

*North
Wiltshire
District
Council*

Planning Enforcement Policy

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1. Introduction

- 1.1 This document sets out North Wiltshire District Council's policy relating to the enforcement of planning control under the Town and Country Planning Acts. These Acts give discretion to the local planning authority in the exercise of its powers for the control of unauthorised development. The existence of a published policy on planning enforcement is considered to be an indication of good practice, and to provide a clear understanding of the priorities and procedures to be undertaken by the Local Planning Authority (LPA).
- 1.2 This Policy has been written taking account of Primary and secondary legislation relating to planning enforcement and Government guidance.
- 1.3 Whilst planning enforcement is not a statutory obligation, the Council is firmly committed to effective planning enforcement and views breaches of planning control very seriously. A specialist enforcement team exists within Planning Services to deal with breaches of planning control which include:-
 - a) breaches of planning control under the Town and Country Planning Act 1990 (as amended),
 - b) contrventions of the Planning (Listed Buildings and Conservation Areas) Act 1990,
 - c) unlawfully displayed advertisements as defined by The Town and Country (Control of Advertisements) Regulations 1992 and
 - d) the law relating to hedgerows under The Hedgerows Regulations 1997.
- 1.4 When considering what action to take, regard will be paid in each instance to the individual merits of the case including the impact of the development in question. Enforcement legislation is by no means straightforward. The desire to achieve early and effective action against a breach of planning control must always be balanced against the need to ensure the matter is thoroughly investigated and legal procedures are followed.
- 1.5 Fair and effective planning enforcement is essential to protect the quality of life for people who live and visit the district of North Wiltshire; and the quality of the District's built and natural environment. A decision about enforcement can have implications for many people, either directly or indirectly. Residents and businesses alike have the right to expect that the Council will maintain the integrity of its planning processes and that harmful activities will be dealt with fairly, equitably and effectively.

2. Principles of planning enforcement

- 2.1 The Council operates within the requirements of the relevant legislation, Government policy and guidance. When deciding whether it is expedient to take enforcement action consideration will always be given to the objectives and policies of the development plan. There will be similar approaches to similar circumstances, but consistency does not mean uniformity. Each case will take into account, not only the relevant provisions of the development plan but any other considerations which are clearly material for a planning purpose.
- 2.2 The Council's Officers will carry out enforcement work to the highest professional standards with due regard for courtesy, responsiveness and openness. Transparency of our decision-making is essential so that all involved in the enforcement process understand and have confidence in the basis on which the service is provided.
- 2.3 The Council's resources are not limitless. It is necessary to target available resources to have maximum effect. In planning terms this means where there is most harm to amenity or the environment, not necessarily a response to who is complaining or how vociferously. It also means that the Council's Planning Enforcement process is focussed on those who are responsible and who are best placed to remedy the problem.

3. What is a breach of planning control?

- 3.1 Every year the Council deals with over 3000 applications for planning permission, listed building consent, advertisement consent and to carry out work to "protected" trees, covered by a tree preservation order (TPO) or trees of a particular size situated within a Conservation Area. However, some developments take place without the necessary permission, sometimes in all innocence, but this is a breach of planning control (defined in s171A of the Town and Country Planning Act 1990 & s7 of the Planning (Listed Buildings and Conservation Areas) Act 1990).
- 3.2 Over 71% of applications are approved, often with detailed conditions attached. Some conditions require details to be approved prior to commencement of the development. Failure to do this is also a breach of planning control and can render the development as unauthorised. It is beneficial to all parties if any failure to comply with a condition is addressed at an early stage.

3.3 Carrying out development without planning permission or failing to comply with a condition are not criminal acts. However, other breaches under different sections of the Planning Act and under Listed Building legislation do carry a criminal liability, for example:

- unauthorised work to a Listed Building which would affect its character as a building of special architectural or historic interest, unless the works are authorised.
- listed building works not in accordance with a listed building consent
- unauthorised advertisements
- unauthorised demolition of an unlisted building in a Conservation Area
- unauthorised works to “protected” trees
- works to “protected” trees not in accordance with a consent granted by the authority

4. When should enforcement action be taken?

4.1 The Government’s advice on the approach that Local Planning Authorities (LPAs) should take to breaches of planning control is set out in Planning Policy Guidance (PPG)18 Enforcing Planning Control. It is important for the District Council to show that it has followed the advice in this document in deciding on enforcement proceedings.

4.2 In assessing the need for enforcement action, the LPA must bear in mind that it is not normally an offence to carry out development without first obtaining planning permission.

4.3 In taking enforcement action or bringing a prosecution the Council has regard to the “harm” that is being caused in the public interest. In some situations works or developments are done in ignorance, rather than intentionally and the person responsible may first be given an opportunity to remedy the situation.

4.4 The Government advises that where the LPA’s assessment indicates it is likely that conditional permission would be granted for development which has already taken place, the correct approach is to suggest to the person responsible for the development that a retrospective planning application be submitted. An Enforcement Notice should not normally be issued solely to ‘regularise’ development which is

acceptable on its planning merits, but for which permission has not been sought.

- 4.5 The LPA may consider that an unauthorised development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode of operation; or to carry out a landscaping scheme). If so, the LPA may invite the person responsible for the development to submit a planning application.
- 4.6 Where, in the LPA's view, unauthorised development has been carried out and the person responsible for the breach will not submit a planning application and the breach is causing serious harm to public amenity in the neighbourhood of the site, enforcement action should be taken to remedy the breach urgently, to prevent further serious harm to public amenity.
- 4.7 The taking of enforcement action remains a discretionary power and breaches of planning control will be resolved by negotiation wherever possible. However, where action is necessary it will be taken without undue delay and unless particular circumstances dictate otherwise, within six months from the breach coming to the attention of the Local Planning Authority.

5. What constitutes harm?

- 5.1 Planning Enforcement operates to protect the public interest. Harm can result from breaches of planning control in terms of the effect on visual or residential amenity, on highway safety, on the amenity of the public, the occupiers and users of surrounding land and buildings or the environment in general. There may be noise nuisance, loss of daylight or privacy for example to those living or working nearby.
- 5.2 Harm may occur through unauthorised work to Listed Buildings or if the conditions attached to the consent are not properly complied with. It may also result from the demolition of an unlisted building in a Conservation Area or unauthorised works to "protected" trees.
- 5.3 When a breach is identified, the law requires the District Council to consider whether it is "expedient" to take enforcement action. This decision is a matter of exercising discretion. The Council follows tests set in legislation, the policies in the development plan and current Government advice. As previously stated, enforcement action is not taken simply because development or works have commenced without the necessary approval; each case is individually assessed to determine what harm is being caused.

- 5.4 It is worth noting that the assessment of harm does not include private interests, such as loss of value to property, competition, loss of view, trespass or breach of covenant.

6. Enforcement objectives

6.1 The setting out of the following objectives is intended to assist those who become involved with the process, whether they are the complainant, those complained against, or the LPA whose responsibility it is to take action where necessary.

- The LPA will maintain the integrity of its planning processes and harmful activities will be dealt with fairly, equitably and effectively.
- The LPA will act to prevent or remedy breaches of planning control where it is expedient to do so
- The LPA will seek to resolve breaches of planning control by negotiation where possible unless the breach is of such serious nature as to require immediate formal action.
- In considering whether to initiate enforcement action the LPA will have due regard to the Development Plan policies and other material considerations.
- The LPA will only instigate enforcement action commensurate with the breach of planning control to which it relates. Formal action will not automatically be taken against trivial or minor technical breaches of planning control which causes no demonstrable harm affecting public interests.
- The LPA will actively seek prosecutions and/ or direct action, in appropriate circumstances, in order to achieve compliance with the requirements of the legislation and to remedy unacceptable breaches of planning control.
- Members of the Development Control Committee will be updated on a regular basis, with details of the number of complaints received, how they have been progressed / resolved, together with details of any Enforcement Notices issued.

7. Making a complaint

7.1 Anyone can complain if they are concerned that there has been a breach of planning or listed building control. To avoid

misunderstanding, all complaints should be made in writing, either as a hard copy or by e-mail. A complaint form can be obtained via the Council's website and the details requested on the form will assist the Council during the investigation.

- 7.2 Complainants will be asked to identify themselves and provide an address and telephone number so that they can be kept informed of what the Council decides. This information is treated as confidential. The alleged contravenor is not told who has made a complaint, although they sometimes make assumptions. It must be noted however that the strength of the Council's case either on appeal or in the event of Court proceedings may depend on the willingness of witnesses to give evidence, on oath if necessary.
- 7.3 It helps investigating officers if as much information as possible can be provided, this should include details:
- About the complaint
 - The name and address of the alleged contravenor
 - The location of the site
 - What has happened; for how long, or is happening now
 - An explanation of the harm that it is causing
- 7.4 In some cases, complaints may be dealt with by telephone, particularly ones of an urgent nature. Complainants will need to be in possession of as much relevant information as possible and relate it calmly and clearly.
- 7.5 Complainants may be very concerned and angry about a breach of planning or listed building control, but this anger should not be vented on Council staff. Their job is to attempt to resolve problems in the public interest. They operate most effectively when assisted in investigations.
- 7.6 The Council will not normally deal with anonymous complaints however all anonymous complaints will be read and may be investigated, at the Council's discretion. Complainants concerned about possibly revealing their identity or having difficulties putting their case may wish to discuss the matter with their Parish/Town or Ward Councillor.

8. Complaints procedure

- 8.1 Most breaches of planning control are brought to the Council's attention by members of the public, Parish Councils, Ward Councillors, neighbours or the monitoring of development under way. The following procedure has been established for investigating such complaints.
1. We will endeavour to acknowledge any complaint made within 3 working days of receiving it.
 2. We will treat the identity of the complainant as confidential, as far as possible.
 3. Investigation will begin as soon as possible although priority will be given to those alleged breaches, such as unauthorised building works, which need to be dealt with quickly before work becomes too advanced. We aim to carry out all initial site visits within 10 working days of registering the complaint.
 4. We will endeavour to update complainants of proposed action within 10 working days of the initial site visit.
 5. If the investigation shows that no breach of planning control has taken place the complainant will be informed of this within 7 working days from the decision having been arrived at.
 6. Where it appears to the LPA that a breach of planning control may have occurred and where further facts are needed, we may issue a Planning Contravention Notice (PCN) requiring information on precisely what is taking place and an explanation as to why no planning permission has been sought. The service of a PCN will inevitably delay the process since 21 days is normally given from the date it is served to allow the recipient to return the required information.
 7. Where it is clear that a breach of planning control has taken place the District Council may invite a planning application. A period not normally more than 28 days is given to invite an application when it is considered appropriate to do so. When considering the proposal it may be possible to seek amendments or impose conditions, which overcome the concerns of neighbours and/or the LPA. Once an application has been submitted it will be treated on merit like any other application. Enforcement action is normally deferred pending determination of the planning application.
 8. If an application is refused, the applicant can exercise their right to submit an appeal to the Planning Inspectorate. An appeal, which can take the form of a written representation, formal hearing or public inquiry is often the greatest delay in reaching a conclusion in most

contested cases. The LPA has little influence over the timing of any appeal, which is processed independently by the Planning Inspectorate.

9. If an application is not submitted the LPA will decide whether formal enforcement action should be instigated. If, for instance, the unauthorised development is considered not to cause any harm then enforcement action is not appropriate. The decision whether or not to take further action is delegated to an authorised Officer.
10. The LPA acknowledge the importance of keeping those persons involved in the enforcement process updated and we will endeavour to do so on a regular basis. However due to the high demand on our enforcement resources, it is not always possible to update our stakeholders as regularly as we would like. Anyone wishing for an update on their complaint is actively encouraged to contact the relevant Case Officer for a verbal progress report.

9. Prioritisation of complaints

- 9.1 The Council receives a large number of planning related complaints each year. They all need to be progressed as quickly and efficiently as possible, but investigations are often lengthy and complex. In view of limited resources, it is necessary to give priority to cases where there is the greatest harm in planning terms. This enables enforcement staff to maximise their impact. Prioritisation is advocated in Government guidance on planning enforcement.
- 9.2 Whilst It is important that complaints are investigated and seen to be acted upon quickly and efficiently, existing enforcement workload may preclude immediate action on all complaints received and therefore procedures have been introduced which will ensure each complaint is handled equally and fairly in accordance with an agreed set of priorities.
- 9.3 Complaints and alleged breaches of planning control will be prioritised in the following order:
 1. Unauthorised works to a listed building.
 2. Unauthorised works to a tree covered by a Tree Preservation Order (TPO), or by Conservation Area Regulations.
 3. Unauthorised demolition within a conservation area.
 4. Any unauthorised development or non-compliance with a planning condition or limitation or other planning agreement, which is causing immediate and irreparable harm to the locality.

5. Unauthorised development which has been undetected and where the time limit for enforcement action will expire within the following six months.
6. All other complaints relating to unauthorised development not falling in any of the above categories.
7. Display of illegal advertisements.

In circumstances whereby a breach of planning control is believed to have taken place, initial contact, preferably in writing, should be made to:

Planning Enforcement
Development Services
North Wiltshire District Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER