

Title: **Planning Enforcement Policy**

Portfolio Holder: **Cllr Jeff Osborn – Planning and Development**

Reporting Officer: **Christine Caistor, Major Applications and Appeals Officer, Development Control**

Key Decision: **Yes**

Purpose

To consider the draft Planning Enforcement Policy Statement with a view to adopting it as Council policy for dealing with planning enforcement and compliance complaints.

Background

The Development Control Section has a responsibility to process and determine planning applications for the District. The integrity of this depends on the Council's readiness to take enforcement action. Without this facility, the Council would be unable to monitor unauthorised or non complying development in the area.

Over the past two to three years priority has been given to achieving planning performance targets which has had an impact on the enforcement function. However, since December 2004, the enforcement team has been undergoing a reorganisation to provide a better service to the Council, Members and the public.

The introduction of an adopted Planning Enforcement Policy is the next step in improving the enforcement service. It will establish a clear and open criteria for dealing with any unauthorised and non complying planning matters.

Main issues

The Council has already adopted its general Enforcement Policy which applies to all service areas engaged in any form of enforcement action. However, unlike other statutory functions, the majority of planning enforcement cases are not offences. They can often be regularised by the submission of an application, may be immune from enforcement action by the passage of time or are not significant enough to justify formal action. Therefore, the Council can exercise discretion in taking any enforcement action against the breach of planning regulations and must consider if it is 'expedient' to do so in each case.

The Planning Enforcement Policy is based on the principles set out in the Council's general policy but seeks to establish more precise guidelines and timescales relating specifically to planning enforcement.

The publication of a detailed Planning Enforcement Policy would ensure that Members, officers and the public will know what to expect. Such a policy would be the equivalent of a contract between the Council and the public. In the event of any complaints about the enforcement process, this document can be used to show the complainant and/or the Ombudsman what processes are expected and to assess if it has failed.

The criteria could also be used as the basis for establishing performance data in the future.

In summary the Policy makes clear that :

- There are two distinct strands in planning enforcement which will be pursued
 - Re-active enforcement (enforcement)– to respond to complaints about alleged unauthorised development or uses.
 - Pro-active enforcement (compliance)– to secure compliance with planning permissions, associated conditions and planning agreements
- All enforcement complaints should be received in writing – to ensure the complaint is genuine, the details are clear and there is a contact address for the complainant to be kept informed.
- Anonymous complaints will not be investigated - to avoid solely vexatious complaints .
- All complainants details will be kept in confidence – in order to protect the complainants identity, notwithstanding the Freedom of Information Act . It should, however, be acknowledged that in some cases the subject of the complaint may well be able to deduce who the complainant is.
- All complaints will be given a priority with a specific set of time scales, as set out below. The Policy defines the priorities.

Action	High*	Medium*	Low*
Acknowledgement letter	3 work days	3 work days	3 work days
Site Visit	3 work days	10 work days	15 work days
Progress Information letter	20 work days	25 work days	30 work days
Action letters	30 work days	35 work days	40 work days

* All figures are **Working days**

- The emphasis will be on negotiating a resolution
- Complainants will be kept informed of both progress and decisions.

Proactive enforcement

For proactive enforcement cases (normally dealt with by the Compliance Officers) the following measures are being put in place to ensure decisions are followed up with the developers:

- Note attached to all permissions, consents and approvals advising of the need to comply with approved plans and details and all conditions and planning obligations
- Approval of any details required by conditions and agreements will be the responsibility of the planning case officer
- Failure to meet the requirements of the condition or agreement within specified time will be passed on to the Enforcement process.
- Case prioritisation will be the same as the reactive enforcement (see above)
- A three stage approach will be adopted the same as the reactive enforcement (see above)
- It will include monitoring implementation of development to completion of all requirements of plans, details conditions and obligations,
- Continuing monitoring of ongoing limitations and restrictions following completion

This is part of a package of measures proposed to improve the planning enforcement service. Following adoption of the Planning Enforcement Policy, an officers' manual is proposed to ensure openness and consistency in dealing with enforcement complaints. In addition all enforcement complaints and actions will be recorded on the Council's CAPS Uniform Enforcement Module. This will allow officers to monitor complaints, their

progress and overall performance data. An advice box has already been inserted on every permission issued by the Council advising applicants /developers to comply with the approved plans and conditions.

Format

The format of the Policy will be designed to convey the information in a form that can be printed as a handout for the public and available in the reception areas of the Council. In addition, a copy of the Council's Enforcement Policy can be supplied on request.

The proposed Planning Enforcement Policy is attached as an appendix to this report.

Financial implications

The financial implications will primarily be the cost of publication.

Legal implications

The legal implications are self evident in the report and the draft text has been assessed by the previous Head of Democratic and Legal Services.

Recommendation:

Cabinet is asked to consider adopting the Planning Enforcement Policy Statement.

Human rights

There are human rights implications in each enforcement case and these are taken into account in deciding whether to pursue formal enforcement action in each case.

Background papers

West Wiltshire District Council Enforcement Policy

Planning Enforcement Policy

Plain English

This report has been checked for plain English. The Planning Enforcement Policy has also been assessed for plain English but further work needs to be agreed.

Statement of reason for key decision	This is a key decision because it will establish the basic policy, criteria and time scales for dealing with planning enforcement and compliance matters in the foreseeable future and form the basis for subsequent enforcement procedures and performance.
Options considered and rejected	Continuing with the existing ad hoc and unclear system.
Date of implementation (not less than five days after date of decision)	1 st December 2005

PLANNING **ENFORCEMENT POLICY**

WWDC logo

INTRODUCTION

The Council has published an Enforcement Policy for all aspects of the Council's Enforcement functions. The planning enforcement procedures should therefore comply with the general principles of this policy.

The integrity of the Planning Development Control function depends on the Council's readiness to take enforcement action. Without this facility, the Council would be unable to monitor unauthorised or non complying development in the area.

There will be two strands to Planning Enforcement:

1. Re-active enforcement – investigating complaints about unauthorised buildings and uses.
2. Proactive enforcement – compliance with planning permissions, associated conditions and agreements

ENFORCEMENT POLICY

The Council has signed up to the Government's 1998 Enforcement Concordat which establishes principles of good enforcement.

The aim of the policy is to ensure that all enforcement actions comply with the following principles of:

- Consistency
- Proportionality
- Openness

Under the terms of the Planning Act, the Local Planning Authority may issue an enforcement notice where it appears to them that there is a breach of planning control and that it is **expedient** to issue the notice, having regard to the provisions of the Development Plan and to any other material considerations.

This means that the Authority has a general discretion to take enforcement action only where they consider it as expedient to do so.

LEGISLATIVE FRAMEWORK

The basic enabling legislation for planning enforcement is the Town and Country

Planning Act 1990 supplemented by the Planning and Compensation Act 2005.

This is supported by Government guidelines in the form of

- Planning Policy Guidance note no. 18
- Circular 2/02
- Circular 10/97 and
- Enforcing Planning Control Good Practice Guide for Local Planning Authorities

Further advice is contained in 'Planning Enforcement A guide to Good Practice'.

WHAT WILL BE INVESTIGATED

The Council will only investigate those matters which constitute a breach of planning control. These consist mainly of

- Unauthorised buildings, uses, works to listed buildings, advertisements
- Non compliance with planning permissions or conditions
- Unauthorised works to protected trees

The Council's planning enforcement officers cannot investigate boundary or neighbour disputes.

There are also only a limited number of legislative enforcement tools available to the Authority. These consist primarily of

- Enforcement Notices
- Breach of Condition Notices
- Planning Contravention Notices
- S215 Despoiled land action
- Stop Notices/temporary Stop Notices
- Injunctions
- Prosecutions

The emphasis will therefore be on negotiating compliance or regularising breaches.

SUBMITTING A COMPLAINT

A complaint about an alleged breach of planning regulations can be submitted by anyone including private individuals, public bodies, elected members and officers of the council.

All complaints should be received in writing giving

- The address of the property where the alleged breach has taken place,
- the nature of the alleged breach,
- the name and address of the complainant,
- a contact telephone number and
- any evidence available.

Telephone complaints must be followed up in writing with the information identified above to ensure that there is no misunderstanding in the detail or the validity of the complaint.

The complainants' details will be taken in confidence, subject to the Freedom of Information Act, but are necessary to establish the validity of the complaint and to enable complainants to be kept informed. However, complainants should be aware that, in some cases, it may be a relatively simple deduction for a subject to identify the source of the complaint.

Anonymous complaints will not be investigated.

PRIORITIES

With limited resources it will not always be possible to undertake an immediate investigation for all cases. Therefore each case will be given a priority by the senior enforcement officer and allocated to an officer to investigate.

The priority will consist of

- **High** – Works which significantly affect public and community health or safety, irreversible works, including works to listed buildings or protected

trees, works where there are sensitive community issues or significant environmental impact and compliance with planning agreements.

- **Medium** – Non compliance with planning permissions where conditions above do not apply, unauthorised development.

- **Low** – all other complaints.

TIMESCALE

The Council's planning enforcement service will undertake where possible to take the appropriate action within the following time scales (measured in **working days** from date of receipt).

Acknowledgement of complaint 3 days

Site visit	High priority	3 days
	Medium	10 days
	Low	15 days

Progress report to complainant

High priority	20 days
Medium	25 days
Low	30 days

Decision on what action to take

High priority	30 days
Medium	35 days
Low	40 days

A complainant will be informed of the Council's decision on the appropriate action within 3 days of this time scale.

TYPES OF ACTION

Because the Council's powers are discretionary and they have to demonstrate any enforcement action is expedient and proportionate, the emphasis will be on negotiating a resolution with the subject in the first instance.

Complainants should be aware that, for a variety of reasons, it may not be expedient to take enforcement action in every case.

In deciding the most appropriate type of action in planning matters, the Council

must demonstrate what harm is caused to the amenity of the area. The choice will be:

- **No further action** - no breach has occurred, no harm to amenity or environment.
- **Regularisation** – including cessation of works/use, submission of planning application, discharge of conditions.
- **Formal action** – enforcement or other formal notice, prosecution.

Therefore officers will make the following approach:

Stage 1 – Advice, Informal letters, seek to negotiate cessation of works/use or reinstatement of land, discharge of conditions.

Stage 2 - Formal letters, written warnings Formal Notices (e.g. Planning contravention notices), submission of planning application

Stage 3 - Formal caution, enforcement or other formal action, Prosecution.

PROACTIVE ENFORCEMENT

For proactive enforcement cases the following measures will ensure decisions are followed up with the developers:

- A note has been attached to all permissions, consents and approvals advising of need to comply with approved plans and details and all conditions and planning obligations
- Details of any approvals required by conditions and agreements will be followed up.
- Failure to meet requirements of condition or agreement within specified time will be investigated.
- Cases will be prioritised the same as the reactive enforcement cases as described above
- A three stage approach will be adopted the same as with reactive enforcement as described above.
- Monitoring development to completion in accordance with the requirements of the approved plans, conditions and obligations.
- Continued monitoring of ongoing limitations and restrictions following completion of development.