

## Agenda Item 9

Development Services  
Salisbury District Council  
61 Wyndham Road  
Salisbury, Wiltshire SP1 3AH

**officer to contact:** Stephen Hawkins  
**direct line:** 01722 434691  
**officer to contact:** Jane Ferguson  
**direct line:** 01722 434256  
**email:** shawkins@salisbury.gov.uk  
**web:** www.salisbury.gov.uk

# Report

**Subject** : Planning Enforcement Draft Statement of Service Provision 2008

**Report to** : The Cabinet

**Date** : Tuesday 15 July 2008

**Authors** : Principal Planning Officer (Enforcement) and Principal Solicitor

**Cabinet Member for Planning** : Councillor Paul Clegg

---

### Report summary:

The purpose of the report is to seek the views of the Cabinet on the draft statement of service provision for enforcement of planning control, including the prosecution of offences committed under the planning legislation (report to Area Committees attached as an appendix).

### Introduction:

The statement has been prepared in order that it is clearer to the public, Parish Councils, Councillors and Officers, Magistrates as well as offenders as to when and why the Council has decided to enforce planning controls, including instigating prosecution proceedings, to clarify the procedures followed in such cases and to ensure that the majority of resources are focused on the most serious breaches. Investigation procedures, including responding only to enquiries by persons who identify themselves save in exceptional circumstances, are also clarified.

Once approved by Cabinet the statement will replace the Council's current Enforcement Policy, which had been adopted in 1999.

The statement has now been presented to all four of the Council's Local Area Committees, who have all resolved to note the report with the following summary responses/comments referred to Cabinet for their consideration:

### Western Area Committee:

*"Members discussed the merits of having an accessible leaflet capturing all the useful information regarding enforcement and that this report once finalized should be made available on the Council's website"*



Awarded in:  
Housing Services  
Waste and Recycling Services



Northern Area Committee:

*“That the Northern Area Committee wish to see the above document used as an example of good practice in enforcement to inform the transition to a unitary authority.”*

City Area Committee:

- *“Members identified that there are numerous occasions when members of the public would need to remain anonymous when reporting possible breaches. Therefore Members urged Officers to ensure some flexibility regarding this matter.*
- *Members also acknowledged that having clear guidance, as set out in the statement, would indicate to the Local Government Ombudsman that the correct procedures had been followed therefore possibly strengthening cases that come before the Magistrates.*
- *Regarding the section on Monitoring Future Performance, Members questioned why priority 1 cases are given a target of 80% of site visits within 24 hours whereas priority 2 and 3 cases which are less urgent in terms of site visit or response have a target of 95%. Members requested that the Officer investigates the proposed target levels and that consider changing 24 hours to 1 working day as 24 hours could be misleading.*
- *It was acknowledged that the draft statement would prove to be useful in the transition to the unitary council as protocols and procedures are drawn together across the 5 councils.”*

Southern Area Committee:

- *“Members congratulated the Officers for producing such a comprehensive and useful report.*
- *Members raised the issue that there could be a number of priority 3 cases that do not get dealt with. The Officer confirmed that to date this has not been the case and his team manages to investigate all low priority cases brought to their attention by reputable sources.*
- *Regarding the section on “Where prosecution may not be appropriate”, Members questioned the paragraph that states that the Council may not be able to prosecute an offence “where it had been open to the Council to prosecute an offence for at least two years, but the Council has chosen not to do so (unless there has been a change in circumstances)”. Members were concerned that only due to the lapse of time, the Council might not be able to prosecute. The Officer confirmed that this reflects the Code for Crown Prosecutors advice and that if the Council, when given the opportunity, does not prosecute within two years then the ability to prosecute offences could be lost. The Officer agreed that he would look at the language used in this paragraph.*
- *Following on from the above point, Members stressed the importance of taking legal action in a fast and effective manner where appropriate.*
- *Members questioned the Officer on issues relating to the transition to the unitary authority stating the importance of retaining or improving the high level of service. Some concern was raised regarding longstanding cases that could get overlooked due to the period of transition to the new authority. The Officer assured Members that all cases in the hands of Enforcement Officers will continue to receive their attention and where it is appropriate for cases to come before a committee they would continue to do so.*
- *Members identified that there are numerous occasions when members of the public would need to remain anonymous when reporting possible breaches. Therefore Members urged Officers to ensure some flexibility regarding this matter.*
- *Members requested the Officer to consider changing 24 hours to 1 working day as 24 hours could be misleading.”*

The Southern Area Committee Members also asked the Chairman to write to the Chief Executive of Wiltshire County Council stating the importance of retaining or improving on the high quality service under the unitary authority that is currently provided by SDC Planning Enforcement Officers. A copy of that letter is also attached.

At the same meeting Landford Parish Council suggested that enquiries should be accepted from persons who are authorised to act on behalf of a parish council, as opposed to just the Clerk and the Chairman.

One further third party comment was received, which mentioned the lack of reference to the interiors of Grade II listed buildings in the suggested priorities for prosecution, which it was felt could be read as meaning that the interiors of Grade II listed buildings were afforded less protection under the law than Grade I or II\* and which could in turn lead to the loss of historic features and materials.

#### **Officer comments on LAC and third party responses/comments:**

Publicity: Officers will investigate publishing the statement as a printed leaflet as well as making it available on the Council's website.

Transition to One Council: Officers are already working with colleagues in enforcement teams in the other authorities, on production of common enforcement standards, where this statement will once adopted be promoted as best practice.

Anonymous enquiries: It is agreed that there will be circumstances, in particular in cases where irremediable harm may be being done (for example, demolition of a listed building) or where the developer may be already be known to the authorities, that an anonymous enquiry may warrant investigation. The statement makes it clear that the discretion to investigate anonymous enquiries rests with the Council and there is no 'automatic' prohibition.

Service Standards: Setting a suggested site visit standard for 80% of priority 1 cases within 24 hours (i.e. a lower percentage than in other priorities) was a recognition of the limited resources available to the Enforcement Team also the effect of weekends and public holidays on the ability to meet the standard. However on reflection it is agreed that amendment of the standard to one working day would allow more opportunity to achieve a 95% target in common with other service standards and for this reason it is proposed to amend the standard to reflect that also to amend 1 on page 5 in a similar fashion.

Listed buildings: In view of the third party concern expressed it is proposed to add an additional sentence in the second paragraph (Prosecution- priority 2), to include alterations to the interior of a Grade II listed building, as such works can result in the removal and loss of features/ fabric which contributes to the special architectural or historic importance of listed buildings and /or denies the Council the opportunity to consider whether such features existing within the building and merit retention:

**Alterations to the interior of a listed building, where there has either been a loss of features/ fabric which contribute to the special architectural or historic importance of the listed building or where the Council considers it has been denied the opportunity to examine whether such features exist within the building and where appropriate secure their protection.**

#### Enquiries made on behalf of Parish Councils:

It is agreed that enquiries should be accepted by any *bona fide* representative of the Parish Council, not only the Clerk or Chairman and an amendment to the text is proposed accordingly, as follows:

**It is also proposed that enquiries by or on behalf of Parish Councils will only be accepted by a bona fide representative of the Parish Council, such as the Clerk or Chairman, or other person holding an official position.**

#### Where prosecution may not be appropriate:

The reference to such action not being appropriate where no action had been taken to prosecute an offence for the preceding two years was meant to deal with situations where the Council had not been taking any

formal action at all in that time and where (unless there was a change of circumstances) bringing proceedings would be likely to be viewed as an 'abuse of process' by the Courts.

It was not meant to embrace continuing serious breaches of planning control where no prosecution proceedings had been brought because other action (i.e. either injunctive proceedings or direct action) was being pursued in the meantime. It is agreed that amendment to the text is necessary to address the concerns identified by Members, as follows:

Cases where it had been open to the Council to prosecute an offence for at least two years, but the Council has chosen not to do so (unless there has been a change in circumstances) and where in the meantime the Council has not been pursuing other action (i.e. injunctive proceedings or direct action) in relation to breaches of planning control at the site.

**RECOMMENDATION:** That the Cabinet notes the report and resolves to adopt the Enforcement Statement of Service Provision 2008, subject to the amendments detailed above as the Council's Services Standards for planning enforcement, thereby replacing the 1999 Enforcement Policy.

**Southern Area Committee  
C/o Democratic Services  
Salisbury District Council**  
PO Box 2117  
**Salisbury, Wiltshire SP2 2DF**  
**direct line:** 01722 434252  
**email:** [jhibberd@salisbury.gov.uk](mailto:jhibberd@salisbury.gov.uk)  
**web:** [www.salisbury.gov.uk](http://www.salisbury.gov.uk)

Dr Keith Robinson  
Chief Executive  
Wiltshire County Council  
Bythesea Road  
Trowbridge Wiltshire  
BA14 8JN

**Date:** 23 June 2008

Dear Dr Robinson,

**Regarding: Planning Enforcement in the unitary council**

I write on behalf of Salisbury District Council's Southern Area Committee to request that Wiltshire County Council's transition arrangements take into consideration the high value that local communities put on having a well-resourced Planning Enforcement team that can meet the needs of the local area and provide a visible and high quality service. Members noted that due to better resourcing of Salisbury District's Planning Enforcement function over the past 5 years, it now receives strong community support and the public are content with the level of service provided by our district team.

At our last meeting on 19<sup>th</sup> June 2008, the Principal Planning Officer (Enforcement) brought before the Committee the Salisbury District Council's new Draft Statement of Service Provision for Planning Enforcement (2008). This guidance is possibly the only statement on planning enforcement of its kind in the country. He outlined some key performance statistics clearly demonstrating the high quality of service we are currently delivering in our District. The Planning Officer informed the Committee that he was working with Enforcement Officers across the County looking at ways the service would be delivered under the unitary authority and working on a county-wide planning enforcement statement. However, he also outlined the differing Planning Enforcement arrangements and levels of service provision across the County, which raised some concern to Members considering the high level of satisfaction currently experienced with our own team.

The Southern Area Committee was concerned that in amalgamating Planning Enforcement across the County, the level of service was at risk of being reduced to that of the least successful district – rather than those of the best-performing. Members unanimously voted to make representation to Wiltshire County Council in order to help protect the current high level of service provision in Salisbury District. Members noted that it would be unacceptable to for the local communities to see any reduction in service in south Wiltshire after April 2009. The Committee seeks assurance that there will be no such reduction in the level of service currently provided. Indeed, it is to be hoped that our plans for even higher levels of service provision will be implemented across the County.

Yours sincerely



**Cllr Bryan Rycroft**  
Chairman, Southern Area Committee



*Awarded in:*  
Housing Services  
Waste and Recycling Services



## Appendix

Development Services  
Salisbury District Council, 61 Wyndham Road  
Salisbury, Wiltshire SP1 3AH

**officer to contact:** Stephen Hawkins  
**direct line:** 01722 434691  
**email:** shawkins@salisbury.gov.uk  
**web:** www.salisbury.gov.uk

# Report

**Subject** : Planning Enforcement Draft Statement of Service Provision 2008

**Report to** : All Area Committees

**Date** : 29 May 2008

**Authors** : Stephen Hawkins, Principal Planning Officer (Enforcement);  
and Jane Ferguson, Principal Solicitor, Legal & Property Services

---

### Report summary:

The purpose of the report is to seek Members views on the draft statement of service provision for enforcement of planning control, including the prosecution of offences committed under the planning legislation.

The above has been prepared in order that it is clearer to the public, Parish Councils, Members and Officers, Magistrates as well as offenders as to when and why the Council has decided to enforce planning controls, including instigating prosecution proceedings, to clarify the procedures followed in such cases and to ensure that the majority of resources are focused on the most serious breaches. Investigation procedures, including responding only to enquiries by persons who identify themselves save in exceptional circumstances, are also clarified.

### Introduction:

Salisbury District Council has always placed strong emphasis on planning enforcement to ensure that the policies of the Salisbury District Local Plan are upheld in new development and the scenic qualities and historic character of the District are protected.

An enforcement policy was adopted by the Council following a period of public consultation in 1999. This document reflected the Government's general approach to enforcement set out in Planning Policy Guidance Note 18 and the 1997 Good Practice Guide on Enforcing Planning Control.

However, since adoption of the policy circumstances have changed and in line with the Good Practice Guide, it is considered that a review of the policy is now overdue.



Awarded in:  
Housing Services  
Waste and Recycling Services



Changes in circumstances since adoption of the enforcement policy in 1999 include:

- The number of enforcement-related enquiries received annually has more than doubled, from just over 400 to over 900.
- The number of full-time Enforcement Officers remains two, with a Principal Officer leading the Enforcement Team. One Enforcement Officer post has been upgraded to a Planning Officer (Enforcement) and a further part-time post at a similar level has been created. The Team has also been supplemented by a Compliance Officer, who monitors permissions, conditions and Section 106 Obligations.
- The number of solicitors advising on planning and enforcement issues remains one full-time equivalent.
- Increasing recognition by government, other agencies and organisations, parish councils, amenity bodies and of the key role of planning enforcement alongside development control and forward planning in upholding environmental quality and delivering sustainable development.
- Publication by the DCLG in November 2006 of its review of planning enforcement and the conclusions and recommendations therein, which include raising the profile of enforcement and disseminating good practice;
- The requirement for all Council policies to be subject to an Equalities Impact Assessment.
- The recommendation in the final report of the Independent Task Group on Site Provision and Enforcement For Gypsies and Travellers (published December 2007) that enforcement policies should include their approach to enforcement against unauthorised encampments and set out clearly what all members of the community should be able to expect.
- The existing policy does not deal with the prosecution of planning offences, which has formed an increasing part of enforcement activity over the past four years.

There is a dichotomy between the public perception of planning enforcement (and indeed, the scope of its powers) and what happens in practice. By far the most effective of all methods of dealing with planning enforcement enquiries received by the Council is negotiation, which statistics show consistently resolves in excess of 90% of all enforcement cases.

Nothing in the following dilutes Officers' commitment to achieving a remedy without resorting to formal action in as many cases as possible, whilst giving full weight to third party expectations of formal procedures being invoked where necessary.

#### **Deciding whether to take action:**

The Council has wide ranging statutory powers to deal with breaches of planning control and there are inevitably several cases per year where negotiations cannot or do not remedy the breach of planning legislation. In such cases, formal enforcement action is necessary to safeguard public amenity.

Members will recall that it is not an offence to carry out development without planning permission; such development is however at risk of enforcement action. Enforcement is a discretionary activity and in every case the Council is required to decide whether such action is 'expedient'.

Breaches of planning control can nevertheless have harmful effects on visual or residential amenities, on highway safety, the occupiers and users of surrounding land or the environment. The degree of harm caused will be a significant factor in determining whether enforcement action is 'expedient'. For example it would not normally be expedient to take enforcement action where a householder had erected a fence slightly in excess of that which could be erected under 'permitted development' unless it was causing harm i.e. obstructing visibility.

The principal objective of enforcement legislation is to remedy a breach of planning control which is causing harm to amenity or land and buildings meriting protection in the public interest. It is not to punish the person responsible for that breach. However Enforcement Notices, Stop Notices, Temporary Stop Notices or Breach of Condition Notices all carry criminal sanctions to deter continued non-compliance.

'Harm' may also occur through unauthorised works to listed buildings, unauthorised demolition of unlisted buildings in Conservation Areas or unauthorised works to protected trees. Breaches of listed building and advertisement control and damage to TPO trees and trees in Conservation Areas are dealt with under separate procedures, which share some similarities with the above,

especially in respect of listed building control. The key differences are that in the case of such breaches an offence has been committed which can also lead to criminal proceedings being brought by the Council in addition to/ instead of enforcement action. There are also therefore occasions when it is appropriate to prosecute offenders under such legislation, such as in the case of the deliberate removal of a listed building or a TPO tree.

In all cases a decision to prosecute should not be taken lightly. The consequences for the individuals concerned could be a substantial fine as well as a criminal record. Members should also be aware that prosecution cases often require considerable investment in Officer time and resources. The factors should be taken into account in deciding whether to prosecute are dealt with in more detail below.

Nevertheless Members should note that in the last two years, several cases have been before the Courts which have resulted in conviction and a fine for the offenders. In one case in for example in October 2006, an owner was fined £12,000 with £2,500 costs also awarded to the Council for demolition of a Grade II listed building without the required consent. In another case from June 2006, 3 people were fined a total of £1,100 with £3,400 costs awarded with the Council for breaching a Breach of Condition Notice.

#### **Enforcement-the general approach:**

In exercising its discretion whether to take planning enforcement action, regard must be had to the following:

- . Is planning permission required?
- Does planning permission exist?
- . How long has the building or use been in existence?
- Is the unauthorised use or activity causing harm, with regard to Development Plan policies or other material considerations?

Not all unauthorised development is unacceptable in planning terms; that is why planning applications are sometimes requested instead of initiating formal enforcement action. It is important that everyone involved in the planning process is clear as to the approach which Development Services will adopt in dealing with breaches of planning control.

Planning enforcement action following a breach is a serious procedure. Ultimately failure to comply with enforcement action is a criminal offence that may result in prosecution. However, Development Services aims to negotiate acceptable outcomes where possible, avoiding the need for formal action. In implementing the enforcement system, it is necessary to strike a balance between the rights of residents and businesses to use or alter their property, whilst safeguarding the amenity of their neighbours and protecting the wider environment in the context of the planning framework.

#### **Consultation:**

The draft statement has been produced following consultation and engagement with key stakeholders in the enforcement process as follows: -

- Parish Councils –through presentation discussion at the Parish Council Seminar.
- Private sector professionals.

#### **The Purpose of the Statement:**

The draft statement incorporates and is consistent with the Government's Enforcement Concordat, which establishes the principles of good enforcement; and the Council's general enforcement policy as well as best practice in planning enforcement.



The statement will set out what individuals and organisations can expect from Salisbury District Council in carrying out its planning enforcement functions.

The statement will set out the procedures the Service will follow and the level of service the Council will aim to deliver. These service standards will:

- Establish priorities;
- Make service commitments and enable them to be monitored;
- Communicate to those enquiring about or accused of breaching planning controls and other members of the public:
  - the principles of planning control and enforcement systems;
  - the main procedures in enforcement;
  - the Council's approach to enforcement, including its priorities and its
  - commitments to those involved in the system.
- Act as a key document in performance management of the enforcement function and the deployment of resources.

#### **Service Standards – Enforcement:**

The objective of the enforcement process is to remedy the undesirable effects of:

- Unauthorised development.
- Unauthorised advertisements.
- Unauthorised works to listed buildings and buildings in Conservation Areas.
- Unauthorised works to protected trees.
- The condition of land adversely affecting the amenity of its surroundings
- Failure to comply with planning conditions.
- Failure to comply with Section 106 Obligations.

Enforcement does not normally seek to penalise individuals for carrying out work without any required permission(s). However, where (amongst other things) there has been an irretrievable loss of historic building fabric or loss of valuable protected trees, or continued non-compliance with formal Notices, prosecution may be merited in the public interest (see further below).

Enforcement can be a technically complex activity, requiring thorough investigation of the breach of control, the collection of evidence, associated issues such as case law, the history of the breach, and the service of the enforcement notice. In allocating resources, it must be recognised that planning enforcement activity is very often labour intensive. Thorough investigations of the relevant planning history and methodical evaluation of the facts are vital ingredients of sustaining/defending enforcement action successfully.

Because of the need for careful investigation and the legal processes involved, enforcement investigations can take a long time to resolve. However, Development Services will endeavour to complete the investigation in accordance with the timescales set out below.

In exercising its enforcement function, Officers will carry out site visits, give advice on compliance and where appropriate, it will consider formal enforcement action.

In the statement, Development Services will undertake to monitor the number of investigations carried out and record and publish what action was taken, whether formal or informal, and other outcomes.

Development Services will also, *apart from* PRIORITY 1 cases in the list of enforcement priorities below, require that all enquiries should be made to the Council in writing (NB: This could be via letter, e-mail or submitted via the proforma available on the Council's website) before an investigation is commenced. This is so that the enquiry can be clearly understood and investigated. It also reduces trivial or malicious enquiries as writing a letter requires a degree of commitment by

the enquirer. Enquirers will be expected to substantiate their evidence in any subsequent proceedings brought by the Council to assist in ensuring a successful outcome.

Development Services will have regard to the presumption in favour of disclosing environmental information under the Environmental Information Regulations 2004, in relation to any request made for public disclosure of records of investigations of breaches of planning control, and will weigh it against any public interest in preventing the disclosure of such information. In all cases, Development Services will have full regard to the Data Protection principles.

It is proposed that anonymous enquiries will no longer be investigated automatically, as Development Services cannot contact the enquirer for further information, which may be needed to assist enquiries. We cannot inform the enquirer of any outcome to the enquiry so we cannot offer our normal standards of customer service. Experience has also shown that such enquiries are often trivial and/or malicious. Just as important, anonymous information has little evidential value in future enforcement or prosecution proceedings. Only in exceptional circumstances, such as where there is strong evidence that a breach causing immediate and irremediable harm is being caused, will such enquiries be investigated. Enquirers concerned about possibly revealing their identity or who are having difficulties pursuing their enquiry could discuss the matter with their Parish/Town Council or District Councillors, who could act on their behalf.

It is also proposed that enquiries by or behalf of Parish Councils will only be accepted from the Clerk or the Chairman. Such enquiries should already be a matter of public record so the source will be subject to disclosure under FOI/EIR (see above).

In PRIORITY 1 cases where there is clearly an imperative to undertake urgent action, it is proposed that an investigation will be initiated on the basis that the enquirer follows up their enquiry in writing as soon as possible.

The priority given to investigations and progress to formal action following the initial site visit will also reflect the nature of the breach of planning control and its seriousness according to the list of enforcement priorities.

In dealing with and investigating enforcement enquiries, it is proposed that Development Services will:

1. Ensure that, as far as possible, all enforcement enquiries received are registered within 24 hours of receipt;
2. Ensure that sites the subject of enquiries which require inspection, are visited within the time scales identified in the list of enforcement priorities which aim to give precedence to tackling the most serious breaches;
3. Ensure all enforcement enquiries are acknowledged within 3 working days of receipt, giving the contact name and telephone number of the officer dealing with the investigation;
4. Endeavour to keep enquirers informed on at least a bi-monthly basis on the progress of their enquiry, where progress has been made.
5. Endeavour, by week 13 following receipt of the enquiry, to have completed the investigation and informed all interested parties of the outcome; or if not to explain why the investigation is taking longer;
6. Ensure that all current/recent/ongoing enquiries are treated in confidence. The identity of enquirers will not be revealed unless the enquirer has either given their consent or the Council is required to do so pursuant to a request for disclosure of information made under the Environmental Information Regulations 2004 and where there is no longer a public interest in maintaining confidentiality. (NB: Confidentiality cannot be relied upon if such information should already be publicly available –i.e. an enquiry made by a Parish Council where there will be a minuted record of the matter raised at a Parish meeting).
7. Ensure that all persons are treated in a manner which is fair and equitable, which respects their age, economic or social background, gender, sexual orientation, disability, race, religion and beliefs, cultural values, race or ethnic background and way of life in accordance with the Council's Comprehensive Equality Policy, equalities legislation and reflects the Council's commitment to social cohesion.
8. In particular unauthorised encampments will be dealt with having full regard to all of these principles, in accordance with the list of priorities below.
9. Advise persons responsible for a breach of planning control that it is open to them to try and regularise the matter through the submission of a retrospective application.

10. Invite a retrospective application where Officers consider that there is a likelihood that conditional planning permission would be granted. However in all cases it will be made clear that any such invitation is made without prejudice to the final decision the Council may make on the matter.
11. Continue progressing enforcement proceedings unless there are any material changes in circumstances i.e. submission of a valid retrospective application has been received prior to service of any Notice.
12. Where an offence is being committed, advise that the breach should be remedied, where appropriate, until such time as any application had been approved, to avoid prosecution proceedings.
13. Not delay formal enforcement proceedings, where initial negotiations have failed to remedy a continuing breach which is causing harm.
14. Where works have been carried out to a listed building or in a Conservation Area without the required consent, which could be made acceptable with the imposition of conditions, the person carrying out the work will be offered an opportunity to enter into a Unilateral Undertaking to carry out the necessary works within a required timescale before commencing formal enforcement action.
15. Ensure that planning permissions, conditions and Section 106 Obligations are monitored in accordance with the priorities for compliance monitoring.
16. Work together with our internal and external partners to ensure that joint investigations are undertaken where it is known that a suspected breach may involve other regulatory agencies.
17. Ensure that on-going cases are subject to regular review, that all interested parties, including Ward Members, are kept informed of progress and responses to correspondence are dealt with within corporate time scales.
18. Pass on complaints which fall outside the ambit of planning enforcement to any relevant service/authority.

#### **Openness:**

In the interests of openness and transparency, it is proposed that Development Services will:

1. Review performance relative to the above service standards regularly. Current and proposed future performance targets are set out at the end of this report.
2. Keep Parish Councils and Ward Members updated on progress on enforcement cases in their areas. Effective from 3rd March 2008 all Members and Parish Councils on e-mail receive a monthly list of 'live' enforcement enquiries. Members will continue to receive the confidential quarterly update list on cases where formal action has been initiated.
3. Keep all interested parties informed as to the progress with any investigation, as set out at 4 above. Due to high demand on resources it is not always possible to update enquirers as often as we would like. Anyone wishing for an update is encouraged to contact the case officer direct at any time.
4. Where formal action is necessary, make it clear as to why the Local Planning Authority intends to take, or has taken, enforcement action.
5. Where action has not been taken, we will also explain why.
6. Respond promptly to any requests for the disclosure of environmental information under the Environmental Information Regulations 2004. We will disclose such information unless the balance of the public interest is in favour of non-disclosure.

#### **Helpfulness:**

Development Service's enforcement role involves actively working with individuals and organisations to advise on and assist with compliance with the planning legislation, on the basis that prevention is better than cure.

Development Services will undertake to provide a courteous and efficient service and staff will identify themselves by name, provide a contact point and telephone number for further dealings and encourage organisations and individuals to seek advice /information. It will ensure that, wherever practicable, planning enforcement is effectively co-ordinated with other services/agencies to minimise unnecessary overlaps and time delays.

To maximise public understanding of and access to the planning enforcement system, information regarding procedures will be publicised and will be available from Council Offices, and on the Council website. This will explain the key elements of enforcement and the adopted policy.

In the future, further advice notes will be provided to provide guidance to interested/affected organisations and individuals.

**Proportionality:**

Development Services will undertake to, as far as the law allows, take account of the circumstances of the case and the degree of harm or potential harm and the attitude of the person responsible for the breach when considering action.

Factors such as pre-meditation or a history of breaches of planning control on this and/or other sites by the individual(s) or company concerned will be weighed against the genuineness of the developers' intentions and their willingness to remedy the breach when considering the most appropriate course of action.

**Consistency:**

Development Services will also undertake to carry out its duties in a fair, equitable and consistent manner. There will be a consistent approach to enforcement action in similar circumstances.

However, consistency of approach does not mean uniformity. Each individual matter will be considered on its merits.

**Principles of Good Enforcement; Procedures:**

Development Services will undertake to ensure that:

- Advice from an Officer will be put clearly and simply and confirmed in writing as appropriate. This will explain why any remedial work is necessary and over what time scale.
- Where no action can, or is to be taken, the enquirer will be notified of the reasons for that decision.
- Unless immediate formal action is required, there will be an opportunity to discuss the circumstances of the case before formal action is taken. Immediate formal action might be necessary, for example in the interests of health and safety, environmental protection or to prevent historic fabric or evidence being destroyed.
- Where immediate formal action is considered necessary, an explanation of the reasons will be given at the time and confirmed in writing together with a time scale for implementation.
- Where formal action is taken by issuing a formal notice, all parties served with a copy of the Notice will be advised in writing of the consequences of non-compliance with such a notice.
- Individuals or organisations that do not comply with any formal notice served on them will be prosecuted in accordance with the policy on prosecutions detailed below.
- Injunctive proceedings are used at any stage during the enforcement process, where it appears that formal enforcement action is expedient, there is serious ongoing harm to local amenity and that an injunction will be the most effective manner in which the breach can be quickly remedied.
- Stop Notices are used where it appears that serious or irreparable harm is being caused to local amenity, for example through loss of trees, valuable natural features or historic buildings. In all such cases it will undertake a cost/benefit analysis before commencing proceedings.
- Temporary Stop Notices are used where it appears that the unauthorised development is likely to lead to serious or irreparable harm is being caused to local amenity, for example through loss of trees, valuable natural features or historic buildings.

- Consider prosecution proceedings as an alternative to or in addition to enforcement action where there has been irreparable loss of: the whole or part of a listed building, irretrievable loss of fabric or effect on its character; loss of a building within a Conservation Area, or; protected trees (for further information on when offenders will be prosecuted, please see below).
- Direct action is taken where such action will achieve a more cost-effective and timely remedy to the harm caused by the breach than other enforcement methods.
- An individual's Human Rights is balanced against the public interest at all stages of the enforcement process.
- Fairness and consistency is ensured between cases, and it will investigate cases in line with the priorities set out above, rather than the persistency or status of enquirers.

**Suggested future priorities for investigations:**

The following priority list suggests that breaches are prioritised for action in order of their importance. It is not an exhaustive list.

<b>PRIORITY 1</b>
<b>Site visit to be carried out within 24 hours</b>
Alleged breaches causing irreparable/immediate and continuing serious harm and loss of amenity to affected neighbours and/or the environment and/or where there is danger to public or highway safety.
Works in progress involving demolition or alterations to a listed building or building in a Conservation Area.
Works in progress to protected trees.
Advertisements - where it is considered that there is immediate harm to public safety.

<b>PRIORITY 2</b>
<b>Site visit to be carried out within 5 working days</b>
Development contrary to policies on AONB/ countryside/landscape/Conservation Areas.
Breaches of conditions attached to planning permissions resulting in serious harm to neighbours, affected parties and/or the environment.
Unauthorised advertisements in Conservation Areas/AONBs.
Unauthorised development where it is possible that the time for taking enforcement action could expire within the next 6 months.
Commencement of development in breach of Section 106 agreements/conditions.

<b>PRIORITY 3</b>
<b>Site visit to be carried out within 10 working days</b>
All, other breaches, i.e. unauthorised breaches of a minor nature which do not cause immediate/long term harm or loss of amenity e.g. breaches which are temporary in nature or those capable of being regularised.
All other unauthorised advertisements.

### **Prosecutions:**

Officers consider that Development Services' attitude to planning offences should be clear to the public, Parish Councils, Members and Officers, Magistrates as well as offenders as to when and why the Council has decided to prosecute (or not to prosecute) and also to clarify the procedures followed in such cases.

In considering whether to initiate prosecution proceedings in relation to unlawful acts committed under the planning legislation, it is proposed that Development Services will:

1. Have regard to the Code for Crown Prosecutors in deciding whether a prosecution case should be brought. There should firstly be enough evidence available to provide a realistic prospect of obtaining a conviction. Additionally it should clearly be in the public interest that such action is taken to remedy continuing harm to public amenity or the objectives of Development Plan policies.
2. Consider factors such as evidence of premeditation, grounds for believing that the offender will re-offend, evidence of the widespread nature of the offence and the effect of a conviction on public confidence of the planning system, which could all weigh in favour of a public interest in prosecution.
3. Consider amongst other things: the likelihood of the Court to impose a minimal penalty, the minor nature of the offence or level of loss or harm caused, evidence of a genuine mistake on the part of the offender, excessive delay in bringing the case to Court, the offender's age, infirmity or mental capacity, and; whether the offence has been remedied; as factors which could militate against prosecution being in the public interest. Direct action may in such cases be considered as an alternative.
4. Balance factors for and against prosecution carefully and fairly. All factors for and against will be carefully balanced before reaching a decision on whether or not to prosecute.

### **Prosecution Procedures:**

It is proposed that Development Services will:

1. Consider prosecution proceedings in accordance with the list of priorities for prosecutions (see below). These priorities are guided by the seriousness of the offence and, in relation to some offences such as unauthorised works to trees, reflect the fact that the Council has a limited time in which to bring the case to Court.
2. View every enforcement case as having potential to result in future legal proceedings and the evidence of site visits and interviews with those responsible for the breach etc. will be obtained and carefully recorded and retained in accordance with codes of practice.
3. Interview persons under caution in accordance with the Codes of Practice under the Police and Criminal Evidence 1984 where it appears that an offence has been committed.
4. Before prosecution is initiated, offer a final opportunity to rectify the situation (if there is an available remedy) as an alternative to prosecution.
5. Review cases on a regular basis, including if and when an application is submitted. Prosecution proceedings will not be suspended/withdrawn unless there has been a material change in circumstances (such as removal of the offending works/signage), for doing so. In such an eventuality it may be appropriate to issue a formal caution (which may also be admissible as evidence in relation to a subsequent offence).
6. Where third parties may have evidence to assist the Council's case, invite them to supply statements and if necessary attend Court to give evidence.
7. Publicise the outcomes of important prosecutions.

**Suggested priorities for prosecution:**

<b>PRIORITY 1</b>
<b>Prosecution proceedings authorised within one month of obtaining evidence of an offence</b>
Any breach of an Enforcement Notice (including Listed Building Enforcement Notice), Temporary Stop Notice, Stop Notice or Breach of Condition Notice, which is causing continuing detriment to public or neighbouring amenity or conflicts with the Development Plan.
Unauthorised demolition, partial demolition or alteration of a listed building (including internal alterations to Grade I or II* buildings) or a building within a Conservation Area, which it had been essential/desirable to retain.
Unauthorised damage or removal of TPO/ Conservation Area trees which it had been essential/desirable to retain, or; where the duty to replant has not been observed.
Failure to comply with an Untidy Site Notice.
Any offence where the time limits for prosecution may run out within the next three months.

<b>PRIORITY 2</b>
<b>Prosecution proceedings authorised within three months of obtaining evidence of an offence</b>
Unauthorised signage in the open countryside in an AONB, SLA or in Conservation Areas causing serious harm and which cannot otherwise be quickly removed by the Council using other powers.
Offences committed in relation to priorities 1 & 2 where informal negotiations have initially achieved a remedy, but where there is subsequently a reoccurrence of the offence.

<b>PRIORITY 3</b>
<b>Prosecution proceedings authorised within six months of obtaining evidence of an offence</b>
Failure to respond or supplying false or misleading answers to formal documents such as Planning Contravention Notices and other Requisitions for Information.
All other planning offences, where there is considered to be a public interest in prosecution.
NB: In priorities two and three, aggravating factors, i.e. evidence of foreknowledge, ignoring clear warnings to cease, misleading, deceiving or abusing Officers and/or third parties will, subject to their being clear evidence available to show such conduct, mean that consideration will be given to increasing the priority given to the case to Priority 1.

**Where prosecution may not be appropriate**

In addition to the above, it is considered helpful to indicate circumstances in which it may *not* be in the public interest to initiate/ continue proceedings. These are suggested below, as follows:

Failure to comply with an Enforcement Notice, Breach of Condition & Section 215 Notices involving development within the curtilage of a dwelling house where the house holder's advanced age, infirmity or mental capacity would weigh against prosecution. In such cases, the use of direct action powers may be more appropriate as a cost-effective and timely means of remedying the breach.
Where an offence is <i>immediately</i> rectified after Council Officers have asked the offenders to do so (except in cases of irremediable works to listed buildings or trees).
Where the offence is mitigated by a grant of planning permission, listed building or advertisement consent for the works/signage in question <i>before</i> any proceedings are significantly progressed. and, during the application the works were discontinued and/or the offending signage removed.

Cases where it had been open to the Council to prosecute an offence for at least two years, but the Council has not chosen to do so (unless there has been a change in circumstances).

In other cases, where the individual circumstances of the persons concerned (i.e. their age, infirmity, mental capacity) are such that it would not be in the public interest to pursue a prosecution case (again use of direct action powers may be more appropriate).

In the first two instances above, it may also be appropriate to take into account in the assessment whether the offender is prepared to accept a formal caution.

### **Monitoring Future Performance:**

Measuring enforcement activity is unlike tracking the performance of development control where there are clear timetabled performance targets. It is also inappropriate to set targets to issue a certain amount of formal notices in any one period of time.

It is important that cases are reviewed on a regular basis to ensure that any appropriate action is not unnecessarily delayed. Currently case reviews are held on a regular basis in addition to local targets that can be monitored as follows:

- % of new enquiries registered on 1<sup>st</sup> day.
- % site visit/ response to enquiry within 3 days.
- % response to enquirer within 10 days.

The above are measured against a 100% target on each indicator.

Whilst performance measured against the above targets has over the past year consistently achieved well in excess of 90% in each quarter on each of the above indicators with ongoing quarterly improvements, there is concern about whether the above targets give an adequate and meaningful reflection of the performance of the Enforcement Team. On adoption of this statement it is proposed to set the following revised /new performance targets, which it is considered will give a more detailed and meaningful overview of the Team's performance and strikes an appropriate balance between challenge and achievability:

- New enquiries registered on 1<sup>st</sup> day. **Target 95%.**
- Response to enquirer within 10 days. **Target 95%.**
- Priority 1-site visit with 24 hours. **Target 80%.**
- Priority 2 site visit/response within 5 working days. **Target 95%.**
- Priority 3 site visit/response within 10 working days. **Target 95%.**
- Priority 1 cases Notice to be issued **within 6 months** from date of enquiry. **Target 80%.**
- Priorities 2 and 3 cases to be completed within **13 weeks** from date of enquiry. **Target 80%.**

The above targets will enable more detailed assessments of the Enforcement Team's performance to be made in future. In view of the relatively small number of prosecution cases initiated per annum (in the context of the overall annual caseload of in excess of 920 cases per year) it is not proposed to set targets at this time; however this will be kept under review.

### **Dealing with complaints about the Service:**

It is also suggested that, if customers are unhappy about the advice given, action taken or the level of service received in relation to the enforcement function, they should be given the opportunity to discuss the matter with the Team Leader.



It is proposed that an Officer receiving such a request will refer the matter to the Team Leader who will:

- Listen to the details of the complaint;
- Consider whether service provision has fallen below the standards set out above in this particular case;
- Provide a written response to the person making a complaint about the matters mentioned above.

This is without prejudice to any formal procedure. In particular if the problem cannot be resolved, the person making the complaint about the service will be informed of the Council's Passport To Improved Services Procedure.

**Conclusion:**

The draft statement of service provision provides a clearer focus on adequately resourcing the more serious planning breaches and will give greater clarity to all of those who have an interest in developments in the District as to what level of service they can expect from the Council's Enforcement Team.

In all planning and related enforcement, the principal objective is to remedy the breach and in the vast majority of cases such breaches are resolved by negotiations. Officers have had regard to government guidance in PPG 18 and the Good Practice Guide as well as other best practice and other publications as well as the principles of good enforcement set out in the Enforcement Concordat, in the preparation of the above draft statement.

In cases where prosecution is considered, the evidence must be robust enough so that there is a reasonable prospect of obtaining a conviction such action must be necessary in the public interest. Clear procedures are needed to ensure that the evidence withstands the scrutiny of the Court process and that the circumstances in which the Council will prosecute to all including the public as well as potential offenders and the Council is shown to have a consistent approach where decisions to, or not to prosecute are taken on cases which are, on the facts, materially similar.

Members are invited to offer their views on the suggested statement and priorities outlined above.

The report will progress to Cabinet with Members' recommendations and those of the other Area Committees. If Cabinet agrees to adopt the statement, it will replace the Council's existing Enforcement Policy.

**RECOMMENDATION: A: That the Committee note the report**

**B: That the Committee's recommendations, including specific comments in relation to the above statement, are referred to Cabinet for consideration.**

**Background papers:**

- **Town and Country Planning Act 1990 (as amended).**
- **Police and Criminal Evidence Act 1984.**
- **Criminal Procedure and Investigations Act 1996.**
- **Human Rights Act 1998.**
- **Regulation of Investigatory Powers Act 2000.**
- **Freedom of Information Act**
- **Environmental Information Regulations 2004.**
- **Planning Policy Guidance Notice 18 "Enforcing Planning Control."**
- **Circular 10/97 "Enforcing Planning Control."**
- **Enforcing Planning Control: Good Practice Guide DETR 1997.**
- **Code For Crown Prosecutors; Crown Prosecution Service 2004.**
- **Best Practice Guidance on Listed Building Prosecutions: DCLG 2006.**

- **SDC Enforcing Planning Control Policy Document;**
- **SDC Enforcement Manual.**
- **Enforcement Concordat: Cabinet Office/LGA March 1998.**
- **The Road Ahead: Final report of the Independent Task Group on Site Provision and Enforcement for Gypsies and Travellers (DCLG December 2007).**
- **The Statutory Code of Practice for Regulators published by the Department For Business Enterprise and Regulatory Reform in December 1997. (This does not apply to planning functions, although the underlying principles have been taken into account in the preparation of the statement).**

**Implications:**

- **Financial:** None at this time
- **Legal:** Detailed in the report
- **Environmental:** Detailed in the report
- **Council's Core Values:** Excellent service; communicating, listening and responding; fairness and equality; openness and honesty
- **Human Rights:** Adoption of the above service standards will ensure that enforcement action is justified and the action undertaken is proportionate to the breach and any harm to public amenity or public safety caused.
- **Wards Affected:** All