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Report

Report subject: Enforcement Policy and Procedures.

Report to: Northern Area Committee

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Report Summary

This report outlines how the Council's Planning Enforcement Team deals with breaches of planning control drawn to its attention by third parties or; established as a result of monitoring compliance with plans, conditions and Section 106 Obligations attached to planning permissions.

Introduction

This report has been brought before Members as a result of request made at the last meeting.

Members will be aware that SDC has for a considerable period of time placed strong emphasis on the enforcement of planning control.

The Council has a dedicated Enforcement Team, comprising two Enforcement Officers (one of whom is at Planning Officer level) and, since April 2004, a Compliance Officer. The Team is led by a Principal Planning Officer and also supported by a part-time Administrative Assistant.

The Team investigates all enquiries received by the Council in relation to development undertaken without planning permission, listed building or advertisement consent and breaches of conditions attached to such permissions/consents and seeks to have such matters regularised; either by securing removal of the offending development or negotiating the submission of a retrospective planning application, as required.

The Team also deals with the display of unauthorised signage and unauthorised works to TPO trees and trees in Conservation Areas.

Additionally, the Team routinely monitors all plans, conditions and Section 106 Obligations attached to planning permissions granted since May 2004.



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Enforcement Powers

The Council has discretion on whether to take enforcement action and exercise its judgement as to whether it is considered “expedient” in the public interest to do so. This is considered in more detail below, however first it is helpful to examine the number of different formal enforcement ‘tools’ which the Council can use:

- Planning Contravention Notice (PCN) –served where a breach of planning control is known or suspected, to require more information on activities/ownership. Failing to respond or giving false or misleading answers is an offence.
- Enforcement Notice -requiring steps to be taken to remedy a breach of planning control. Can be appealed to the Planning Inspectorate, but if upheld, failure to comply with the Notice is an offence.
- Stop Notice -requiring a breach to cease within a much shorter period of time. Must always be served with an Enforcement Notice. No right of appeal. Failing to comply is an offence.
- Temporary Stop Notice (TSN). This is a new power introduced in Spring last year to deal with breaches which it is considered should cease immediately. There is no right of appeal, but service of a TSN must still be expedient. A TSN lasts 28 days following which an Enforcement Notice together with a Stop Notice must be served to continue the prohibition. Failing to comply with a TSN is an offence.
- Breach of Condition Notice (BCN) -requiring conditions to be complied with. No right of appeal. Failure to comply with a BCN is also an offence (but subject to a lower penalty than above).
- Injunction –used to restrain any actual or expected breach of planning control where other remedies available are considered likely to prove ineffective, i.e. exceptionally in the most serious cases. Breaching an Injunction is regarded as contempt of court and can, depending on the circumstances, render the offender liable to be committed to prison.
- “Untidy Site” Notice -where the appearance of land is harming local amenity. There is a right of appeal to the Magistrates Court. Failing to comply is an offence, again subject to a similar penalty to that which applies in respect of BCNs.

However, by far the most effective of all methods of dealing with enforcement enquiries is negotiation (see further below).

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 such breaches can also lead to criminal proceedings being brought by the Council in addition to/ instead of enforcement action. These issues are also dealt with by the Enforcement Team. However specialist advice i.e. (Conservation or the Arboricultural Officer) is also engaged in such cases.

The Government’s policy guidance on the use of enforcement powers is largely set out in PPG18, Circular 10/97 and the 1997 publication “Enforcing Planning Control: Good Practice Guide for Local Authorities” however other Circulars covering particular subjects, such as Circular 11/95 “The Use of Conditions in Planning Permissions” or Circular 01/2006 “Planning For Gypsy and Traveller Caravan Sites” can also be relevant considerations.

Enforcement Policy

Members will recall that it is not an offence to breach planning legislation; development carried out without planning permission is however at risk of enforcement action. The principal objective of enforcement legislation is to remedy a breach of planning control 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.

The Council informally adopted its own enforcement policy following a period of public consultation in 1999. The Council’s policy is fully in line with Government’s current general approach to enforcement, as set out in PPG18:

“(1) Parliament has given LPAs the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate planning enforcement action);

(2) The Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is “maladministration” if the authority fails to take effective enforcement action, which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice;

(3) In considering any enforcement action, the decisive issue for the LPA should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest;

(4) Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site); and

(5) Where the LPA’s initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop. (LPAs should bear in mind the statutory time limits for taking enforcement action) “

The Adopted Local Plan also advocates an approach of resolving breaches by negotiations but not to delay formal enforcement action where such negotiations are unsuccessful.

Priorities for Enforcement:

The Council’s adopted Enforcement Policy and Procedure identified the strategic priorities of the service as: -

1. *Improving speed of response.* Performance indicators (see below) were introduced to counteract the perception that enforcement was slow and nothing was happening.
2. *Resolving longstanding cases.* At the time there were a significant number of cases where an enforcement notice had been issued but compliance had not been achieved. The number of such cases is now very small and generally represents the ‘hard core’ of offenders who are determined to evade planning legislation and which involve more complex considerations in attempting to resolve the breach.
3. *Involving local communities.* In 1999 a series of talks were given by the Enforcement Team to individual Parish Councils. More recently the Principal Planning Officer (Enforcement) has also given presentations to Parish Councils at their invitation and Development Services’ Parish Council seminar and Stakeholder Focus Group meetings and Member Update meetings on enforcement issues.

Additionally, each Member of the Council should receive an e-mail confidential quarterly update on progress on all current cases where an Enforcement Notice has been authorised or issued (also referred to as Stage 3 cases-see explanation below). This service has been suspended whilst issues surrounding the technology and presentation of the information have been resolved but has recently re-commenced.

The Quarterly Digest also contains a detailed breakdown of the number of enforcement cases received, and the number of cases resolved either through negotiation, obtaining planning permission or formal enforcement action during the quarter.

To meet the agreed strategy, the Enforcement Team then evolved detailed priorities for enforcement action. This took full account of recognised best practice referred to above. The Team endeavours to progress enforcement cases as quickly as possible at every stage. However, not every case can be given top priority at all stages. The team’s current priorities for taking enforcement action are set out in order below:

1. Any unauthorised development including a breach of condition which causes immediate and irremediable harm in the locality;

2. Unauthorised demolition or partial demolition of a building which it is essential/desirable to retain;
3. Any unauthorised development or breach of condition which results in serious harm to amenity in the neighbourhood;
4. Any unauthorised development where the time limit for taking enforcement action will expire within the next 6 months;
5. Unauthorised development in the New Forest Heritage Area, Cranborne Chase and West Wiltshire Downs AONB, Designated Conservation Area or which affects a listed building or its setting.
6. Any long-standing case which was drawn to the Council's attention more than 2 years previously or where no action has taken place for 2 years.

The Enforcement Process

All breaches of planning or other controls over development are potentially serious matters. In deciding whether enforcement action is expedient, the Council has to ask itself three, fundamental questions:

- Is there an unacceptable effect on amenity/ the use of surrounding land or buildings?
- Would planning permission be granted?
- Could conditions be imposed to remedy any harm?

If the answer to the first question is *yes*, then enforcement action is likely to be expedient. By contrast, if the answer to the latter two questions is *yes*, then it is questionable whether such action is merited in the public interest and enforcement would have to be carefully justified, particularly if a planning application had not been invited prior to any action.

The Government has recognised that planning enforcement is labour-intensive. Thorough investigation of the relevant planning history and painstaking evaluation of the facts are vital to underpin effective enforcement. (Source: Enforcing Planning Control: Good Practice Guide 1997).

The principles of good enforcement by local government officers enforcing planning and other legislation are set out in the 'Enforcement Concordat' jointly prepared by the Cabinet Office and the Local Government Association in the late 1990s. The Concordat sets out general policies and procedures for enforcement functions which contribute to Best Value.

The Council's general procedures for investigating enforcement enquiries are set out in its policy. These are expanded upon in a loose –leaf practice manual utilised by team members. Recognised best practice was adopted in the formulation of the Council's enforcement procedures and in compiling the practice manual.

Where an enquiry concerning an unauthorised development is received by the Enforcement Team, a prompt investigation will take place and evidence obtained, following which the Team will:

- Warn those responsible that they are in breach of planning control and should stop and put things right to avoid formal action, or
- Request submission of a retrospective planning application, so that conditions can be imposed to regulate the effects of the development; or
- Formal enforcement action will be started.
- Complainants will be kept informed during the stages of the process. Where action cannot be taken, we will explain why.

A significant minority of enquiries received are anonymous. This can be due to fear of disclosure of the source of enquiry to the individual (s) whose activities have been queried, however all enquiries are treated in confidence by the Council. Whilst the Team currently does respond to anonymous enquiries, in practical terms they make

any breach uncovered difficult to deal with as there is little evidential value in the information supplied. The enquirer cannot be contacted to obtain further information or evidence sought from them at a later date to assist with any further proceedings. Perhaps more significantly from the enquirer's perspective, they cannot receive any feedback on the matter they have raised. Such enquiries also have the potential to be malicious or vexacious. At least one adjoining District (West Wilts) no longer accepts anonymous enquiries.

Team Performance & Workload / Staffing/ Process Issues

The Enforcement Team currently has 3 key performance indicators, which were introduced to improve the speed of response to enquirers, one of its key priorities identified above. These are:

- No of cases registered within 1 day;
- No of sites visited within 3 days;
- No of complainants contacted within 10 days.

Analysis of the records of enquiries received over the past year the team shows mixed results. The team did well in the middle two quarters in relation to visiting sites within 3 days, when 80% of sites were visited in time. The team also did well in the performance in terms of registering cases in the last two quarters, when 90% of enquiries were registered in time. All third party enquirers have been contacted within the 10 -day period throughout the year.

However in the first two quarters, registration of enquiries dipped below 50% and sites visited within 3 days also dipped below 50% in the last quarter. The reasons for the above are complex but are likely to have been affected by incoming staff in the first two quarters and training/experience issues, a large number of planning and enforcement appeals received and prioritising workload by the Administration Assistant, personnel issues and seasonal weather conditions in the last quarter (source: Quarterly Digest).

The overall workload of the team can be broken down into three categories:

- Stage 1 – Initial enquiries, all of which are investigated;
- Stage 2 – Matters which are identified as breaches of planning control after an initial investigation;
- Stage 3 – Matters that have been reported to Committee or the HDS, where enforcement action has been authorised;

Analysis of the number of enforcement enquiries received shows that the team 's workload is increasing, year on year. The number of enquiries received in 2003 was around 800, compared with the total number of complaints received in 2002 and 2001 (both around 700). Almost 900 enquiries were received in 2004 and this figure has been exceeded in 2005. It is clear that the rising number of cases is a long term trend and it is significant to note that in 1997 the Council dealt with around 400 enforcement enquiries and had the same number of enforcement officer posts at that time.

Following changes to the Council's Constitution in Spring 2005, formulated to speed up formal enforcement action, the Head of Development Services (in consultation with Ward Members) can decide whether to issue an Enforcement or Stop Notice. The HDS can also authorise Planning Contravention Notices, Temporary Stop Notices, Breach of Condition Notices, or Untidy Site notices and can instruct the commencement of legal proceedings. Ward Members are consulted when the Council is contemplating issuing an Enforcement Notice. They can still require the matter to be referred to Committee, if they feel there are issues in the case which merit public debate.

Investigations by Officers can involve a number of activities including: visiting sites, negotiating with developers and neighbours, serving formal notices to obtain information, undertaking land registry searches, undertaking research of planning histories and seeking legal advice from the Council's solicitors. Team members make written reports concerning enforcement action to the relevant Area Committees or to the Head of Development Services and represent the Council at appeals and at Court where necessary. Additionally the Principal Planning Officer and one of the Enforcement Officers carry a caseload of more complex planning or Lawful Development Certificate applications involving enforcement issues, and make reports to the relevant Area Committees.

The enforcement process is also 'cyclical'; following issue of a Notice the Council is likely to have to devote further Officer resources to fighting an appeal, most often at a hearing or public inquiry. Preparation for appeals in particular inquiries places considerable demands on Officer resources. Appealing against Enforcement Notices is attractive to offenders because at the very least, it lengthens the time in which they have to comply; indeed one of the most common grounds of appeal pleaded is to extend the period for compliance with the Notice-even if appeals are dismissed on other grounds Inspectors will extend the period for compliance as the offender is entitled to believe that his appeal will succeed.

As the Planning Inspectorate takes increasingly longer to deal with appeals, lodging an appeal against an Enforcement Notice looks even more attractive to offenders. It increases the delay in bringing enforcement cases to a conclusion, thus perpetuating the harm to amenity whilst seeming to let the developers continue with impunity. The above can add to the public's frustration with the length of the enforcement process, but this is totally beyond the Council's control.

Additionally preparing prosecution cases places further demands on Officer time with attendance at the Magistrates Court required in each case, often for a considerable part of a day and with defendants frequently successfully persuading the Court to delay proceedings to a later date.

Enforcement Outcomes

Analysis of the enquiries received has established that a consistently in excess of 90% of all the enforcement cases received are resolved through the Enforcement Team successfully negotiating the remedying of the breach either through requiring the use to cease, the undoing of unauthorised work or submission of a retrospective application, without the need for formal action:

- In 2003, the Team resolved 788 cases without recourse to formal action.
- In 2004, the Team resolved 957 cases without recourse to formal action.
- In 2005, the Team resolved 997 cases without recourse to formal action.

The above approach is fully in line with the Government's approach to enforcement in PPG 18, which advocates negotiations as a pre-requisite to formal action, which should never come as a 'bolt from the blue' and in line with the general approach set out in the Local Plan.

The above and the fact that the majority of formal notices are now routinely authorised by the HDS, also means of course that much of the work of the Team is not apparent other than to parties directly affected. This can lead to a perception that minimal enforcement work is being undertaken when, as is demonstrated above, the contrary is in fact the case.

The above figures also reveal however that the number of more complex or difficult cases, i.e. those progressing to stage 2 and subsequently to stage 3 are also increasing. Notwithstanding the above, there has been a significant increase in formal enforcement activity over the past three years:

- In 2003, the Council served 11 Enforcement Notices and 25 BCNs (4 cases where Enforcement Notices had been served were resolved within the same period).
- In 2004, the Council served 9 Enforcement Notices including one Untidy Site Notice and 54 BCNs. Two enforcement cases were resolved following Committee authorisation, without the need to issue the Notice (7 cases where Enforcement Notices had been served were resolved within the same period). The number of prosecution cases is unrecorded but was in excess of 7.
- In 2005, the Council served 20 Enforcement Notices including 3 Untidy Site Notices. It also issued one TSN (shortly after the new power was introduced) and obtained an Enforcement Injunction at the County Court which was subsequently complied with. Additionally in 2005, 8 prosecution cases were instructed by the HDS and 9 such cases were heard at the Magistrates Court (6 cases where Enforcement Notices had been served were resolved within the same period).

At the time of writing, there are 31 cases where, following the Council taking formal action, compliance is still necessary, in most cases because an appeal has been made or because the time for compliance has yet to expire. Additionally, there are 11 ongoing cases where the Council is prosecuting offenders.

The above can be contrasted with 2002, when 4 Enforcement Notices and one BCN issued comprised the sum total of formal enforcement activity, with approximately 700 cases resolved without formal action.

It should also be recalled that a permanent post carrying a significant level of responsibility within the team was vacant for almost a year up to January 2005, notwithstanding successive attempts to recruit a replacement member of staff. Thus there have been significant periods during the last two years when the team has not been operating at its full staff complement. The Principal Planning Officer (Enforcement) joined the team just over three years ago and inherited a backlog of older, more complex cases, which had previously proved difficult to resolve, partly due to high staff turnover and lack of continuity within the team.

Compliance Monitoring

As noted above, the Compliance Monitoring Officer was recruited in April 2004 to monitor planning permissions, approved plans and Section 106 Obligations as part of a new, proactive approach to enforcement which also includes a more robust approach to prosecution of offenders.

The CMO routinely checks Building Control information and cross –references it with information on the planning files. Developments are checked at key stages in the development process to ascertain compliance with approved plans and conditions, in accordance with a scale of priorities. Routine checking whether development is proceeding on site in accordance with the approved plans also takes place.

If it is established that the approved plans are not being complied with, the development will be entirely unauthorised and any conditions would not apply. If the breach caused demonstrable harm, formal enforcement action would then be necessary and the matter will be passed to another member of the Team to deal with.

If it is established that conditions have not been complied with, a Breach of Condition Notice (BCN) will usually be served on the persons responsible (normally the developer, but the agent and owner may also be regarded as responsible in legal terms).

Obligations are now monitored in accordance with the same procedures for conditions set out at above. Liaison between different services is required, to ensure that their respective requirements have been met. If a breach of the Obligation is established, the developer is at risk of immediate enforcement action by the Council initiating injunctive proceedings in the Courts. If such a breach is established, a 'letter before action' would then be sent to the applicant. This will require them to undertake to comply with the terms of the Obligation within a certain time period, or face injunctive proceedings in the Courts to require them to cease the development. If the Obligation is not then honoured legal proceedings would be commenced.

In addition to the above the CMO also monitors Premises Licencing and HGV Operator Licences applications and ensures that any relevant planning considerations are drawn to the attention of the relevant authority where appropriate.

To date, it is considered that the CMO post has achieved the following outcomes:

- Earlier detection and remedying of breaches, often without the need for formal action;
- Earlier compliance with conditions, again often without the need for formal action;
- Earlier compliance with Section 106 Obligations;
- Increased awareness of enforcement activity and the Council's lack of tolerance of breaches.

It is difficult to quantify the effect that the CMO post has had. However, the above has in all probability forestalled a considerable number of enforcement enquiries from third parties, a number of which would in all likelihood have taken a considerable period to resolve arising from the issue of formal notices, appeals etc.

Conclusions

The Council has a number of formal enforcement powers, which can and are increasingly used to require the remedying of breaches of planning control.

Notwithstanding a year on year rise in the number of enquiries received, the Enforcement Team are increasingly taking a more robust approach to enforcement by serving more formal notices and prosecuting more offenders, whilst still negotiating an informal settlement without resort to formal action where it is appropriate. The above approach is fully in line with government and the Council's own policy on enforcement. The vast majority of enquiries are resolved by negotiation which in turn gives the impression that there is little enforcement activity, when as can be seen the converse is in fact the case.

Compliance monitoring has also been an effective supplement to traditional reactive enforcement activity, assisting in the earlier resolution of breaches as well as raising the profile of enforcement with developers.

RECOMMENDATION: That the Committee note the report.

Background Papers:

- "Review of the Planning Enforcement System in England" consultation paper published by the OPDM 2002;
- PPG18;
- Circular 10/97;
- Enforcing Planning Control: Good Practice Guide For Local Authorities" published by DETR 1997;
- SDC Enforcing Planning Control Policy Document;
- SDC Enforcement Manual.

Implications:

- Financial: None. Set out in the report.
- Legal: Set out in the report.
- Human Rights: This report does not have any direct Human Rights implications for any party. Any interference in individual Article 8 and Article 1, Protocol 1 rights would be proportional and in the public interest.
- Council's Core Values: Protection of the environment; fairness and equality; open learning Council.
- Ward(s) Affected: All