

Enforcement Policy

Introduction

Planning Enforcement is a discretionary power local authorities have to remedy breaches of planning control. Although it is discretionary, it is a vital part of the planning service – without it, much of the remainder of the service would be rendered ineffective and public confidence in the planning process would be undermined. Enforcement action is usually taken as a last resort and, wherever possible, the Council is willing to discuss alternative solutions to resolve a breach of planning control, provided the harm arising from the breach is properly addressed or mitigated.

A breach of planning control is where development or works have been carried out without the necessary planning permission/consent or not in accordance with the details of a planning permission/consent. Such development/works include:

- Unauthorised building or engineering works
- Unauthorised change of use of land or buildings
- Unauthorised works to a listed building
- Non-compliance with conditions imposed on a planning permission, listed building or other consent
- Unauthorised display of advertisements
- Unauthorised works to protected trees

Although carrying out unauthorised works to a listed building, the unauthorised display of advertisements and unauthorised works to protected trees are criminal offences, most breaches of planning control are not, in themselves, a criminal offence. However, failure to comply with the requirements of a valid Enforcement Notice is a criminal offence. It is important, therefore, to understand the circumstances under which the Council decides when to elevate a breach of planning control to a potential criminal offence through the service of an Enforcement Notice – i.e. such decisions need to be well-founded and transparent.

Enforcement action is taken against unauthorised development/works when it is considered expedient to do so having regard to the development plan (i.e. the adopted Vale of White Horse Local Plan and the adopted Oxfordshire Structure Plan) and any other material planning considerations. Such decisions are judgemental and the test of expediency relates to the need to address the questions Where is the harm? Where is the need? Where is the benefit? Decisions on these matters need to be supported by a clear policy setting out the reasons and priorities for the Council investigating cases and taking action. That is the purpose of this Enforcement Policy.

The questions which need to be asked before a decision to take enforcement action can be made are:

Has “development” taken place? Is there a breach of planning control? Is the breach causing harm? Is enforcement action expedient?

Helpful guidance on the operation of the planning enforcement process is provided in the Royal Town Planning Institute’s Planning Advice Note 6, “Enforcement of Planning Control,” which can be found at <http://www.rtpi.org.uk/download/355/PAN-06-Enforcement-of-Planning-control.pdf>. This confirms that the objectives of the planning enforcement process are:

1. to remedy undesirable effects of unauthorised development
2. to bring unauthorised activity under control to ensure that the credibility of the planning system is not undermined

Government guidance is provided in PPG 18, “Enforcing Planning Control”, Circular 10/97, “Enforcing Planning Control: Legislative Provisions and Procedural Requirements”, and the accompanying guide, “Enforcing Planning Control: Good Practice Guide for Local Planning Authorities.” A helpful table of “Do’s and Don’ts” included in the Good Practice Guide is attached as **Appendix 1** to this Policy.

PPG 18 makes it clear that enforcement action is a discretionary power of local authorities which should only be used when it is considered “expedient” to do so (i.e. in accordance with Section 172(1) of the Town & Country Planning Act 1990). Enforcement action should not be taken simply to remedy the absence of a valid planning permission if it is considered that “there is no significant planning objection to the breach of control.” A retrospective planning application should be invited in such circumstances to see if the unauthorised development can be regularised. In addition, unless it is urgently needed, “formal enforcement action should not come as a “bolt from the blue” to a small business or self-employed person.” Discussions need to be held in such circumstances to see if the harm to local amenity arising from the use can be minimised or, if necessary, to assist the relocation of the business to another site.

Under the provisions of the Human Rights Act 1998, it is also important to take into account the human rights of the landowner/developer and any neighbouring residents/occupiers when deciding whether to take enforcement action.

Reference in this Policy to “enforcement action” includes the Council serving or carrying out any of the following:

- Planning Enforcement Notice (S172 Town & Country Planning Act 1990)
- Listed Building Enforcement Notice (S38 Planning (Listed Buildings & Conservation Areas) Act 1990)
- Stop Notice (S183 Town & Country Planning Act 1990)
- Temporary Stop Notice (S171E Town & Country Planning Act 1990)
- Breach of Condition Notice (S187A Town & Country Planning Act 1990)
- Planning Contravention Notice (S171C Town & Country Planning Act 1990)
- Repairs Notice (S48 Planning (Listed Buildings & Conservation Areas) Act 1990)
- Emergency Repairs Notice (S54 Planning (Listed Buildings & Conservation Areas) Act 1990)
- Proper Maintenance of Land Notice (S215 Town & Country Planning Act 1990)
- Discontinuance Notice (Regulation 8(1) Town & Country Planning (Control of Advertisements) (England) Regulations 2007)
- Fixed Penalty Notice (S43 Clean Neighbourhoods & Environment Act 2005)
- High Hedge Remedial Notice (Part 8 Anti-Social Behaviour Act 2003)
- Requisition for Information Notice (S330 Town & Country Planning Act 1990; S16 Local Government (Miscellaneous Provisions) Act 1976)
- Court Injunction (S187B Town & Country Planning Act 1990)
- Prosecution (S179 & S210 Town & Country Planning Act 1990; S9, S43 & S59 Planning (Listed Buildings & Conservation Areas) Act 1990; Regulation 30(1) Town & Country Planning (Control of Advertisements) (England) Regulations 2007)
- Direct Action (S178 & S225 Town & Country Planning Act 1990; S54 Planning (Listed Buildings & Conservation Areas) Act 1990; S132(2) Highways Act 1980)

Policies

1. All alleged breaches of planning control will be investigated, and the degree of harm will be assessed by the Enforcement Officer in consultation with the relevant Area Planning Officer (APO) or the Section Head (Environmental Planning & Conservation). About 400 such complaints are received each year, and the action taken against any alleged breach will depend on an assessment of relevant development plan policies and the degree of harm identified to any of the following:
 - residential amenity
 - visual amenity
 - highway safety

- the character, appearance and setting of listed buildings, conservation areas and known sites of archaeological importance
 - the character and appearance of the rural environment
 - the Oxford Green Belt
 - the flood plain of any main watercourse
 - sites of special scientific interest, special areas of conservation, national nature reserves, or biodiversity action plan priority habitats
2. The following breaches of planning control will be given top priority for investigation and, where necessary, enforcement action:
- a) **Unauthorised works to a listed building** – this is a criminal offence, and such works may result in irreparable harm to the building's historic or architectural interest.
 - b) **Unauthorised building work in breach of development plan policies** – deliberate and harmful attempts to flout or abuse the planning process (e.g. building a new dwelling or a large domestic extension without permission) need to be addressed urgently before building work reaches an advanced stage to protect the environment and the credibility of the planning system.
 - c) **Incorrect setting out of new buildings or incorrect slab levels** – problems relating to the visual impact of a new development or a harmful impact on neighbouring properties can arise if a building is sited incorrectly or the slab level is too high – enforcement action to rectify such breaches can be protracted and fraught if it is not taken at the earliest possible opportunity.
 - d) **Unauthorised industrial/commercial uses which give rise to significant harm to the amenity of neighbouring residents** – such harm may be a result of noise, smell, vibration, fumes, smoke or dust, and residents should not have to endure a harmful diminution of their living environment.
 - e) **Unauthorised works to a TPO tree** – this is a criminal offence and may result in permanent harm to the tree.
3. The priority to be given to other unauthorised development/works such as caravans/mobile homes, use of existing rural buildings, advertisements (including flyposting), fences, garden extensions, etc. will be decided by the Enforcement Officer in consultation with the APO (North), APO (South) or the Section Head (Environmental Planning & Conservation), as appropriate, following consideration of the issues referred to in paragraphs 1 and 6 of this Policy, and in accordance with paragraphs 4, 5 and 7 – 14 of this Policy and the Internal Procedures set out below.
4. Unless the circumstances of the case justify urgent formal enforcement action (i.e. serving a notice or Court summons or taking direct action), the Council will seek to remedy breaches of planning control through informal

discussions and negotiation. If these prove unsuccessful within a reasonable timeframe and it is considered expedient to do so, the Council will then proceed to take formal enforcement action. Any formal action taken will be commensurate to the seriousness of the breach of planning control and will be in accordance with the Council's Scheme of Delegation.

5. When considering whether to take enforcement action against the unauthorised siting of occupied caravans/mobile homes, the Council will first enter into discussions with the occupiers to gain an understanding of the reason(s) they have moved onto the site and their personal/family needs, and to explain the planning issues raised and the possible consequences of the breach of planning control. The decision whether to recommend taking enforcement action and the timeframe for seeking authority for such action will be made by the Enforcement Officer in consultation with the APO (North) or APO (South), as appropriate, following consideration of the issues referred to in paragraph 1 of this Policy and the personal/family needs of the occupiers of the caravans/mobile homes, and in accordance with the Internal Procedures set out below.
6. When considering unauthorised advertisements (e.g. banners, flags, A-boards on highway land, illuminated fascia signs), priority will be given to taking action against advertisements which are considered to be particularly harmful to:
 - a) highway safety, either by obstructing highway visibility or impeding the free-flow of pedestrians/cyclists on the highway (including A-boards);
 - b) the visual amenity of the countryside, particularly if they are prominent from trunk or principal roads;
 - c) the character, fabric or setting of a listed building;
 - d) the character or appearance of a conservation area (including A-boards on highway land);
 - e) the visual amenity of the area due to their temporary nature where they are advertising an event and:
 - i. they are displayed more than 14 days before the event they are advertising or 3 days after the event has finished; or
 - ii. there is, in the opinion of the Enforcement Officer in consultation with the APO (North) or APO (South), as appropriate, an excessive number of signs displayed; or
 - iii. they are displayed in location(s) remote from the site of the event being advertised – i.e. they are not on or immediately adjacent to the site; or
 - iv. the event being advertised does not support a charity, the local community or the general vitality of the village/town (examples

of such events include farmer's markets, craft fairs and other similar events supported by the Town or Parish Council).

Unauthorised advertisements not coming within any of the above categories will be given lower priority.

7. The decision on whether to recommend taking action against unauthorised advertisements will be made on a case by case basis by the Enforcement Officer following consultation with the APO (North), APO (South) or the Section Head (Environmental Planning & Conservation), as appropriate. However, in relation to flyposting, the decision to serve a Fixed Penalty Notice will be at the sole discretion of the Enforcement Officer – one prior warning will normally be given before a Fixed Penalty Notice is served. Action will be taken if an advertisement is considered to be particularly harmful in accordance with paragraph 6 of this Policy. Action will be in accordance with the Internal Procedures set out below and will be one or more of the following:
 - Prosecution – under regulation 30(1) of the Town & Country Planning (Control of Advertisements) (England) Regulations 2007.
 - Discontinuance Notice – under Regulation 8(1) of the Town & Country Planning (Control of Advertisements) (England) Regulations 2007.
 - Fixed Penalty Notice – under Section 43 of the Clean Neighbourhoods & Environment Act 2005.
 - Direct action – the power of direct action to remove signs displayed on the public highway is provided by Section 225 of the Town & Country Planning Act 1990 and Section 132(2) of the Highways Act 1980 (with authority delegated from Oxfordshire County Council to this Council).
8. In cases where a complaint is received and investigations identify a minor breach of planning or listed building control but it is not considered expedient by Officers to take enforcement action, the reasons for deciding to take no further action will be explained to the complainant. If the complainant is not satisfied with the explanation, a formal decision to take no further action will be made following consideration of a written report by the Deputy Director (Planning and Community Strategy) in consultation with the Chair or Vice-Chair of the Development Control Committee.
9. In cases where it is considered possible that conditional planning permission or listed building consent may be granted to regularise a breach of planning or listed building control, the decision whether to invite a retrospective planning application or a listed building application for works already carried out will be made by the Enforcement Officer following consultation with the APO (North), APO (South) or the Section

- Head (Environmental Planning & Conservation), as appropriate. If a retrospective planning application is not submitted within a reasonable timeframe, the Enforcement Officer following consultation with the APO (North), APO (South) or the Section Head (Environmental Planning & Conservation) as appropriate will decide whether to initiate enforcement action or whether to carry out the procedure set out in Policy 8 above.
10. Retrospective applications will be decided on their own merits and will not be permitted or refused simply because the works have already been carried out. Enforcement action will not normally be taken whilst a retrospective application or appeal is under consideration. In these circumstances, the applicant/developer will normally be advised to cease any further work. However, carrying out work without planning permission is not a criminal offence and the applicant/developer may choose to continue with the work. If they do, the Council will advise them that any unauthorised development may be abortive and is undertaken entirely at their own risk – i.e. they may be required to demolish or modify the development at their own cost.
 11. Unless it is urgently needed, enforcement action will not be taken against an unauthorised business use or operation without discussions first being held with the business to see if the harm to local amenity can be minimised or, if necessary, to assist its relocation to another site. Such discussions and consequent actions need to be carried out within a timeframe set by the Enforcement Officer following consultation with the APO (North) or APO (South), as appropriate. The timeframe for deciding whether to take enforcement action in these circumstances should not normally exceed 12 months.
 12. Anonymous or obviously malicious complaints or allegations of a breach of planning control will not normally be investigated.
 13. Complaints about a possible breach of planning control can be made by telephone or in writing. Written complaints can be made by letter, e-mail or fax, or by using the planning enforcement enquiry form which is available from the Council on request and is on the Council's website. To enable the Council to investigate an alleged breach of planning control, it is essential that information relating to the nature of the alleged breach, the site in question, the complainant's details, and the effect the alleged breach has on the complainant or the wider environment are provided by the complainant.
 14. Complainants have an expectation of confidentiality from the Council. Accordingly, complaints about alleged breaches of planning control and all related correspondence will be dealt with confidentially, and the identity of complainants will be kept confidential. Complainants will be treated as

“protected informants” under the provisions of Schedule 1 of the Local Government (Access to Information) Act 1985, and the information they provide will be treated as “exempt information” under the provisions of Part II Section 31(1)(g) of the Freedom of Information Act 2000. However, if the matter is to be progressed to a public inquiry or the Courts, complainants may be asked to provide evidence to support the Council’s case and, in these circumstances and only with their agreement, the identity of a complainant would no longer be confidential.

Within the policy context provided by the above assessment of harm and priorities for investigation and action, the Enforcement service will endeavour to meet the Service Standards and comply with the Internal Procedures set out below.

Service Standards

The Enforcement service will:

- Provide a written acknowledgement of the receipt of written complaints (i.e. by letter or e-mail) within 3 working days, and endeavour to provide a written interim response to the complainant within 15 working days.
- Investigate 80% of enforcement complaints within 10 working days of receipt. This will include a site visit and an initial assessment of the alleged breach.
- Provide a written interim response to 80% of complainants (letter or e-mail) to their initial complaint within 5 working days of the site visit (i.e. within 15 days of the receipt of the complaint).
- All complainants will receive a written explanation of the decisions and actions taken by the Council.
- Give priority to letters of complaint/enquiry received from Members, Town/Parish Councils/Meetings and Chambers of Commerce, and provide a written response (i.e. letter or e-mail) within 10 working days of receipt.
- In cases where a remedy of planning or listed building control is considered necessary, advise the person(s) responsible for the breach immediately what needs to be done to remedy the breach and the likely consequences if they fail to do so within a timeframe set by the Council. If the suggested remedy is the submission of a retrospective planning application, the timeframe given for the submission of the application will normally be up to a maximum of 2 months.
- Initiate action or instruct the Legal service to take the required action within 5 working days of enforcement action being authorised.
- In cases of minor breaches of planning or listed building control when it is not considered expedient to take enforcement action:

- i. make the decision to take no further action as expeditiously as possible to enable the file to be closed; and
 - ii. when the decision to take no further action is made by the Deputy Director (Planning and Community Strategy) in consultation with the Chair or Vice-Chair of the Development Control Committee, inform complainants in writing of the reasons for the decision to take no further action within 5 working days of the decision being made.
- Decide High Hedge Complaint applications made under Part 8 of the Anti-social Behaviour Act 2003 as expeditiously as possible.

Internal Procedures

The Enforcement service will:

- Obtain authority (when required) to take appropriate action in relation to unauthorised development, works to a listed building, advertisements, or works to protected trees from the Development Control Committee or the Deputy Director (Planning and Community Strategy) in consultation with the Chair or Vice-Chair of the Development Control Committee in accordance with the Council's Scheme of Delegation.
- Advise complainants that their identities will be kept confidential, but if the matter is to be progressed to a public inquiry or the Courts they may be asked to provide evidence of the alleged breach of planning control. In these circumstances, and only with their agreement, their identity would no longer be confidential.
- Maintain properly documented records of all investigations into alleged breaches of planning control, including:
 - i. all correspondence with interested parties, including e-mails
 - ii. notes of conversations with interested parties
 - iii. the dates and times of site visits
 - iv. dated photographs
 - v. plans and drawings annotated with notes, if appropriate.
- Compile weekly lists of complaints and yellow cards (i.e. notifying commencement of developments) received and forward to the Development Control Manager, APO (North), APO (South) and the Section Head (Environmental Planning & Conservation) every week.
- Liaise with the APO (North), APO (South) and the Section Head (Environmental Planning & Conservation) and agree which cases on each weekly list of complaints and yellow cards received are to be given priority.
- Monitor progress on all cases via the Uniform Enforcement Module, which is to be accessed by the Enforcement team, Development Control Manager, APO (North), APO (South) and the Section Head (Environmental Planning & Conservation).

- Liaise regularly with the Legal service to ensure progress is made on priority cases. This will include requiring monthly updates from Legal on all outstanding cases, and forwarding each update to the Development Control Manager, APO (North), APO (South) and the Section Head (Environmental Planning & Conservation).
- Ensure Enforcers meetings are held every quarter, chaired by the Development Control Manager and attended by the Enforcement team, APO (North), APO (South), Principal Planning Officer (North), Principal Planning Officer (South) and the Section Head (Environmental Planning & Conservation). The purpose of these meetings is to monitor progress on current cases, decide actions within agreed timeframes and allocate responsibilities, and report new cases.
- Report to the Chair and Vice-Chair of the Development Control Committee every quarter on the status of current enforcement cases where action has been authorised.
- Report to the Development Control Committee annually on the status of current enforcement cases where action has been authorised.

May 2008