

**Development Control Group
Enforcement & Compliance Team**

The Policy on Planning Enforcement

Section 1: Priorities

Section 2: Decision – making

Section 3: Procedures

Section 1: Priorities

- 1. Allegations about breaches of planning control will be investigated thoroughly and accurately in accordance with the following order of priority:**

High Priority

1. Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area.) or any other development that causes irreversible demonstrable harm.
2. Unauthorised works to trees covered by a tree preservation order (TPO) or in a Conservation area.

Medium Priority

3. Any unauthorised development/activity which, causes clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents.
4. Breach of a condition, which results in serious demonstrable harm to amenity in the neighbourhood.
5. Unauthorised development in an AONB, SSSI (or other national *or local* designation of nature conservation), or Conservation Area or where an article 4 direction has been issued.
6. Unauthorised development, which is the source of significant public complaint (significant public complaint can be quantified as 5 or more independent sources complaining about the same alleged breach of planning control).
7. The erection of unauthorised advertisements that have a detrimental impact on highway safety.

Low Priority

8. Any unauthorised development where the time limit for enforcement action will expire within the next 6 months.
9. Unauthorised development, which is *not* the source of significant public complaint.
- 10 The erection of unauthorised advertisements.

Lowest Priority

- 11 Unauthorised development, which would be likely to receive planning permission/approval (e.g. if a planning application were to be submitted or S106 agreement completed) or would not result in formal enforcement action being instigated.
- 12 Developments that are unlikely to require planning permission.

The council receives approximately 800 complaints regarding alleged breaches of planning control each year. Although many of these do not result in a formal enforcement action, many require lengthy investigations, site surveillance or legal action over several months, and therefore the Council must give priority to those cases where greatest harm is caused. Depending on the seriousness of the alleged breach and available resources the target response times for initial response will be as follows: -

High Priority cases (1 and 2)

A site visit will be made the same day.

Medium Priority cases (3, 4, 5, 6 and 7)

A site visit will be made within 5 working days

Low Priority cases (8, 9 and 10)

A site visit will be within 15 working days

Lowest Priority cases (11 and 12)

A site visit will be within 21 working days

Once investigations commence its priority may change following the initial site visit or on receipt of additional information. As the investigation progresses the complainant will be advised of progress and the outcome by 'phone or in writing as required. The Enforcement and Compliance Team aims to complete the first phase of the enforcement investigation within 8 weeks of the date the complaint was first received. The Enforcement and Compliance team plan for 2005/06 aims to achieve this target for 70% of cases by April 2006.

The first phase of investigation is complete when one of the following points has been reached:

- a. Case is closed because the investigation identifies that no breach in planning control has occurred.

- b. Case is closed because an alleged breach of planning has been identified but then resolved by negotiation.
- c. A planning application or other form of application has been submitted following the investigation.
- d. A breach in planning control has been identified and an application requested, but not submitted. An assessment has been made determining that it is not expedient to take formal enforcement action in this case at this time.
- e. A breach in planning control has been identified. An assessment has been made determining that it is expedient to take formal enforcement action in this case. Formal action may be in the form of notices issued or prosecution statements sent to legal.

- 2. Complaints about alleged breaches of control will be accepted by letter, e-mail, telephone or by personal caller provided the complainant provides their name, address and telephone number. Anonymous complaints will not be entertained, although the complainant will be encouraged to refer the matter to either their elected ward member or their parish council representative to advance their complaint, should they wish to remain anonymous.**

To avoid malicious complaints, anonymous allegations of breaches of planning control will not normally be entertained. Every effort, however, will be made to reassure anybody wishing to make a complaint that his or her details will be kept confidential so far as other legislation permits it to be. Should they still wish to remain anonymous, then every effort will be made to encourage the complainant to refer the matter to either their local ward member or to their Parish council representative.

Section 2: Decision-making

Policies 3 to 9 give guidance on the decision making process.

- 3. The Council will only take enforcement action when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise breaches in planning control. In taking formal enforcement action the Council will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach.**

In deciding whether to take enforcement action the Council will have regard to the development plan and to any other material considerations including national policies as expressed through Government Circulars and Policy Guidance Notes.

In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Any action taken will be proportionate with the breach of planning control to which it relates.

This reflects the approach to enforcement set out in Planning Policy Guidance 18 and Circular 10/97. Where it is assessed that it is likely that planning permission would be granted for the development, the person responsible would normally be invited to submit a retrospective planning application. It will generally be inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity or the environment.

In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account.

4. In considering whether to take enforcement action the Council will not give weight, either way, to the fact that development may have commenced.

Other than in very specific situations (e.g. works to listed buildings) it is not a criminal offence to carry out development without planning permission and it is therefore important that unauthorised developments are treated on their individual merits in the same way as proposed developments. The test to be applied will be “would planning permission have been granted for this development had it been the subject of a planning application?”

5. Decisions not to take enforcement action will normally be made by the Development Control Group Manager or the Enforcement and Compliance Team Leader as agreed through the delegation arrangements. Reasons for not taking action will be recorded in writing.

It is in the public interest that decisions not to take enforcement action are properly recorded and that Councillors have the opportunity to refer matters to committee if necessary.

6. The Council will not allow prolonged negotiation to delay essential enforcement action.

Whilst the Council will endeavour to overcome any harm caused by unauthorised development, by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set in accordance with the priority accorded to the case.

7. In situations where an unauthorised development may only be made acceptable by the imposition of appropriate planning conditions, a planning application will be sought to regularise the development. Where such an application is not forthcoming within an agreed time scale, an enforcement notice will be served together with a statement that the Council would be prepared to grant planning permission subject to specified conditions.

The Council will aim to ensure that where a development is considered to be acceptable, but which remains unauthorised, then the service of a notice along with a statement will protect the interests of future owners/developers.

8. In considering whether to take enforcement action, the Council will not give weight to non-planning considerations.

It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be placed on sound planning grounds. Local opposition or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons.

9. The Council will have regard to the Council's obligations and powers under other legislation.

From time to time more effective and efficient outcomes can be achieved by use of powers outside the Town and Country Planning legislation

Section 3: Procedures

Policies 10 to 25 guide the Councils planning enforcement procedures.10 Accurate records will be kept including photographs.

The collection of accurate evidence is one of the keys to successful enforcement action.

11. The Council will make efficient use of the relevant investigative powers and will justify their use as required.

Full use will be made of Planning Contravention Notices or section 330 notices to elicit information about alleged breaches of control where evidence is not otherwise forthcoming. Where appropriate, powers of entry on to land will be used to obtain information for enforcement purposes.

12. In carrying out its enforcement investigations the Council will make efficient use of HM Land Registry records and its own records. Close links will be developed between, other Groups and Directorates of the Council to achieve this.

Information relevant to enforcement investigations is held in a variety of locations. Sources outside the Council include HM Land Registry, Parish Councils, national and local amenity groups, national bodies, (e.g.: Environment Agency, Health and Safety Executive, DVLA, English Heritage). Within the Council, Housing and benefit records, electoral roll, and Council Tax records are all examples of areas where information relevant to enforcement investigations can be located.

13. The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 (as amended) when interviewing persons suspected of a criminal offence (in so far as it applies to those being interviewed by a non police agency) and with the Criminal Procedures and Investigations Act 1996 and Section 222 of the Local Government Act 1972, when carrying out prosecutions.

It is not a criminal offence to carry out development without first obtaining planning permission. However, it is an offence to erect unauthorised advertisements, fell a protected tree without consent, carry out unauthorised works to a listed building, or fail to comply with an enforcement, breach of condition, planning contravention or stop notice. For a successful prosecution to take place it is essential that the provisions of PACE, CPIA and the Code of Conduct for Crown Prosecutors are followed.

14. The Council will ensure officers keep up to date with relevant enforcement case law.

It is important to ensure that Officers acting on behalf of the Council are fully aware, and informed of changes in legislation or case law to ensure accuracy and professionalism are maintained at all times.

15. The Council will endeavour to allocate resources to see priority actions through to the end.

Once a priority investigation has been commenced, the Council will ensure that resources are made available in order to ensure that the matter is concluded satisfactorily. This will mean that lower priority cases have less resource allocated to them

16. The Council will be clear and precise in specifying breaches and requirements.

Every effort will be taken to ensure that those being regulated, fully understand what action is being taken, the steps that are required to remedy the breach, and the possible implications should they fail to comply with the requirements of that action.

17. The Council will use plain language.

Clarity and understanding should be maintained at all times.

18. The Council will make sure the reasons for issuing an Enforcement Notice match its requirements.

Only those actions necessary to remedy a breach will be included in a notice.

19. The Council will stick to procedural time limits or ask for justifiable extensions.

In certain circumstances additional time may be required in order to comply with the Council's requirements. When this is apparent, due consideration will be given to permitting such requests so long as the apparent harm to third parties can be minimised.

20. The Council will involve the police if there is an assessed risk to personal safety of staff.

Where there is a perceived threat to either an officer of the Council or a member of the public, and following an appropriate risk assessment, the police will be requested to attend in order to ensure that safety of staff is not compromised in any way.

21. The Council will be flexible and consider genuine solutions.

Where possible, any alternative solution will be considered in order to achieve a satisfactory conclusion to a reported breach of planning control. The use of formal enforcement action will in some circumstances be as a last resort and shall not be used without first seeking a remedy by other means, for instance through negotiations.

22. The benefits of ICT systems in recording, processing and monitoring work will be maximised.

ICT systems are an essential tool in all spheres of planning control and their use in enforcement work will maximise the efficiency of the officers involved.

23. Where appropriate, relevant officers will liaise with adjoining authorities to share enforcement experiences.

The enforcement service can benefit from team working between different authorities. Shared practices, procedures and experiences can all add value to the service.

24. In order to avoid unnecessary delay, the Council will issue notices "in the alternative" where there is uncertainty over the nature of the breach.

In some cases it may not be clear as to what the breach of control involves. For example, the siting of a mobile home may amount to a material change of use or it may be an operational development. To avoid delays, which may be caused by pursuing what can turn out to be a wrongly defined breach, alternative and composite notices will be served as appropriate.

25. The Council will resource out of hours site visits if they are required as an essential part of an investigation into an alleged breach of planning control.

To investigate some alleged breaches in planning control or collate evidence to instigate formal legal proceedings, where it is essential Council officers will visit sites out of the normal office working hours. Out of office site visits will only be required when no other course of action/investigation will provide the necessary evidence to resolve an investigation into an alleged breach of planning control. Such visits will be planned and are not designed to form an out of hours call out service. Prior to any out of hours site visits the Council will undertake a risk assessment and take all appropriate measures to ensure the safety of the staff involved.