

# ENFORCEMENT POLICY STATEMENT

November 2005

# **STATEMENT OF ENFORCEMENT AIMS, POLICIES, PRIORITIES AND OPERATIONAL CODE OF PRACTICE**

## **1.0 INTRODUCTION AND LEGISLATIVE BACKGROUND**

The basis for the planning system is to protect amenity, whether it is the quality of the environment in general, or the quality of life of people living close to the development. For this reason Parliament has granted powers to Local Planning Authorities to ensure that action can be taken against unauthorised development or a breach of planning control which is causing harm to the amenity of the area.

Unauthorised development is generally:

- development that does not have planning permission;
- development that has permission but is not being carried out in accordance with the conditions of the permission.

Enforcement legislation is complex and a schedule of the powers available to the District Council are set out in **Appendix 1**. This is intended to be for general guidance only as the circumstances of each case will dictate action to be taken.

Local Authorities are advised to take formal enforcement action only in cases of obvious harm or nuisance and/or where persuasion and negotiation have failed, it is a discretionary power based upon expediency.

The legislation, and Government advice to its use, tends to give the benefit of the doubt to the person undertaking unauthorised development. The Local Planning Authority is expected to give the contravenor opportunities to rectify the situation before serving a formal notice as a last resort. Furthermore, the Local Planning Authority can be ordered to pay costs or have its decisions overturned, by the Planning Inspectorate on behalf of Parliament or the Courts, if its actions are considered too hasty or harsh or legally incorrect.

The setting out of objectives, policies and priorities is intended to assist those who become involved with the process.

## **2.0 RELATIONSHIP WITH THE DISTRICT COUNCIL'S CORPORATE OBJECTIVES**

Alleged breaches of planning control can be emotive issues and controversial by their very nature. The setting out of aims and priorities is intended to assist those who become involved with the process, whether they are the complainant, those complained against, or Council officers whose responsibility it is to take action where necessary.

The District Council has identified the following as its corporate aims:

- **Managing the Environment**
- **Delivering a Well Managed Council**
- **Decent and Affordable Housing**
- **Community Well Being**

Similar themes are also to be found within the identified priorities of the Mid Devon Community Plan.

Some types of development may present conflicts between these objectives and where this is the case a balance has to be achieved. It is the planning system as a whole which seeks to achieve a fair balance. The enforcement system is an important stage assisting within that process.

### 3.0 ENFORCEMENT AIMS

Formal enforcement action can be complex, time consuming and expensive. The decision on whether action is expedient, and if so, which action to take, will need to take into account all the circumstances of each individual case. In practical terms consideration will need to be given to:

- the impact of the unauthorised development;
- the potential for damage to the environment;
- the benefit to be accrued from taking action.

It will not always be expedient to take formal enforcement action having considered the circumstances of the case. Enforcement powers are to be used in a reasonable manner, to remedy adverse impacts on the environment or on neighbours, and should not be used solely to regularise a situation where no planning permission exists. Such situations should be dealt with by negotiation. The fact that development has gone ahead without planning permission should not prejudice the consideration of a subsequent planning application if it is a reasonable use of land and in most cases no criminal offence has been committed, in which case planning permission is likely to be granted, but if refused, enforcement action will be the usual consequence. Submission of a planning application does not automatically mean that permission will be granted.

The following enforcement aims are considered to be appropriate:

1. **To remedy breaches of planning control;**
2. **To arrive at a solution based on agreement between all the parties involved wherever possible having considered the provisions of the Development Plan;**
3. **To provide clear guidelines for objectors and those enforced against.**
4. **To set out the options available to all the interested parties in an enforcement case.**
5. **To provide assistance in monitoring the requirements of Section 106 obligations.**

### 4.0 ENFORCEMENT POLICIES

Having regard to the aims outlined above the following policies are considered appropriate.

- ENF1**            **The District Council will act to prevent or remedy breaches of planning control where it is expedient to do so.**
- ENF2**            **The District Council will seek to resolve breaches of planning control by negotiation where possible unless the breach is of such a serious nature as to require immediate formal action.**
- ENF3**            **In considering whether to initiate enforcement action the District Council will have due regard to the Development Plan policies and all other material considerations.**

- ENF4**            **The District Council will only instigate enforcement action commensurate with the breach of planning control to which it relates. Formal action will not automatically be taken against trivial or minor technical breaches of planning control which cause no demonstrable harm affecting public interests.**
- ENF5**            **The District Council will seek to ensure compliance with conditions imposed on the grant of planning permission through the service of Enforcement Notices and Breach of Condition Notices, Stop Notices, Injunctions and other related notices.**
- ENF6**            **The District Council will actively seek prosecutions in the Courts and/or direct action, in appropriate circumstances, in order to achieve compliance with the requirements of the legislation and to remedy unacceptable breaches of planning control.**

## **5.0 ENFORCEMENT PRIORITIES**

The realities of time and resource allocation mean that decisions must be taken to accord certain kinds of breach higher priority with relation to subsequent enforcement action. The Council has the following priorities:-

- 1. Where it is causing or is likely to cause danger to the public.**
- 2. Where it is likely to cause immediate and/or permanent harm in the locality.**
- 3. Unauthorised works to or demolition of a listed building or such operations within a Conservation Area.**
- 4. Where a Tree Preservation Order or a planning condition relating to trees is being breached.**
- 5. Where a serious breach of condition is apparent.**
- 6. Where it is causing a loss of amenity to neighbouring properties.**
- 7. Where the requirements of a Section 106 obligation are not being complied with.**
- 8. Where the time limit for enforcement action is to expire within 6 months.**
- 9. Other breaches of planning control including the service of notices under Section 215 of the Town and Country Planning Act.**

## **6.0 CODE OF PRACTICE**

In setting out a Code of Practice for the Enforcement Service it is important the District Council recognises that an equal duty exists to both a complainant and the alleged contravenor and seeks to address any issue in an equitable manner. The requirements of the Data Protection Act and the Freedom of Information Act (FOI) must be taken into account.

1. The source of all notifications of alleged breaches of planning control will, as far as possible, be kept confidential within the remit of the Freedom of Information Act. Anonymous reports will be investigated as far as we are able to do so.
2. Notifications will be acknowledged within 3 working days of receipt and the informant will be provided with a contact name, telephone number and notified that a copy of this enforcement policy statement is available on-line via [www.middevon.gov.uk](http://www.middevon.gov.uk)

3. All notifications will be recorded on the Enforcement Database.
4. To comply with the Regulation of Investigator Powers Act 2000 (RIPA 2000) the alleged contravenor will be advised that the site the subject of the complaint is to be monitored as part of an on-going investigation.
5. A site inspection will normally be undertaken within 15 working days of the receipt of a notification unless the issue raised relates to works affecting a listed building or the maintenance of a Tree Preservation Order or any other issues likely to cause serious harm to the environment in which case the site will be inspected within one working day of receipt of notification.
6. Where it is necessary and reasonable to undertake detailed surveillance of a site authorisation will be sought from the "appointed officer" in accordance with the requirements of the RIPA 2000.
7. A complete documentary record of all investigation will be maintained including a photographic record where appropriate.
8. Where issues raised are confirmed, the Council will write to the contravenor advising of the breach, what is required to remedy the breach, a timescale for action and the consequences for not taking that action.
9. Within 25 working days of the acknowledgement the informant will be advised of the current status of the investigation and how it is proposed to pursue the alleged breach.
10. In those cases where an application is submitted to the Council in an attempt to regularise the breach all informants will be given the opportunity to comment on that application by way of the planning application process.
11. At the conclusion of an investigation all informants will be advised in writing of the outcome of the investigation.
12. Where necessary under the scheme of delegation contravenors reports will be presented to Committee seeking authority in relation to enforcement action.
13. Complainants will be advised in writing of the date of any Committee consideration.
14. As soon as practicable following any consideration by Committee all parties involved will be informed in writing of the Committee decision.
15. Where an enforcement (or similar) notice has been issued by the Council a copy of the notice will be available for viewing when placed upon the statutory enforcement notice register.
16. Where an appeal is lodged with the Planning Inspectorate against a notice issued by the Council any informants, Ward Member, Town/Parish Council, appropriate officers within the Authority and those who may be affected by the breach will be advised, in writing of the appeal and how they might contribute to the appeal process, should they wish to do so.

17. Where a decision has been made to take no further action on a case, either because no breach has been discovered, the breach has been rectified, or it is not considered expedient to pursue the matter further, the Council will notify the complainant and contravenor giving reasons unless information indicating a material change is received, when the Council will reconsider the matter.
18. A schedule of current enforcement cases will be circulated to the Planning Committee, Ward Members and Town/Parish Councils on a six monthly basis with a brief update of the current situation.
19. Information of enforcement cases where the Council has decided to action will be passed to potential purchasers via the Local Land Charges Register, and CON 29 enquiry.

## **APPENDIX**

### **SCHEDULE OF PRINCIPAL LEGISLATION WITH ENFORCEMENT PROVISIONS**

Town and Country Planning Act 1990

Planning and Compensation Act 1991

Planning (Listed buildings and Conservation Areas) Act 1990

Planning and Compensation Act 2004

Town and Country Planning (Control of Advertisements) Regulations 1992

Town and Country Planning (General Permitted Development) Order 1995

Town and Country Planning (Use Classes) Order 1987

Local Government (Miscellaneous Provisions Act 1982

Caravan Sites and Control of Development Act 1960

Town and Country (Tree Preservation) Order 1969

Hedgerow Regulations 1997

### **OTHER RELATED LEGISLATION**

Human Rights Act

Data Protection Act

Police and Criminal Evidence Act (PACE)

Regulation of Investigatory Powers Act (RIPA)

Freedom of Information Act 2000

### **SUMMARIES OF COURSES OF ACTION**

#### **FOR INFORMATION GATHERING**

##### **Planning Contravention Notice (PCN)**

This is not formal enforcement action, but may in some cases be required to establish what is happening on a site where there are genuine grounds for concern that a breach of planning control has occurred or is likely to occur. It may also be necessary when a site operator or owner has not complied with requests for information, or where they have already been advised that planning permission is necessary for their activities. In such cases, a PCN can be used to establish the facts of the case and let the operator know that the Council are seriously concerned about a site. It is intended to act as both information gathering tool and statement of intent by the Council, but it is not a charge on land and

therefore is still relatively informal, although failure to respond does carry a potential fine, and means that there are no grounds for claiming compensation in any appeal against a subsequent “stop” notice (so long as the PCN mentions this penalty and the fact that the Council considers that the breach is potentially serious enough to warrant the issue of a “stop” notice).

### **S.16 of the Local Government (Miscellaneous Provisions) Act 1976 S.330 of the Town and Country Planning Act 1990**

These are alternative means of establishing information about land and its ownership. These are less well used than the PCN which is intended to be the main method by which information can be gathered about potentially unauthorised development.

Other sources of information may include HM Land Registry, and District Council’s planning and building regulation records.

### **WHERE CONDITIONS IMPOSED ON A PLANNING PERMISSION ARE NOT BEING COMPLIED WITH**

#### **Breach of Condition Notice (BCN)**

This tool was brought in under the Planning and Compensation Act 1991. It allows for the Local Planning Authority to issue a notice that a condition of a planning consent is not being complied with and is an alternative source of action to issuing an enforcement notice. There is no appeal against this notice when issued under the provisions of Section 187A. An enforcement notice may be more appropriate than a BCN if there is any doubt about the condition which has been breached. Failure to comply with a BCN within the specified period (at least 28 days) is a criminal offence liable to a fine not exceeding £1,000.

### **WHERE THERE IS A CONTINUING BREACH OF CONTROL**

#### **Enforcement Notice**

An enforcement notice must:

1. Specify the breach of planning control
2. Specify the steps to be taken to remedy it
3. Specify the reasons why it is expedient to take action (must be in the interests of “amenity”)
4. Specify the date on which the notice comes into effect
5. Specify the period for compliance
6. Specify the precise boundaries of the land to which the notice relates
7. Accompany an explanatory note about rights of appeal

An appeal to the Secretary of State against the service of an enforcement notice suspends the notice until the appeal has been dealt with.

#### **When an enforcement notice has not been complied with**

Failure to comply with an enforcement notice within the time permitted is an offence liable to prosecution.

### **WHERE THERE IS A BREACH OF CONTROL THAT IS CAUSING SERIOUS HARM OR HAS THE POTENTIAL TO CAUSE SERIOUS OR IRREVOCABLE HARM TO AMENITY**

## **Stop Notice**

Where an appeal has been submitted against an enforcement notice, suspending it, or where the breach of control is causing irrevocable damage to interests of acknowledged importance, the Council may consider the issue of a Stop Notice in tandem with the enforcement notice which prohibits any continuation of the activity specified in the enforcement notice.

A Stop Notice cannot be issued if the activity has been carried out for a period of more than four years ending with the date when the notice is served.

Time limits for compliance with a Stop Notice are to be specified in the notice and should not normally be less than 3 days after its service, unless the Council have "special reasons for specifying an earlier date and a statement of those reasons is served with the notice". The time limit should not exceed 28 days after its service.

The Stop Notice will cease when it is withdrawn; the related enforcement notice is withdrawn or the compliance period for the enforcement notice is withdrawn or the compliance period for the enforcement notice expires (which renders continued breach a criminal activity liable to prosecution).

### **Where a Stop Notice is not complied with**

Failure to comply with a Stop Notice is an offence liable to prosecution.

## **Injunction**

"Where a Local Planning Authority consider it necessary or expedient for any factual or apprehended breach of planning control to be restrained by injunction, they may apply to the court for an injunction, whether or not they have exercised or are proposing to exercise their other powers..."

The scope for obtaining an injunction is wider than for serving an enforcement notice as it may refer to an "apprehended breach" and it is "personal" in that it relates to the activities of a person or persons rather than a use of land (although it is possible for it to be served against "persons unknown").

The injunction may be sought at any stage of the enforcement process, but is most frequently used when an operator is ignoring an enforcement notice, or where the Local Planning Authority are reluctant to issue a Stop Notice.

### **Where an injunction has not been complied with**

Failure to comply with an injunction leads to a contempt of court and can lead to imprisonment.

## **WHERE ALL OF THE ABOVE HAVE NOT BEEN SUCCESSFUL**

### **Direct action and recovery of costs**

The Local Planning Authority can consider taking "default" action to secure compliance with the terms of an enforcement notice, carrying out the "steps" required in the notice themselves and then taking action to recover the costs from the owner of the land.