

CABINET - 4 SEPTEMBER 2002

PLANNING ENFORCEMENT - POLICY GUIDANCE

1. INTRODUCTION

- 1.1 In May 2000, the former Planning and Transportation Committee agreed to publish an enforcement policy in the form of a booklet which explains how we enforce the planning regulations and sets out appropriate standards of service.
- 1.2 A consultation draft was published in August 2000, a copy of which was sent to all Town and Parish Councils in November 2000 for their comment. Copies have also been made available to the public in the planning reception area.
- 1.4 The purpose of this report is to consider the representations received and to agree the revised policy guidance.

2. RESPONSE TO CONSULTATIONS

- 2.1 The response to the consultations with the Town and Parish Councils has been disappointing, with only three Parish Councils responding (Bramshaw, Hale and Hythe and Dibden).
- 2.2 This disappointing response was raised at a liaison meeting with the Executive of the New Forest Association of Local Councils in October 2001. The Association were sent further copies of the draft policy guidance on 26 October 2001 but to date, no further comments have been received.
- 2.3 No comments have been received from members of the public.
- 2.4 The Parish Councils that did respond made the following points:
 - the introduction and the section on government guidance gives encouragement to people to contravene the planning regulations by stressing how difficult it is for the Council to take enforcement action;
 - the guidance should make it clear that the Council can seek to recover its costs when carrying out works in default to secure compliance with the requirements of an Enforcement Notice;
 - people who knowingly contravene the planning regulations know that 90% of the time that they will get away with it;
 - the fee for retrospective planning applications should be at least double the normal fee; and

- more detail should be shown on approved plans, such as actual measurements.

3. COMMENTS ON THE CONSULTATION RESPONSES

- 3.1 The policy guidance is more weighted towards helping to explain our procedures to those people affected by unauthorised development, rather than to those who carry out unauthorised development. Many people who contact the Council about alleged breaches of planning control are surprised that the Council cannot always take immediate action to stop an unauthorised development. One of the aims of the policy guidance is to help people understand that there are a number of issues that have to be taken into account before enforcement action can be commenced.
- 3.2 For these reasons, it is not proposed to change the wording of the introduction or the section on government guidance about how and when to take enforcement action.
- 3.3 It is accepted that the policy guidance should make it clear that the Council can seek to recover its costs when carrying out works in default and such a statement has now been incorporated into the policy.
- 3.4 The other issues raised with regard to the deliberate flouting of the planning regulations, the setting of higher fees for retrospective planning applications and the provision of more details on application plans are matters which are outside the scope of the policy guidance.
- 3.5 However, the Planning Green Paper has acknowledged that more effective sanctions are needed against *"those trying to cheat the system"* and that the *"current enforcement system is unduly complex and cumbersome"*. The Green Paper states that the Government intends *"to review current arrangements with the intention of introducing simpler procedures. As part of this process we will look again at whether there should be punitive charges for retrospective applications and whether a deliberate breach of planning regulation should constitute an offence immediately pursuable through the courts."*

4. COMMENTS OF THE ECONOMY AND PLANNING REVIEW PANEL

- 4.1 The report was considered by the Review Panel on 19 June 2002. The Panel Members agreed the planning enforcement policy guidance, subject to the amendment referred to above.
- 4.2 Since then, the enforcement policy has been revised slightly to include guidance concerning breaches of Listed Building control and illegal works to protected trees (TPOs). The Chair of the Review Panel, Cllr Wyeth, has agreed that these minor revisions are acceptable and that there is no need to refer the enforcement policy back to the Review Panel.
- 4.3 A copy of the revised enforcement policy is attached at Appendix 1.

5. FINANCIAL IMPLICATIONS

5.1 There are no financial implications arising directly from this report.

6. ENVIRONMENTAL IMPLICATIONS

6.1 Having agreed procedures in place which helps people to understand how the enforcement system works should assist the Council in taking effective enforcement action which in turn, will help to protect the environment from inappropriate forms of development.

7. CRIME AND DISORDER IMPLICATIONS

7.1 There are no crime and disorder implications arising directly from this report.

8. PORTFOLIO HOLDER COMMENTS

8.1 *The Portfolio Holder supports the adoption of the revised planning enforcement policy guidance.*

9. RECOMMENDATION

9.1 That Cabinet agree the attached planning enforcement policy guidance.

For Further Information:

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Background Papers:

NEW FOREST DISTRICT COUNCIL PLANNING ENFORCEMENT POLICY GUIDANCE

INTRODUCTION

This leaflet describes the Council's policy on Planning Enforcement and the various formal actions which the Council can take. It is a guide for those affected by breaches of planning and listed building control who may wish to know what steps the Council may take and the timescale involved in achieving a result.

Enforcing compliance with planning control can be both time consuming and complex. In most cases the Council will try to negotiate compliance rather than pursue formal action. However, in those cases where serious environmental damage or harm to the amenities of neighbouring residents is taking place, or where damage is being caused to protected trees and/or listed buildings, then we will use the full range of powers available to us to bring the matter speedily under control.

Whilst it is a criminal offence to carry out unauthorised works to a listed building or a protected tree, it is not illegal or an offence to carry out a development or use that does not have proper planning permission. It is merely unauthorised and no criminal offence has been committed. Only when the Council have served formal enforcement or similar notices, all avenues of appeal have been exhausted and time periods for compliance have expired, does a use or development become illegal and a criminal offence.

The person against whom an enforcement notice is served has rights of appeal which must be respected although this may result in some delay in securing a resolution of the matter.

The Council can only use its enforcement powers effectively if there is sufficient evidence available to demonstrate clearly that a breach of planning and/or listed building control has occurred.

This leaflet compliments the publication of the Development Control Users Guide and the Listed Building Guide for owners and occupiers.

OUR ENFORCEMENT POLICY

- We will investigate all complaints about breaches of planning and listed building control, however they are received.
- All complaints are logged onto the Council's computerised enforcement records system and acknowledged by letter within three working days. The acknowledgement letter provides the complainant of the name of the investigating officer and a contact telephone number.
- Within 15 working days of receipt of a complaint we will try to notify the complainant as to how the Council intends to deal with the matter although at this stage we may not be able to say precisely what action we can take.
- High priority will be assigned to cases involving unauthorised works to protected trees and listed buildings, which may result in immediate enforcement action being taken.
- All complaints will be treated in confidence. The identity of the complainant will not be revealed unless consent is given to do so. For this reason, our enforcement files are not available for public inspection.
- Anonymous complaints may receive a lower priority as we will be unable to contact the complainant for further information which may be needed to assist our enquiries.
- All complainants will be advised of the outcome of our investigations and what action, if any, the Council proposes to take to remedy the breach. In those circumstances where the Council does not take enforcement action, an explanation will be provided.
- We will advise those 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 planning application. In such circumstances, it will be made clear that the offer to submit a retrospective planning application is made without prejudice to any final decision the Council may take in the matter.
- We will normally suspend enforcement proceedings whilst considering a valid retrospective planning application unless there are good reasons not to.
- If appropriate, we will try to suggest an alternative site where a use could perhaps be more appropriately located.
- We will 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.
- We will pass on complaints which fall within the province of other agencies to the relevant department.
- We will liaise with the Council's Building Control Service in monitoring new developments and checking compliance with planning conditions imposed on planning permissions where the Council has a Building Control presence on site.

HOW TO COMPLAIN ABOUT A BREACH OF PLANNING CONTROL

- All suspected breaches of planning and listed building control should be reported to the Council - we rely upon the help of the public to bring such breaches to the Council's attention.

- Unauthorised works to listed buildings and protected trees should be reported immediately. In all other circumstances, it is normally best if complaints about possible breaches of planning control are made in writing and give us as much detail as possible about the site and what is happening there. This will enable the investigation to be targeted precisely and effectively. Your letter should be addressed to the manager of the Projects and Enforcement Team:

Mr S Avery
Principal Planning Officer
Environment Services
New Forest District Council
Appletree Court
Lyndhurst
SO43 7PA

- In respect of unauthorised works to protected trees, please telephone the Tree Help Line: 023 80285330.
- Sometimes the Council may have to call upon complainants to give evidence to support their complaint. An information/evidence 'pack' is available to help guide neighbours in monitoring activities where this is appropriate.

WHAT DO WE DO NEXT ?

- Investigate the details of the complaint.
- Establish whether a breach of planning or listed building control has taken place.
- Try to negotiate a solution with the "offender" if the development/use can be stopped or if there is a possibility that planning permission might be granted.
- Where there is insufficient evidence, advise the complainant that no action is proposed.
- Otherwise we will gather evidence as necessary to be satisfied that formal action is justified and has a reasonable prospect of success.
- Consider the expediency of taking formal enforcement action having regard to the development plan and all other material considerations.

HOW DO WE TAKE FORMAL ACTION ?

- Notify the complainant and offender that enforcement action is being considered - this allows a further chance for a negotiated settlement.
- Begin preparing the formal Notices in consultation with the Council's Solicitors.
- Serve the Notices on all parties with a legal interest in the site.
- The Notice will specify the steps that need to be undertaken within an appropriate timescale.
- In the case of unauthorised works to listed buildings and/or to protected trees, the Council can proceed to instigate prosecution proceedings without having to first serve an Enforcement Notice (as such unauthorised works are illegal and represent a criminal offence).

WHAT HAPPENS AFTER NOTICES ARE SERVED?

The recipient of a Notice will either:-

- comply with the Notice (in which case the matter is closed); or
- contest the Notice by way of an appeal to the Secretary of State for Transport, Local Government & the Regions or challenge in a Court of Law, where this is appropriate.

Hearing a case on appeal will take time and can often delay proceedings particularly if, a public inquiry has to be arranged.

If the appeal against the Notice does not succeed the formal Notice comes into force, although there can be further challenges to the Council's action. If the appeal is successful and/or planning permission is granted, then this is normally the end of the matter.

If the Notice is upheld or there is no appeal but it is still not complied with, the breach then becomes illegal and the Council is able to prosecute the offender in a Court of Law.

We will try to keep complainants advised of progress at regular intervals during these proceedings.

GOVERNMENT GUIDANCE ON HOW AND WHEN TO TAKE ENFORCEMENT ACTION

It should not be forgotten that enforcement action is a **discretionary power**.

- Central Government guidance is set out in Planning Policy Guidance Note No. 18 and Circular 10/97. In summary, the advice from government is as follows:
- the decisive issue for the Council should be whether the breach of control would unacceptably affect amenity or the existing use of land and buildings which merit protection in the public interest;
- enforcement action should always be commensurate with the breach of planning control to which it relates;
- 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;
- enforcement action should not be taken solely to “regularise” development which is acceptable on its planning merits but for which permission has not been sought;
- if a breach of control is causing serious harm to public amenity, the Council should normally take vigorous action.

Many courses of formal action are dependant upon how long the use or development has been carried out.

In the case of breaches arising as a result of building operations, or the use of a building as a single dwelling house, an enforcement notice cannot be served after 4 years from the commencement of the breach.

Under Planning legislation, all cases other than those subject to the 4 year rule set out above are subject to a time limit of 10 years beginning with the date of the breach. After that time, no enforcement action can be taken and the use may have become lawful. Indeed, in those circumstances, the owner/occupier can apply for a Certificate of Lawfulness which has to be considered on the ‘balance of probability’.

However, there are no time limits for taking enforcement action against breaches of listed building control. Further government advice on enforcing listed building control is set out in Planning Policy Guidance Note No. 15.

THE ENFORCEMENT POWERS

Listed below is a brief description of the various enforcement powers available to the Council. This is not intended to set out in full all the detailed legal considerations, but simply to try to explain the general nature of the available enforcement powers. In all cases, the Council will seek to use the most effective power available to remedy a breach of planning control.

1. Planning Contravention Notice (PCN)

This Notice enables the Council to require detailed information about suspected breaches of planning control. A PCN may require the person on whom it is served to give information such as:-

- (a) details of all operations being carried out on the land which might be suspected as being a breach of planning control;

- (b) matters relating to the conditions or limitations subject to which any planning permission has been granted;
- (c) names and addresses of any person known to use the land for any purpose; and
- (d) the nature of any legal interest in the land and the names and addressees of any other person known to have an interest.

The service of a PCN does not stop the Council taking other formal action against a breach of planning control. The recipient of a PCN has 21 days to respond to it, but if there is no response a legal offence has been committed which can be subject to prosecution by the Council in a Court of Law.

Penalties for non-compliance with a PCN can result in a fine of £1,000. Similarly, if any person makes a false or misleading statement he/she shall be guilty of an offence on conviction (maximum penalty £5,000).

A PCN can not be served in respect of any suspected breaches of listed building control.

2. Enforcement Notice

This is the principal form of Notice used to deal with unauthorised development. As in all other forms of action it is subject to the Council and its legal advisors being satisfied that a breach of planning control has occurred and that there is sufficient and robust evidence to ensure that there is a reasonable prospect of success in pursuing formal action.

Above all, the Council must be satisfied that it is expedient to serve an Enforcement Notice having regard to the development plan and to any other material considerations.

Such a Notice must specify the time it takes effect and what steps must be undertaken to remedy the breach and a time period in which to undertake these steps.

An appeal against an Enforcement Notice must be made before the date on which the Notice takes effect (normally within 28 days of service). If an appeal is made, the requirements of the Notice are suspended until the appeal has been decided.

Non compliance with the requirements of an Enforcement Notice is a criminal offence against which the Council can instigate prosecution proceedings. The maximum fine in the Magistrates Court is £20,000 and unlimited in the Crown Court. The Council can also enter the site and carry out the works required by the Notice in default and then seek to recover its costs from the owner/occupier.

3. Listed Building Enforcement Notice

This is similar to an Enforcement Notice. The Notice may (a) require the building to be brought back to its former state; or (b) if that is not reasonably practicable or desirable, require other works specified in the Notice to alleviate the effects of the unauthorised works; or (c) require the building to be brought into the state it would have been in if the terms of any listed building consent had been observed. The Notice must specify time constraints for securing compliance with the requirements of the Notice.

There is a right of appeal against a Listed Building Enforcement Notice. The procedures are similar to those for an appeal against an Enforcement Notice.

If works subject to a Listed Building Enforcement Notice are later authorised by a retrospective application for Listed Building consent, the Listed Building Enforcement Notice will cease to have any effect although the liability to prosecution for an offence committed before the date of any retrospective consent remains.

4. Breach of Condition Notice (BCN)

If any conditions imposed on a grant of planning permission or listed building consent have not been complied with, the Council can serve a BCN to require the recipient to secure compliance with the condition/s.

The BCN will specify the steps which the Council consider should be taken or the activities which the Council consider ought to cease, in order to secure compliance with the condition/s specified in the Notice.

There is no right of appeal against a BCN although the Council's decision to issue a BCN can be challenged in the Court.

If the requirements of the Notice have not been met within the prescribed period, the person responsible is in breach of the Notice and shall be guilty of an offence on conviction (maximum penalty £1000) should the Council decide to prosecute the matter.

5. Injunctions

Where the Council consider it necessary or expedient for any actual or apprehended breach of planning or listed building control to be restrained, it can apply to the Court for an injunction. Such action would normally only be sought if the breach was particularly serious and was causing, or was likely to cause, exceptional harm to the local environment. Failure to comply with an Injunction may result in imprisonment.

6. Stop Notice

The Council can serve a Stop Notice at the same time as an Enforcement Notice where it considers it expedient to take urgent action, in order to bring a particularly offensive activity to stop sooner than an Enforcement Notice.

The exercise of the power to serve a Stop Notice is discretionary, and the fact that it is expedient to issue an Enforcement Notice, will not automatically mean that it will be expedient to serve a Stop Notice. If a Stop Notice is served it will have effect either immediately or within a few days and even if an appeal is made against the accompanying Enforcement Notice, the Stop Notice must be complied with or if not the Council can prosecute the offender.

As a breach of listed building control is in itself a criminal offence, there is no need or provision for a serving a Stop Notice in respect of a breach of listed building control.

7. Untidy Site Notices

The Council can serve a Notice on the owner/occupier of any land or building which is in an untidy condition to the extent that it is adversely affecting the amenity of a neighbourhood. The Notice requires the person/s on whom the Notice is served to remedy the matter and if not legal proceedings can be taken by the Council.

7. Advertisements

Some advertisements may not be displayed without prior approval by the Council. In such cases, the Council can prosecute persons responsible for displaying an illegal advertisement or serve a Discontinuance Notice (in cases where an advertisement does not need express consent but where it causes offence to amenity or traffic safety).

WHY CAN ENFORCEMENT ACTION TAKE SO LONG?

Many of the reasons have been explained above but it is often frustrating to complainants that despite contacting the Council, the activity which is causing concern still persists. Some of the factors which can result in apparently slow progress include:-

- the gathering of satisfactory robust evidence;
- continuing negotiation to try to resolve the matter with the offender without pursuing formal action;
- consideration of an application seeking to remedy the matter; and
- awaiting determination of an appeal against formal Notices.

COMPLAINTS

Whilst we will always do our best to achieve the standards set out in this document and to follow the procedures we have explained, there will inevitably be occasions where customers feel they have not received the standard of service to which they were entitled. The Council has adopted a complaints procedure to be followed by all services where a customer is dissatisfied with the way they have been treated.

A copy of the leaflet explaining the full procedure can be obtained by telephoning us or picking one up from any Council office. The first stage is to write to the manager of the relevant service, who in this case is:

Chris Elliott
Head of Development Control
Environment Services
New Forest District Council
Appletree Court
Lyndhurst
SO43 7PA

He will acknowledge your complaint and investigate the matter. You should be sent a reply within 15 working days which will tell you who you can appeal to if you are still not satisfied.

YOUR VIEWS

We would welcome any views that you may have about our enforcement policy. Please tell us whether we follow the procedures set out in the policy guidance and whether they should be changed to provide a better service and other improvements you would suggest.

All of your comments will be carefully assessed.

With your feedback, we hope to make the service as responsive as possible to user needs.

THE PROJECTS AND ENFORCEMENT TEAM: -

