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Why planning enforcement services have collapsed in many local authorities

8 December 2022 by David Blackman

A new RTPI study paints a bleak picture of the poor state of planning enforcement services across English local authorities. Practitioners say recruitment and resourcing are key problems and the situation could have serious consequences for the credibility of the planning system as a whole.



Planning enforcement. Pic: Enforcement Services

Planning is often dubbed one of the financially beleaguered local government system's 'Cinderella' services. And within planning departments, enforcement is characterised as an especially neglected activity.

New research, published by the Royal Town Planning Institute (RTPI) last week, shows how true that picture is. Based on a survey of enforcement officers from one-third third of English local authorities, it said 80 per cent of the 133 respondents reported that there weren't enough officers in their team to match the level of workload. An even higher proportion (89 per cent) said their councils are currently experiencing an enforcement backlog.

The study found that 'understaffed' enforcement teams at local authorities across England, which are under immense pressure from both politicians and the public, are being 'stretched to their limits'. 'The last decade of cuts has had a tangible and damaging impact on planning enforcement,' it said, adding that the enforcement service the public is receiving has 'significantly deteriorated'.

The survey also found that 73 per cent of respondents reported their authority had struggled to recruit in the last year. Some of those interviewed for the research reported that multiple rounds of recruitment for permanent enforcement roles turn up 'small' numbers of applicants with 'little relevant experience'.

The task of recruiting enforcement officers is 'often impossible' because graduates lack awareness of or interest in accepting such roles. And while many members of enforcement teams are traditionally ex-police officers, the increasing emphasis on qualifications in planning means fewer such candidates are eligible these days.

In addition, enforcement teams face the same kind of competition from recruitment consultancies as the rest of local government planning, said the report. The combination of these factors has 'decimated the talent pool' for enforcement, the report concludes.

The growth of contracting within local authorities meanwhile has 'exacerbated' high levels of staff turnover and 'instability' within enforcement teams. Combined with the accumulation of cases during the pandemic, long-term underresourcing has resulted in backlogs and low staff morale, according to the RTPI.

Just under half of the authorities surveyed reported insufficient capacity to monitor compliance of conditions once successful enforcement action has been taken. This inability to 'proactively' monitor compliance means teams are now 'largely reactive' and must rely 'completely' on complaints from the public, said the research.

In addition, 'tight budgets' make it 'extremely difficult' for councils to effectively take direct action unless there is a 'clear political will' to do so, said the report.

Issues within enforcement are compounded by problems in the appeals and courts systems with nearly 71 per cent of the survey's respondents reporting that delays from the Planning Inspectorate are having a negative impact on their service.

The picture painted by the RTPI study is an accurate one, according to Richard Crawley, programme manager at the Local Government Association's Planning Advisory Service. "Enforcement is really difficult and has been slowly becoming more difficult as the years pass. Not for nothing is it called the Cinderella service," he said.

Robert Bruce, a partner at law firm Freeths went further, noting that enforcement is "even more of a Cinderella service than it's ever been". Peter Geraghty, development management spokesperson for the Planning Officers Society, said the report is "absolutely reflective" of the "dire nature of the situation" that local authority enforcement teams are in.

"Things have really ground to a halt in a lot of enforcement teams", said Bruce, who agrees with the report's finding that backlogs built up during the pandemic when an inability to conduct site visits made it difficult for enforcement officers to investigate planning breaches.

However, the picture has not improved since restrictions eased in the early part of last year, he said: "That's now disappeared, but they don't seem to have got back into gear after that."

Geraghty agreed with the research that recruitment is a big part of the problem, noting a "dearth" of both professionally qualified planners and ex-police officers wanting to take enforcement roles. "No one is going into enforcement," he said.

Izindi Visagie, partner at Ivy Legal, was heartened to see a "whole new raft" of enforcement officers joining local authorities recently. "That's great but it takes time to get experience," she said.

And they will often be working in local planning authorities (LPAs) where enforcement experience is thin on the ground, meaning they lack support and will be reporting to managers who don't understand the intricacies of enforcement, said Visagie: "There always used to be experienced people in planning enforcement on whom you could draw if you needed guidance. Where that has been lost, newer officers face a tough challenge to make their enforcement work effective."

And the inevitably confrontational nature of enforcement means that it doesn't suit everybody, she said: "It's quite tough and requires a certain kind of personality. If you require these exceptional technical skills as well, you are really reducing the number of people."

Enforcement is also held back in the competition for scarce resources within councils because it is not a statutory function of local government, said Crawley: "For this reason, it's vulnerable when there is pressure for cost savings."

Geraghty, who is also an executive director at Hertsmere Council, said all discretionary activities are under "incredible pressures" in terms of seeking resources, both financial and human. Elected members are often "extremely keen on planning enforcement because it's a hot topic for residents", said Rory Stracey, a planning partner at solicitors Trowers & Hamlins.

However, the cost of running enforcement services are high, he said. The process of investigating planning breaches is often long winded and complicated, involving site visits and correspondence. Enforcement notice

will then have to be drafted by the local authority's legal team, said Stracey.

Many authorities don't even get round to serving enforcement notices because they lack the capability, staff

Then around 19 in every 20 enforcement notices are challenged, said Visagie, adding that enforcement appeals are "much more time consuming" than other types.

The appeal will typically require the council hiring a barrister meaning yet more cost, Stracey said: "Even if the appeal is unsuccessful, it does not necessarily follow that the person who's failed in the appeal pays the other side's costs. You can only get costs back from the other side if you can demonstrate that there was unreasonableness and it's quite a high standard."

If appellants don't comply, the council's only option is to prosecute, which entails further expense, he said.

Visagie agrees with the report's conclusions about the legal process, which is like "treacle". "It is really difficult to pursue any prosecutions right now," she said.

"If the defendant is successfully prosecuted, they get fined but the money doesn't go to the local authority, it goes into the central government funds, which is the same as any criminal prosecution," said Stracey. "There's all of that complexity and delay and not really any payback at the end when they're successful." The upshot is "lots of breaches of planning controls will be "too trivial" to justify an intervention, he added..

A recent *Planning* analysis of government statistics for our 50 Biggest Planning Authorities report showed dramatic variations in performance by LPAs on enforcement. While the median number of enforcement notices issued per thousand applications was 33, in some boroughs the activity has virtually disappeared.

In the lowest performing authority - the south London borough of Croydon - just 0.4 notices were issued per

thousand enforcement applications, while in Greater Manchester's Trafford, the figure was 0.9. Visagie said: "It doesn't require a lot of sleuthing to discover which local authorities those are and it is very clear to developers which local authorities will never take any action."

The authorities that tend to do a good job on enforcement are those with good processes in place, said Stracey: "They don't just forget about breaches. If they open an investigation, they tend to have quite good case management systems, so they do follow through and they have reminders that tell them this person hasn't replied within the time period specified."

The more proactive authorities tend to be more experienced issuing notices, said Visagie: "They know the pitfalls and they are better able to defend appeals."

Crawley backed the research's backing for monitoring of compliance to be centrally funded. "We need to be clear that leaving the 'eyes and ears' of the planning system to neighbours is not a real answer and will just lead to more investigations that need following up and a growing sense that the system is unfair," he said.

The wider worry is that the apparent collapse of enforcement services will have serious consequences for the credibility of the entire planning system. The RTPI report concludes: 'Without a change from the status quo, the service which is being provided to the public will continue to deteriorate and the planning system will lack teeth.'

Geraghty agreed, adding: "Without enforcement, you really don't have a planning system. It underpins the integrity of the system and people's belief in it. Without that kind of activity to ensure that those who don't

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or even will, said Visagie:

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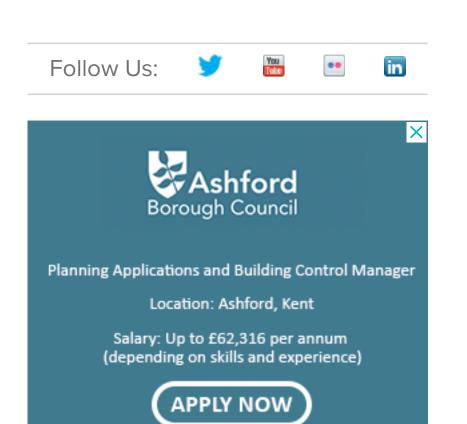
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