



WEST OXFORDSHIRE  
DISTRICT COUNCIL

[www.westoxon.gov.uk](http://www.westoxon.gov.uk)

# Policy for the Enforcement of Planning Control

Adopted April 2006



## I Introduction

- 1.1 The purpose of this policy is to help the Council protect and enhance the District's environment through the provision of timely and appropriate responses to complaints about breaches of planning control and by monitoring compliance with selected planning consents. The policy sets out the Council's priorities and the procedures which the Council will follow in dealing with unauthorised development.
- 1.2 The Council recognises that public confidence in the planning process is dependent upon its readiness to back up its planning policies and decision-making by taking appropriate action in response to breaches of planning control.
- 1.3 Effective enforcement is the bedrock of planning control and plays a great part in ensuring that the quality of the built and natural environment is preserved and enhanced.
- 1.4 The Council's leaflets 'Planning Enforcement - How to make your complaint' and 'Planning Enforcement - Guidance for owners & occupiers - how the Council handles investigations' are intended as summaries of this formal policy for those who have undertaken unauthorised development (developers) or been affected by it.



- 1.5 The Council is a signatory to the Government's 'Enforcement Concordat' which commits the Council to adhering to certain practices and procedures relating to all our regulatory functions. A copy of the concordat is available on request.
- 1.6 The Council has a dedicated planning enforcement team. Contact details can be found on the reverse of this policy.

## 1.7 The aims of this policy are:

### General

- 1 To ensure that the Council makes timely and appropriate use of the powers available to it to ensure that the requirements of any enforcement action are met.
- 2 To ensure that the requirements of any enforcement action are reasonable, necessary and commensurate with the level of harm identified.
- 3 To ensure that minor or technical breaches of planning control and those stemming from malicious complaints do not receive disproportionately high levels of resources.
- 4 To ensure that the Council's adopted planning enforcement policy and accompanying leaflets can be found on the Council's website, are available from the Council's offices or upon request.

### Reactive Enforcement

- 1 To acknowledge all complaints about unauthorised development within 3 days, to visit the site within 5 days and to set out the Council's position in writing to the developer and complainant within 8 weeks.
- 2 To invite the submission of a retrospective application where unauthorised development is considered acceptable or could be made so through negotiation or the imposition of conditions.
- 3 To take enforcement action swiftly where unauthorised development is considered to be harmful and there is little prospect of the harm being removed voluntarily or being made acceptable through the imposition of conditions on a planning permission.

### Proactive Enforcement

- 1 To achieve compliance with approved schemes through the monitoring of selected aspects of new development and to notify developers at an early stage if there has been a failure to adhere to the approved details of the relevant planning permissions.
- 3 To consider enforcement action swiftly where any deviation from approved plans or non-compliance with conditions is considered harmful and attempts to remedy the situation voluntarily have failed.

## What constitutes a breach of planning control?

- 1.8 A breach of planning control is where actions have been undertaken without the necessary planning consent(s) or not in accordance with the details of a planning consent. Such actions include:
- 1 Unauthorised building or engineering works
  - 2 Unauthorised change of use of land or buildings
  - 3 Non-compliance with Conditions attached to a Planning Permission, Listed Building or Conservation Area Consent
  - 4 Unauthorised works to a Listed Building
  - 5 Unauthorised work to a tree with a Tree Preservation Order or other trees in a Conservation Area
  - 6 Unauthorised display of advertisements
- 1.9 A breach of planning control is not usually a criminal offence. However, carrying out unauthorised work to a listed building, the unauthorised display of advertisements or unauthorised works to protected trees or trees growing in conservation areas are usually criminal offences.
- 1.10 Not all development can be enforced against. Many minor building works benefit from 'permitted development' rights and do not require formal permission from the Council. In addition, some adverts do not need consent.
- 1.11 District Councils do not address all breaches of planning control. The County Council is the responsible authority for development relating to mineral extraction and waste disposal.
- 1.12 The following are examples of activities which are not normally breaches of planning control and against which enforcement action could not be taken:
- 1 On street parking of commercial vehicles in residential areas.
  - 2 Operating a business from home where the business use is incidental to the residential use.
  - 3 Site clearances, including removal of undergrowth, bushes and trees provided they are not subject to a Tree Preservation Order, within a Conservation Area, or protected by conditions attached to a planning permission.

## 2 Planning Enforcement

- 2.1 The work of the Enforcement Team involves two distinct processes. Reactive enforcement involves the investigation of complaints about breaches of planning control. Proactive enforcement involves monitoring selected planning consents to ensure that works are carried out in accordance with the approved plans and conditions.

### Reactive Enforcement - Investigations and Actions

#### Making a complaint

- 2.2 Individuals wishing to make a complaint or enquiry about a potential breach of planning control should normally notify the Council of their concern in writing (letter, email or fax). When bringing concerns to the attention of the Council it is important to include details of the precise location of the site, a full description of the planning problem that has been identified, the date when the problem first started and the reason why it is considered to be problematic.
- 2.3 When writing to the Council please make sure that you include your contact details in case we need to discuss the concern with you further. Alternatively, complaints can be lodged online through the planning enforcement webpage on the Council's website. Complaints or enquiries to the Enforcement Team will be acknowledged within 3 working days.
- 2.4 Complaints are always dealt with confidentially and persons providing information to the Council are treated as 'protected informants'. There is no public right to access information about complainants as they have provided information for the purpose of ascertaining whether circumstances would justify regulatory action. Therefore divulging their details would not be in the public interest because it would dissuade members of the public from bringing allegations of breaches of planning control to the Council's attention.
- 2.5 It should be noted that further information is often required from complainants to progress the matter/substantiate the allegation being made ie a log of relevant action. This is particularly so where an appeal is lodged against an enforcement notice and the Council is relying upon evidence from third parties to support its case.
- 2.6 Anonymous or malicious complaints will only be investigated when the matter complained about is likely to result in serious harm.

2.7 Complaints will be thoroughly investigated. On receipt of the necessary information enforcement cases will be prioritised. Where necessary, we will endeavour to carry out a site visit within 5 working days.

2.8 In order to investigate breaches of planning control, officers of the Council will exercise their 'right of entry' onto land where access is initially denied. Where a developer refuses to make information available to assist in an investigation, a Planning Contravention Notice may be served, which requires questions about the development to be answered.

### **Prioritising Enforcement Investigations**

2.9 Following the initial investigation and assessment of the merits of any confirmed breaches of planning control, enforcement cases will be prioritised. This may involve the reassessment of unauthorised development and ongoing works.

2.10 Prioritisation of cases allows the Council to ensure that available resources and the most urgent attention are given to the most important matters and those resources are not diluted by other matters of lesser importance.

2.11 The highest priority will be given to cases involving development or activity that result in a significant loss of amenity to the occupants of surrounding properties, or is the subject of widespread local concern. Other examples of cases receiving the highest priority include those that would seriously undermine the policies of the development plan and set undesirable precedents such as ongoing building work or a deliberate and harmful attempt to flout or abuse the planning process.

2.12 Lesser priorities include cases which result in minimal impacts on the amenity of the occupants of surrounding properties, are the subject of some local concern or if left unchecked would result in potentially unacceptable development. Depending on the level of harm identified the matter may not be investigated, or may be subject to early recommendation to take no further action.

2.13 The lowest priority will be given to cases resulting from anonymous or malicious complaints, minor or technical breaches of planning control resulting in little or no harm to occupants of surrounding properties or other interests of acknowledged importance.

### **Resolving a breach of planning control**

2.14 Whilst the speed of resolution of confirmed breaches will vary depending on the complexity of the individual case, officers will, as a general guide, aim to confirm whether there has been a breach of planning control and set out the Council's position in writing to the developer and complainant within eight weeks of a complaint being received. The aim is to report unresolved breaches of planning control within six months of the receipt of a complaint (where necessary).

2.15 Most investigations are resolved through discussion or negotiation, resulting in voluntary action or the submission of an application. Many people choose to take advice from the Council about how development can be altered so that it no longer needs planning permission. Alternatively many people remove development voluntarily because officers have indicated that it is harmful or to avoid the need to pay the fee associated with a planning application.

2.16 If, at any stage, it becomes clear that there has been no breach of planning control, or the development has been altered to no longer require consent, the process will be discontinued and interested parties informed of the situation. We will not normally contact owners or occupiers to advise of the closure of a case where there has been no previous contact.

### **Retrospective Applications**

2.17 In many cases where there is a confirmed breach of planning control a developer may, with or without invitation, submit a retrospective application in an attempt to regularise development which has already taken place. If a development is not harmful or any harm can be controlled by condition then in most cases the developer will be invited to submit an application. A developer will be given at least 28 days to submit an application and reminders will often be sent. The two leaflets 'Do I need Planning Permission?' provide useful advice and a request form. They are available from the Council's offices or can be found on the Council's website. Where significant harm has been identified as a result of unauthorised development and it is considered that this harm cannot be overcome through negotiation or by the imposition of conditions on a planning application the developer will not be invited to submit an application.

2.18 The submission of a retrospective application is the best way of allowing the Council and all interested parties, including complainants, to consider the merits of the development undertaken. It also provides a valuable opportunity for the developer to set out the rationale for what has occurred. Retrospective applications can provide a forum for negotiation so that any necessary amendments can take place to make the development more acceptable. They can also provide the Council with the means of imposing conditions to control aspects of the development.

2.19 Retrospective applications will be considered on their merits and not rejected nor approved simply because the development has already taken place without the necessary permission.

2.20 Whilst applications are being considered the developer will normally be asked to cease work. Enforcement action will not normally be taken whilst applications are under consideration, particularly where real progress is being made through negotiation to make the development acceptable. Carrying out work without planning permission is not an offence and developers may choose to continue with the work, though they will be advised that any unauthorised development is undertaken on the basis that there is a risk it may have to be removed. In exceptional cases the Council may serve a Stop Notice which has the effect of legally requiring the cessation of development on site.

2.21 Where an application for retrospective planning permission is recommended for refusal and there is no indication that the harmful elements of the development are to be removed voluntarily, a report recommending enforcement action will normally be prepared for consideration at the same time.

### **Certificates of Lawfulness**

2.22 If the development took place some time ago or a use has been carried out for many years, or where there is genuine doubt about the lawfulness or otherwise of an alleged breach, the developer may be invited to submit an application for a Certificate of Lawfulness. This is to establish whether an existing development no longer requires planning permission through the passage of time or would not have required planning permission at all.

2.23 These types of applications are legal matters and do not involve a site notice or consultation on the merits of the development. They need

to be accompanied by evidence supporting the prior existence of the development for the required period. The Council would normally expect applications to be supported by Statutory Declarations and as much other documentary evidence as possible.

### **Proactive Enforcement - Monitoring Permissions**

2.24 The purpose of monitoring planning permissions is to identify at an early stage either the omission of essential information required by planning conditions attached to the permission or any deviation or departure from the approved plans of the permission.

2.25 Bearing in mind the resources available, it is only possible to monitor a small selection of planning permissions. These are usually selected by one of the two Area Planning Managers following a Planning Committee meeting or the delegated grant of planning permission. They usually comprise the major developments, schemes that proved particularly contentious or finely balanced and development that has the potential to cause particular harm to a listed building, important trees, the character of an important local area, public amenity or other important issues.

2.26 Planning permissions granted only for a temporary period or for a particular person (e.g. a farm worker) will also need to be monitored periodically.

2.27 It is important to note that it remains the developer's responsibility to ensure that development accords with the approved plans of a permission and that the requirements of any conditions are met at the appropriate stage of development or in perpetuity as the case may be.

2.28 Any failure to comply with conditions attached to a planning permission requiring the submission of various details prior to the commencement of development will result in the active pursuit of the required details. Failure to provide information/ details to discharge any outstanding planning condition, which would result in harm or potential harm, is likely to result in the initiation of formal enforcement action. This action will usually be a Breach of Condition Notice which requires compliance with the condition.

2.29 There will be close liaison, in accordance with agreed procedures, with the Council's Building Control section to ascertain when developments commence and to ensure that the drawings submitted to each service are consistent. Limited information about inspections carried out by

private companies – e.g. National House Building Council, will be supplied by the Building Control section. Building Control will also advise the Planning section of new commencements and completions and the enforcement team will advise Building Control of new alleged breaches of planning control.

- 2.30 Where ongoing building work comes to light, either as a result of the development being monitored or as a result of an enquiry, and it is not wholly in accordance with the approved plans the Council will determine whether or not that development is harmful in planning terms before embarking upon enforcement action. The assessment of the planning merits will not take any special account of the fact that the development may have reached an advanced stage in its construction.
- 2.31 Developers will normally be expected to cease work pending the submission of appropriate plans, normally in the form of a fresh planning application. Failure to follow this advice may lead to developers undertaking abortive work which may require demolition or modification at their own cost.
- 2.32 In some circumstances the Council may be prepared to consider retrospective proposals to introduce minor changes to approved plans without the submission of a full fresh planning application. Such proposals will only be considered where they are likely to be acceptable in planning terms.

### 3 Deciding Whether To Take Formal Action

- 3.1 In deciding to take any form of enforcement action the Council will need to satisfy itself that the action is reasonable, expedient and justifiable solely on planning grounds. Enforcement action is usually taken as a last resort and, where possible, the Council is prepared to discuss alternative solutions to resolve a breach of planning control.
- 3.2 In cases where no attempt has been made to regularise the breach of planning control through the submission of an application or through voluntary removal or remedial works, officers will assess the level of harm resulting from the breach. This assessment is set against Government guidance and relevant Development Plan policies, along with any other material considerations. Such decisions will also take account of the degree to which the human rights of the developer will be affected by enforcement action.
- 3.3 There is a range of formal powers available to the Council to stop any harm which is being caused by a breach of planning control. Some powers are available to officers under delegated powers and others can only be used following authorisation from a Planning Committee which will have first considered a report on the expediency of enforcement action.
- 3.4 Following a recommendation to take formal action the developer of the land will usually be notified and given an opportunity to make written submissions prior to the formal decision being made. The developer and any third parties who have made representations in respect of the development will be informed of the decision.
- 3.5 The main forms of enforcement action taken by the Council are as follows:
- Enforcement Notice
  - Breach of Condition Notice
  - Stop Notice
  - Temporary Stop Notice
  - Prosecution
  - Injunction
  - Direct Action
  - Notice to tidy land
- 3.6 Before serving a notice the Council will need to satisfy itself that all persons with an interest in the land receive a copy of any notice. This information is normally obtained through the service of a Notice requiring the developer to submit information to the Council.
- 3.7 Not all breaches of planning control will result in significant harm being identified. In these cases officers may decide that no further action should be taken.

#### Highway Advertising

- 3.8 Separate provisions exist for highway advertising which normally comes in the form of fly-posting and 'A' Boards. The Council will take direct action to secure the removal of fly-posting wherever it comes to light. Legal proceedings will be instigated to prosecute persistent offenders. Some fly-posting is tolerated by the Council where it relates to non-commercial activities in the immediate vicinity along with other criteria relating to highway safety and amenity.

- 3.9 'A' Boards are dealt with separately and the Council has adopted the OCC protocol on 'A' Boards which allows some 'A' Boards to be retained depending upon the impact on highway safety and convenience and local amenity.
- 3.10 The adopted protocols for both 'A' Boards and fly-posting are available on our website or upon request.

## 4 Appeals Against Enforcement Notices

- 4.1 There is a right of appeal to the Secretary of State against an enforcement notice, a refusal of planning permission, the imposition of conditions on a planning permission or a failure to determine an application within the statutory period. These appeals are processed in accordance with procedures administered by the Planning Inspectorate. The actions required by an enforcement notice, along with the compliance period, are held in abeyance pending the determination of an appeal.
- 4.2 If the development, the subject of an effective notice, becomes the subject of an appeal against a refusal of an application for retrospective permission, the outcome of the appeal may be awaited prior to taking further action to secure compliance with the notice.
- 4.3 The grounds of appeal against the service of an enforcement notice are:
- that planning permission should be granted
  - that the breach of control has not occurred
  - that there has not been a breach of planning control
  - that at the time the enforcement notice was issued it was too late to take enforcement action
  - that the notice was not properly served on everyone who had an interest in the land
  - that the steps required in the notice are excessive, and lesser steps would overcome the objections
  - that the time given to comply with the notice is too short
- 4.4 If the appeal is successful, the Enforcement Notice is quashed and the investigation closed.
- 4.5 If the appeal is unsuccessful and the Enforcement Notice is upheld the Council will use all appropriate means to secure compliance with the notice.

## 5 Securing Compliance With Enforcement Notices

- 5.1 An offence occurs where a developer fails to comply with the requirements of enforcement and other notices. It is essential that the Council secures compliance with the requirements of the notices that it serves and firm action will be taken to ensure that this is achieved.
- 5.2 Such action is most likely to consist of a prosecution in the local courts as this is the simplest and most effective means of securing compliance with the requirements of the notice.
- 5.3 The Council will not necessarily withdraw from action in the Courts, once commenced, and this will apply even where the breach of planning control is rectified before the case is heard.
- 5.4 In exceptional cases, either where it has not proved possible to initiate a prosecution or there is a persistent offence, the Council may take direct action or seek an injunction through the Courts.
- 5.5 If the Council does take direct action to secure compliance with the requirements of an outstanding enforcement notice it will seek to recover its costs for example, by placing a charge on the land.

### **The following documents have been used in the formation of the policy:**

Enforcing Planning Control: Good Practice Guide for Local Planning Authorities.

Development Control and Planning - Audit Commission

DETR - Planning: Delivering a Fundamental Change

Circular 10/97 (Enforcing Planning Control: Legislative Provisions and Procedural Requirements

RTPI - Practice Advice Note 6 - Enforcement of Planning Control

PPG18 - Enforcing Planning Control

WODC - Review of the Enforcement Service 2002

Planning & Compensation Act 2004

Parsol (Planning and Regulatory Services Online) - Information on Websites

## Contact Details

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