

## CODE OF PRACTICE -

## PLANNING SERVICES APPENDIX 6 (ANNEX 2)

### ADDENDUM ON ENFORCEMENT OF PLANNING CONTROL

#### 1. Policy

1.1 The Council's policy on Enforcement as set out in the adopted District-Wide Plan is as follows:

*"In determining what, if any, enforcement action to take where development has been undertaken either without the requisite planning permission or consent or in breach of a planning condition the council will:*

(a) *take prompt, appropriate enforcement action in cases where:*

(i) *it considers the development to be demonstrably harmful to public amenity or public interest and would not gain approval even with the imposition of any planning conditions; or*

(ii) *a planning application has been invited but has not been submitted;*

(b) *serve a breach of condition notice in cases where it considers that the breach is demonstrably harmful to public amenity or public interest;*

(c) *serve a planning contravention notice or seek a prompt planning application in cases where it considers that the development is demonstrably harmful to public amenity or public interest but could be made acceptable by imposing planning conditions;*

(d) *allow an appropriate and reasonable period of time for compliance with its requirements while ensuring that good planning is not prejudiced by virtue of the development having been undertaken;*

(e) *where possible, issue a stop notice in cases where it considers the development to be exceptionally harmful to public amenity or public interest;*

(f) *commence appropriate legal proceedings in cases where there is evidence that an offence has been committed."*

1.2 *The District Council's actions on enforcement of planning controls will, at all times, be dependent on available resources. The District Council undertakes to keep under constant review the resources required within the constraints of Council budgets.*

#### 2. Procedure

2.1 *There may be some exceptional circumstances where the following targets are not met. The time taken to deal with an enforcement complaint will also be dictated by the time officers give to a person to comply with a request or offer to submit a planning application. The time given to a person very much depends on the nature of the planning problem and what the breach of planning control is. However, the following is the preferred level of service for enforcement.*

2.2 *An incoming complaint is dated and passed to the Principal Officer.*

- 2.3 *The Principal Officer will give the complaint a priority level of either A or B and allocate the case to an Enforcement Officer.*
- 2.4 *Category A implies a severe and/or urgent case requiring immediate attention. This would include harmful works to a listed building or new physical development which would present a serious danger to members of the public; a Gypsy, Roma or Traveller incursion; works to a tree subject to legal protection; and works to a protected hedgerow. A site visit should be carried out within 7 working hours.*
- 2.5 *Category B covers all other cases that are a less severe and/or less urgent case requiring prompt attention, and a site visit should be carried out within 14 working days.*
- 2.6 *The case will be recorded on MVM and a colour coded card will be created and placed in individual Enforcement Officers boards to show the progress of the complaint. The investigation of the complaint will involve checking Council and other records, and assessing the proposal against planning legislation, policy and planning guidelines. The outcome of these investigations will determine what course of action shall be taken. This may require a report being prepared for Legal Services to commence enforcement action or proceedings. The Principal Officer will confirm any decision that it is not expedient to take enforcement action.*
- 2.7 *Depending on the outcome of the investigations the complainant and other interested parties, Councillors etc., will be advised of what steps are being taken or what the outcome of the investigation was.*
- 2.8 *There are seven key events possible in resolving an enforcement complaint:*
- (a) no action appropriate;*
  - (b) inviting and receipt of a planning application (see also 2.9 below);*
  - (c) voluntary cessation of the use, or the alteration of the development to meet approved plans, or the making of a revised proposal, which is considered acceptable;*
  - (d) serving an enforcement notice (or breach of condition notice);*
  - (e) serving a stop notice;*
  - (f) taking criminal or injunctive court action;*
  - (g) action by another service or organisation.*

*The level and nature of action will have a significant impact on the application of resources.*

- 2.9 *Retrospective planning applications will not be invited by officers where it is obvious that they have no prospect of being granted. However, this does not preclude the person/organisation responsible for the breach making any such application.*

### **3. Communications**

- 3.1 *Communications with complainants and those complained of, is an important aspect of the enforcement process. The acknowledgement letter sent to all complainants has the Enforcement Officer contact details, and invites the complainant to ring or email the Officer for updates on the investigation. The targets outlined below relate to these key events, and also have attendant administrative requirements as follows:*
- (a) *acknowledge within 5 working days receipt of external complaints by letter or email.*
  - (b) *within 5 working days of closing a case write to complainant or interested parties advising them of the findings of the Enforcement Officer.*
  - (c) *within 10 working days of the receipt of correspondence from a complainant a response will be sent provided that the correspondence does not raise complex or legal issues (this would not include repetitive or vexatious correspondence or correspondence which had already been covered in an earlier response).*
  - (d) *in the absence of a planning application, then the person/organisation complained about will be informed that enforcement action will commence, except in urgent cases or in exceptional circumstances.*
  - (e) *Regular updates will be included in the Members Bulletins about cases which:*
    - (i) *Enforcement Notice action has commenced*
    - (ii) *Enforcement Notices have been complied with*
    - (iii) *Enforcement Notices have not been complied with and prosecutions have commenced*
    - (iv)

#### **4. Confidentiality**

- 4.1 *The Local Government (Access to Information) Act 1985 indicates that certain types of information are confidential. Of relevance to Planning Enforcement, are the following:*
- (a) *the identity of those indicating breaches of planning control;*
  - (b) *financial/business affairs;*
  - (c) *where Counsel's opinion is involved or contemplated; and*
  - (d) *where prior disclosure would reveal that Notices or Orders are proposed.*

*The District Council will, in most cases, debate enforcement items in public session, as the exercise of these powers is in the public interest.*

- 4.2 *As far as possible and recognising the above limits, complaints, other than from public organisations, will be kept confidential. Similarly the affairs of operators/owners of businesses will also be respected.*

4.3 *However, it must be recognised that in pursuing certain complaints (e.g. my neighbour's apples fall in my garden and there is only one apple tree) it is obvious who the complainant must be. In addition, if written comments are made about planning applications, in other public arenas, in connection with a planning appeal, or in court, then to secure control, that initial confidentiality can no longer be relied upon.*

4.4 *At present, cases are charted on MVM and also manually on a "battle board" which includes the following territories:*

*'Pending.'* *'Under Investigation.'* *'Application Invited.'* *'Application Received.'* *'Next Committee.'* *'Enforcement Authorised.'* *'Notice Issued.'* *'Notice Appealed.'* *'Prosecutions.'*

4.5 *Each Enforcement Officer's cases are checked monthly by the Principal Officer from a list produced via MVM and live cases where the total time elapsed since first logged has exceeded three months and the case has not yet generated a planning application or enforcement action are reviewed. The target is to minimise the number of such cases and to review them each month to see if any change in approach is called for.*

## **5. Site Visits**

5.1 *In investigating breaches of planning control, or suspected breaches, Enforcement Officers or others exercising the same powers bestowed by the Authority, will not necessarily take the same approach as other officers. If they are asked to investigate someone doing something, in particular a use that others consider they should not be doing, they may well wish to monitor the situation at random. They are exceedingly unlikely to make an appointment to forewarn the operator complained of. Indeed, to do so can enable some operators to effectively hide what they are doing to the Enforcement Officer, but not the neighbour who is complaining and who then cannot understand why the Enforcement Officer cannot see what is upsetting them. Similarly, an officer arriving at a site may well briefly note what they can see before marching up to the door to announce their presence. Not all activities complained of take place in normal working hours, and Enforcement Officers do visit sites outside those hours.*

5.2 *In an age of concern about crime or worry about "who is up to what" this is difficult to reconcile with the Council's Code concerning safer communities. However, each Enforcement Officer or other officer carrying out similar duties has a name badge, and other specific rights of entry documentation which can be inspected on request and a courteous explanation of what the officer is doing will be given.*

5.3 *The rights of entry are satisfactorily used on an informal basis in the vast majority of cases and such co-operation is appreciated. The rights stem from the Town and Country Planning Act 1990 Sections 196A-196C. The rights are briefly as follows:*

- *Admission to any land at any reasonable hour*
- *Admission to dwelling house if twenty-four hours notice has been given to the occupier*

*The rights can be secured formally if they are denied and wilfully obstructing an officer is an offence.*

- 5.4 *Some complaints may be referred to other specialists, such as the Council's Landscape Officer, or to other departments of the Council, who will then be expected to process the matter. If the Enforcement Officer cannot control the matter, but knows a man who can, then the complainant/commentator will be advised whom to contact.*