

Enforcement Policy February 2010



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This Policy sets out the general principles that form the standard operating procedures and function of the Planning Enforcement Service

1 BACKGROUND

- 1.1 New and substantially improved powers to enforce Planning Control were given to Local Planning Authorities by the Planning and Compensation Act 1991. The Enforcement provisions of the Act are based on the main recommendations of the report by Robert Carnwath QC, together with related secondary legislation, DOE circulars 21/91, 17/92 and Planning Policy Guidance note 18.

As a result, procedural advice on enforcing Planning Control has been consolidated and updated in DOE circular 10/97.

- 1.2 The circular states that for an assessment to be made of all relevant factors that need to be considered before initiating formal Enforcement proceedings, a clear statement of the Council's Enforcement Policy shall be formulated in order to provide a decision-making framework to enable effective Enforcement procedures and practices to be implemented.
- 1.3 As a result of the advice contained within circular 10/97 and the policies emerging through the proposed Local Plan (LDF) particularly in order to satisfy Policy in regard to performance and the Council's aim of trying in the first instance to achieve an amicable negotiated outcome without the need for formal action wherever possible the Council have formulated this Policy document on 'Enforcing Planning Control'.

2 INTRODUCTION

- 2.1 Officers in Planning Services will always seek to secure compliance with legislation whilst conforming to the spirit of the European Convention on Human Rights (as implemented by the Human Rights Act, 1998) and the Central/Local Government Enforcement Concordat which this Authority has adopted. Planning Services in their Enforcement of legislation are able to use powers that enable Officers, amongst other things, to issue verbal advice, send letters, serve formal notices, or prosecute in the courts.
- 2.2 Officers frequently find contraventions of the law but have to consider the most appropriate method of achieving compliance with the law from the range of possible actions available.
- 2.3 Planning Services will seek to carry out its Enforcement functions efficiently and effectively and in a way which is open, clear and helpful to businesses and members of the public.
- 2.4 The Enforcement action considered by the Officer must be informed by this Policy, which promotes consistency, proportionality, transparency and fairness.
- 2.5 This Policy will be available for examination by any party affected by Enforcement decisions made by the Service.

2.6 Where the Service becomes aware of a situation where there is a shared role with other Enforcement bodies, officers shall liaise accordingly.

3 FORMULATING THE ENFORCEMENT POLICY

3.1 The Enforcement Policy has been formulated using the following references:

- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compensation Act 1991
- The Town and Country Planning (General Permitted Development Order) 1995
- Planning Policy Guidance Note 18
- Planning Policy Guidance Note 19
- DOE circular 10/97 Enforcing Planning Control
- The Council's Development Plan Policies
- Government ODPM 'Best Practice Guide(s)' ie on s215 (Amenity)
- Royal Town Planning Institute (PEA) Enforcement Handbook
- Other associated legislation including but not limited to:
Human Rights Act, Police and Criminal Evidence Act, RIPA etc

4 WHAT IS PLANNING ENFORCEMENT

4.1 Planning enforcement can only be considered where the matter reported needs planning permission or other consent or work is not being carried out in accordance with a permission that has been granted. An initial investigation by the enforcement section will seek to determine this.

4.2 Certain types of building works or changes of use are defined as "permitted development" meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the relevant legislation.

4.3 Where building/engineering work carried out and changes in the use of land or buildings are not permitted development, they will need planning permission from the Council. In addition sometimes development is carried out that does not properly follow the detailed plans which have been approved by the Council or a use does not comply with conditions imposed in a planning permission. Cases such as these can be detrimental to the way in which people live.

4.4 Other situations that can be considered for planning enforcement include:

- Unauthorised display or advertisements.
- Unauthorised works to protected trees, trees in conservation areas or protected hedgerows.
- Unauthorised work to buildings listed as being of special architectural or historic interest and ancient monuments.
- Unauthorised demolition of certain buildings within a Conservation Area.
- Land that is in such a poor condition that it adversely affects the amenity of the area.
- Hedges defined as high hedges under the Anti-Social Behaviour Act 2003.

- 4.5 Some cases will relate to possible offences that can be subject to prosecution, in other cases a legal notice must be served and become effective before any offence can be deemed to occur. In the later instances the term 'breach of planning control' is used to describe the occurrence until a legal notice becomes effective.
- 4.6 **What is the purpose of Planning Enforcement Action?**
- 4.7 Planning laws are designed to control development and uses of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.
- 4.8 Carrying out work or changing the use of land or buildings without planning permission is not usually a criminal offence. In most cases the Council will give the opportunity to apply for retrospective planning permission. However, where serious harm is being caused, the Council will take appropriate action.
- 4.9 The Council must operate its enforcement activities within Government guidelines and in accordance with Council policy. This means that:
- The Council must decide whether the breach of control is unacceptable.
 - Action should not be taken just because development has started without planning permission.
 - The Council does not always have to take action but the particular circumstances of the case must always be considered.
 - It is not normal to take formal action against a minor breach of control that it is considered causes no real harm.

But:

- Enforcement action will be taken quickly when it is necessary.

5 THE COUNCIL'S APPROACH TO ENFORCEMENT

- 5.1 The integrity of the Development Management process depends on the Council's readiness to take enforcement action when it is considered essential to do so. The Council accepts that swift initiation of enforcement action is vital to prevent a breach of Planning Control from becoming well established and more difficult to remedy.
- 5.2 The Council recognises the importance of establishing effective controls over unauthorised development, in accordance with the advice contained in Planning Policy Guidance Note 18 and Circular 10/97, in order to assist in the preservation and enhancement of the qualities of both the built and natural environment and to protect public amenities.
- 5.3 The formulation of a Planning Enforcement Policy is essential in order to promote and maintain effective and efficient working practices in the Enforcement of Planning Control.

- 5.4 The Council will not condone wilful breaches of Planning Law and will exercise its discretion to take Enforcement action if it is considered expedient to do so.

6 MAIN ENFORCEMENT POLICY STATEMENT

- 6.1 Reasonable resources shall be committed to ensure effective implementation and maintenance of Planning Enforcement Control. The Council is ensuring that whenever possible a Pro-Active Enforcement regime with emphasis on the improvement of neighbourhood amenity taking a schemed approach in bringing about a better quality of local amenity standards.
- 6.2 As the Local Planning Authority, the Council shall exercise all reasonable powers granted under the provisions of the Town and Country Planning Act 1990, including all other subordinate legislation, to effectively control unauthorised development. In considering whether it is expedient to initiate Enforcement action, the Council shall pay due regard to its Development Plan Policies and all other material considerations.
- 6.3 In considering Enforcement action, the Council will assess whether the breach of Planning Control unacceptably affects public amenity or causes harm to land or buildings.
- 6.4 The Council will always attempt to persuade an owner or occupier of land to voluntarily remedy any harmful effects of unauthorised development. The Council will not allow negotiations to hamper or delay formal Enforcement action that may be required to make the development more acceptable on planning grounds, or to compel it to stop.

7 GENERAL PRINCIPLES

- 7.1 Planning Enforcement must seek to secure compliance with the relevant legislation.
- 7.2 When Officers find a contravention of the law they will warn or advise those involved (orally or in writing) of the steps needed to put things right, unless more formal Enforcement action is the most appropriate way of dealing with the matter.
- 7.3 All communications will be clear and where possible in plain English, translated where appropriate and will distinguish between advice and legal requirements.
- 7.4 Planning Enforcement will endeavour to discuss fully with a responsible person any compliance failures or difficulties and will give full consideration to their views before exercising discretion on the most appropriate course of action.
- 7.5 The Service will at all times comply with the spirit of the European Convention on Human Rights as implemented by the Human Rights Act, 1998. It will also have due regard to all necessary procedural requirements contained in legislation such as the Criminal Procedure and Investigations Act, 1996, the Regulation of

Investigatory Powers Act, 2000, the Police and Criminal Evidence Act, 1984 and the Data Protection Act, 1998.

- 7.6 The Policy will be operated with regard to the requirements of current legislation, Planning Enforcement will operate without grace, favour, malice or bias and in a non-discriminatory way and for example, gender, ethnic origin or sexual orientation of the offender will not influence the choice of Enforcement action.
- 7.7 Planning Enforcement will, so far as is possible, endeavour to foster a good working relationship with all stakeholders.
- 7.8 Complainants' confidentiality is paramount in dealing with complaints and will be respected at all times in so far as it is possible.
- 7.9 The Council recognises that in certain circumstances complainants may have legitimate reasons for not wishing to disclose their identity. The Council is also aware of the need to protect the individual from malice and unfounded allegations.
- 7.10 Details held on Council files are protected by Data Protection legislation. It should also be noted that certain protections exist for information held on record in connection with investigations under the remit of Freedom of Information legislation. The Council will abide by the requirements of this legislation to balance the rights of all individuals involved in enforcement matters.

8 ENFORCEMENT OPTIONS

- 8.1 The Council will first establish whether a breach of control has occurred.
- 8.2 Where a breach of control has taken place the Council will then make an assessment of the harm caused by the breach of control.
- 8.3 Where an assessment is made that it is likely a retrospective planning permission would be granted, the person responsible would be invited to make such an application.
- 8.4 Should no retrospective application be received the Council will consider enforcement action where the breach of control is causing sufficient harm to justify it, such action would be to remedy any harm not necessarily to remove the breach in its entirety.
- 8.5 The Council can serve an Enforcement Notice on the owner and/or occupier of the land. The notice explains the nature of the breach of control and sets out what steps are necessary to put things right and a date by which this must be done. If the notice is not complied with, the Council may bring a prosecution in the Courts.
- 8.6 In the most serious of cases, the Council may also consider serving a Stop Notice or may apply to the Courts for an Injunction to prevent further harm being caused. This action requires the people responsible to stop specified activities.

8.7 People who receive an Enforcement Notice can appeal to the appropriate Secretary of State. An appeal has to set out why it is felt that the action should not be taken. The appeal can be dealt with by an exchange of letters, an informal hearing in front of an Inspector or at a Public Inquiry.

8.8 The Council can also carry out other enforcement action, including:

- Service of a “Breach of Condition Notice” where development has taken place without compliance with a condition or conditions of the planning permission.
- Service of a notice requiring the proper maintenance of land under Section 215 of the Town and Country Planning Act 1990.
- Prosecution in connection with unauthorised advertised advertisement display (please note that the content or accuracy of an advertisement is not a planning matter).
- Prosecution for unauthorised work to a listed building or ancient monument.
- Service of a “Listed Building Enforcement Notice” where unauthorised work has taken place to a building listed as having special architectural or historic interest.
- Service of a “Conservation Area Notice” where unauthorised demolition has taken place within a designated Conservation Area.
- Prosecution for non-compliance with a requirement to replace a protected tree.
- Prosecution for unauthorised work to a protected tree, removal of a protected hedgerow.
- Unauthorised work to: a listed building, demolition within a Conservation Area or work to a protected tree.
- Service of a remedial notice on a hedge determined as a ‘high hedge’.
- Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken.

This harm would not, for example include:

- The loss of value to a neighbouring property,
- Competition to another business,
- Loss of an individual’s view or trespass onto someone else’s land.

- 8.9 It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved.
- 8.10 However the checks and appeals built into the Planning system (being Civil law for most Offences, not Criminal) can make it a prolonged process.
- 8.11 Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. If a person decides to appeal against formal enforcement action this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.
- 8.12 In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required Enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal Enforcement is inappropriate in the circumstances, such as unauthorised business has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well-being. A decision to take no action must be recorded in writing and must take into account the health, safety, environmental and nuisance implications of the contravention.
- 8.13 If it is the intention to take no action Planning Enforcement will inform the complainant always and will let them know the reason why.
- 8.14 What will not be pursued:-
- **Neighbour disputes:**
The Council will not pursue obvious neighbour disputes unless there is a clear planning issue, which has a significant impact on amenity.
 - **Anonymous complaints:**
Unless relating to unauthorised works to protected trees or listed buildings.
 - **Trade complaints:**
In cases where the issue is purely trade or competition.
 - **Boundary disputes**
 - **Height of hedges and trees**
Ability to be pursued under other legislation.
 - **Internal alterations (unless a listed building)**

- **External security lights fixed to houses**

Ability to be pursued under other legislation.

- **Fences and walls in rear gardens:**

Unless they are considered to have a substantial detrimental effect on residential amenity and/or visual amenity.

9 **ENFORCEMENT PRIORITIES**

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

9.2 **High Priority**

- a Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (eg a listed building or building within a Conservation Area) or any other development that causes irreversible demonstrable harm.
- b Unauthorised works to trees covered by a Tree Preservation Order (TPO) or in a Conservation area.
- c Unauthorised development in an AONB, SSSI (or other national *or local* designation of nature conservation).

9.3 **Medium Priority**

- a Any unauthorised development/activity which, causes clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents.
- b Breach of a condition, which results in serious demonstrable harm to amenity in the neighbourhood.
- c Unauthorised development in Conservation Areas or where an article 4 direction has been issued.
- d 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).
- e The erection of unauthorised advertisements that have a detrimental impact on highway safety.

9.4 **Low Priority**

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

9.5 **Lowest Priority**

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

9.6 The Council receives approximately 400 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: -

9.7 **High Priority cases (1, 2 and 3)**

A site visit will be made the same day.

9.8 **Medium Priority cases (4, 5, 6, 7 and 8)**

A site visit will be made within 5 working days

9.9 **Low Priority cases (9, 10 and 11)**

A site visit will be within 15 working days

9.10 **Lowest Priority cases (12 and 13)**

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 Team aims to complete 70% of the first phase of the enforcement investigation within 8 weeks of the date the complaint was first received.

- 9.11 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.
- 9.12 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.
- 9.13 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.

10 **DECISION MAKING**

- 10.1 **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.

10.2 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 (eg 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?”

10.3 Decisions not to take enforcement action will normally be made by the Director of Development and Resources as agreed through the council’s 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.

10.4 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.

10.5 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 may 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.

10.6 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.

10.7 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.

We aim to give initial feedback on complaints, either in writing or verbally, on findings and what actions we intend to pursue within 10 (working) days following the initial site visit.

The enforcement procedure by its very nature is very complex and crosses many other legal boundaries. As such the action initiated at times is a very long and drawn out process, particularly if the offender challenges the Authority's decision/recommendation, which he is perfectly entitled to do so.

10.8 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.

10.9 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, (eg: 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.

- 10.10 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.

- 10.11 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.

- 10.12 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.

- 10.13 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.

- 10.14 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.

11 **STAFF SAFETY**

- 11.1 Planning Service officers will always aim to resolve breaches of planning control in an amicable way with the offender, preferably through negotiation. However, some times people react in a violent and unprovoked way. Should officers perceive this might be the case they will always remove themselves from potentially threatening situation that might prove a risk to their personal safety.

If you would like a copy of this leaflet in large, clear print, audio, braille or in another language, please telephone

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