manager is recommending the implementation of a Harms Policy based on the principles of planning enforcement. This will allow the Service to manage our resources efficiently by focusing on those breaches of planning control where there is unacceptable harm.

At the same time the Planning Service will purchase an enforcement module from Idox our software provider which alongside the implementation of the Harms policy will provide a more efficient, resilient and cost effective service.

These actions and processes should make for a fairer process with a recordable justification of actions; ensure quicker decision making and a consistency of approach.

9. **Recommendation**

The Committee are requested to:

1) Approve the adoption of a HARMS policy and scoring schedule for the Enforcement Service.

### Background Papers

None

### External Consultations

None

### List of Appendices

1. HARMS Assessment Form
2. HARMS Assessment process flowchart
3. Equality Questionnaire

### Officer to Contact

Paul McKim Planning Manager 01536464163
CORBY BOROUGH COUNCIL
HARM PRIORITISATION ASSESSMENT FORM
TO BE COMPLETED BY AN OFFICER WHO HAS SEEN THE DEVELOPMENT

- All retrospective refusals of planning permissions and complaints received regarding illegal works to listed buildings, advertisements, protected trees and hedgerows and non compliance with legal notices will automatically receive a full investigation.
- Each new complaint will be allocated scores as set out to assess its harm. The total will provide its harm score from which its priority will be based.
- Where there is no breach of planning control found, the file will be closed with an expediency report.

<table>
<thead>
<tr>
<th>Points Allocation</th>
<th>Score</th>
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<td>Is the breach:</td>
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<td>worsening (1)</td>
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<td>stable (0)</td>
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<td>Are there Highway safety concerns:</td>
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<td>Yes (2)</td>
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<td>No (0)</td>
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<td>Are there other safety or statutory nuisance concerns:</td>
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<td>Yes (1)</td>
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<td>No (0)</td>
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<td>Complainant:</td>
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<td>Immediate neighbour (2)</td>
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<td>Member/Parish Council (2)</td>
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<td>Other (1)</td>
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<td>Age of breach:</td>
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<td>Within 3 months of immunity(2)</td>
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<td>More than 6 months old (1)</td>
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<td>Is the harm:</td>
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<td>Widespread (2)</td>
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<td>Local (1)</td>
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<td>Incidental (0)</td>
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<td>Irreversible harm:</td>
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<td>Yes (1)</td>
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<td>No (0)</td>
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<td>Breach of planning condition:</td>
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<td>Yes (1)</td>
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<td>No (0)</td>
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<td>Conservation Area</td>
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<td>Yes (1)</td>
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<td>No (0)</td>
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<tr>
<td>Affecting the setting of a listed building</td>
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<td>Yes (1)</td>
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<tr>
<td>No (0)</td>
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<td>Yes (1)</td>
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<tr>
<td>Special exercise</td>
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<tr>
<td>Non compliance with local planning policy</td>
<td>Yes (1)</td>
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<tr>
<td>Undesirable precedent</td>
<td>Yes (2)</td>
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</tbody>
</table>

**TOTAL POINTS (HARM SCORE)**

**Actions Arising.**

Only complaints which score 5 or above will be further investigated. Those with a lesser score will be informed of the breach/likely breach and invited to remedy/regularise it. In both cases the complainant will be notified of our actions.
APPENDIX 2

WORKFLOW CHART

ATP OFFICER TO UPLOAD THE CASE ONTO THE UNIFORM SYSTEM AND SEND AN ACKNOWLEDGEMENT LETTER TO THE COMPLAINANT WITHIN 5 WORKING DAYS OF RECEIPT.

PLANNING ENFORCEMENT OFFICER UNDERTAKES A SITE VISIT WITHIN 5 WORKING DAYS OF RECEIPT OF THE COMPLAINT

ALLEGED MATERIAL CHANGE OF USE

MONITOR ACTIVITY AT THE SITE AND MAKE INITIAL CONTACT WITH THE ALLEGED TRANSGRESSOR
SCORE THE DEVELOPMENT USING THE HARM PRIORITISATION SYSTEM
TAKE APPROPRIATE ACTION

ALLEGED OPERATIONAL DEVELOPMENT

DETERMINE WHETHER THERE IS DEVELOPMENT AND IF IT REQUIRES PLANNING PERMISSION
SCORE THE DEVELOPMENT USING THE HARM PRIORITISATION SYSTEM
TAKE APPROPRIATE ACTION

IF HARM SCORE IS LESS THAN 5
INFORM RELEVANT PARTIES WITHIN 5 DAYS OF THE FINAL SITE VISIT EXPLAINING WHY NO FURTHER ACTION IS BEING TAKEN.
CLOSE CASE ON UNIFORM

IF HARM SCORE IS 5 OR MORE,
INFORM RELEVANT PARTIES WITHIN 5 WORKING DAYS OF THE FINAL SITE VISIT EXPLAINING WHY NO FURTHER ACTION IS BEING TAKEN.
CLOSE CASE ON UNIFORM

IF HARM SCORE IS 5 OR MORE,
INFORM RELEVANT PARTIES WITHIN 5 WORKING DAYS OF THE FINAL SITE VISIT AND TAKE APPROPRIATE ACTION

IF HARM SCORE IS LESS THAN 5
INFORM RELEVANT PARTIES WITHIN 5 DAYS OF THE FINAL SITE VISIT EXPLAINING WHY NO FURTHER ACTION IS BEING TAKEN.
CLOSE CASE ON UNIFORM
**Equality Questionnaire**

This Equality Questionnaire must be completed to enable a decision as to whether a full Equality Impact Assessment should be carried out. For further information see the guidance notes.

<table>
<thead>
<tr>
<th>Name of the policy, strategy or project:</th>
<th>Enforcement HARMS Policy</th>
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<tbody>
<tr>
<td>Department and Section:</td>
<td>Planning and Environmental Services, Development Control.</td>
</tr>
<tr>
<td>Lead Officer:</td>
<td>Contact Details:</td>
</tr>
<tr>
<td>Paul McKim</td>
<td><a href="mailto:paul.mckim@corby.gov.uk">paul.mckim@corby.gov.uk</a></td>
</tr>
<tr>
<td></td>
<td>01536 464163</td>
</tr>
</tbody>
</table>

1. What is the main purpose of this policy/project?
   To provide a transparent and auditable assessment process for determining enforcement action as a Discretionary service at CBC

2. Who are its beneficiaries?
   Residents, Members and Offices

3. Has consultation on the proposal been undertaken?
   Who will be/has been consulted with: Yes  No  
   X

4. Has this consultation highlighted any negative impact?
   If yes, please state the negative impact: Yes  No  
   X

5. What systems are in place to monitor its impact?
   DMS enforcement module within Uniform which will enable quarterly reports to Development Control Committee

6. Does the proposal contribute towards one of the 3 aims of the General Equality Duty?
   Point 1

**Explain (general equality duties are listed at the foot of this form):**
Its intention is to provide a clear auditable process to avoid value judgements being made against any groups or individuals so that the LPAs actions are consistent and transparent and can be communicated clearly to CBC residents.
7. Which group is likely to be affected by the proposal?
   Explain how each protected characteristic is likely to be affected, or not as the case may be.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>Comments (include data source)</th>
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<tbody>
<tr>
<td>Age</td>
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<td>X</td>
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<tr>
<td>Disability</td>
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<td>X</td>
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<td>Sex</td>
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<tr>
<td>Marriage &amp; Civil Partnership</td>
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<td>X</td>
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<td>Pregnancy &amp; Maternity</td>
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<td>X</td>
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<td>Race</td>
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<td>X</td>
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<tr>
<td>Religion or Belief</td>
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<td>X</td>
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<tr>
<td>Gender Re-assignment</td>
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<td>X</td>
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<td>Sexual Orientation</td>
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<td>X</td>
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<tr>
<td>Socio Economic</td>
<td></td>
<td></td>
<td>Its intention is to provide a clear auditable process to avoid value judgements being made against any groups or individuals so that the LPAs actions are consistent and transparent.</td>
</tr>
<tr>
<td>Community Cohesion</td>
<td></td>
<td></td>
<td>Its intention is to provide a clear auditable process to avoid value judgements being made against any groups or individuals which are consistent and transparent for CBC residents.</td>
</tr>
</tbody>
</table>

8. What impact does the proposal have on the Equality Target Groups?  
   No Impact  
   Positive Impact  
   Negative Impact or Impact unknown*  

   *Negative Impact or Impact Unknown will require a Full Impact Assessment to be completed.

9. Proceed to a Full EIA?  
   Yes  
   No  

   Lead Officer Signature:  
   Paul McKim  
   Date: 27th March 2017.

On completion submit copies to:  
Policy Officer (Equalities & Diversity)  
Democratic Services for Committee with policy (if relevant)

General Equality Duties:
1. Eliminate discrimination, harassment and victimisation.
2. Advance the equality of opportunity between people who share a relevant protected characteristic and those who do not share it. Eg:
   a. minimising disadvantage,
   b. taking steps to meet their needs,
   c. involving them with activities where normally people with that PC participation is low.
3. Foster good relations between people that share a relevant protected characteristic and those that do not.