

## **Environment & Development Service Group Development Control & Conservation**

### **WHAT IS ENFORCEMENT ACTION?**

#### **The Enforcement Process**

Enforcement action is taken when the Council considers that there has been a breach of planning control. A breach could be either the carrying out of development without planning permission or where a condition attached to a decision notice has not been complied with.

There are two possible forms of enforcement action. A) the issuing of an enforcement notice where development has been carried out or by the serving of a breach of condition notice where a condition attached to a planning permission has not been complied with. There is a right of appeal to the Secretary of State in respect of an enforcement notice. There is no right of appeal in respect of a breach of a condition notice.

If the Council becomes aware that significant and serious unauthorised activities taking place, then it can serve a stop notice requiring the immediate cessation of the activity. While there is now less danger under national legislation than there used to be of the authority having to pay compensation resulting from a loss occurring as a result of the serving of a stop notice, nevertheless the Council must be certain of its position for using stop notices.

In addition to the enforcement powers referred to as above, the Council may also serve a planning contravention notice. These are served when the authority considers that there may have been a breach of planning control. The purpose of the notice is to enable the authority to ascertain precisely what the situation is and requires the person who it appears may be committing the breach, to meet officers to discuss what action might be taken to resolve matters.

Occasionally an injunction may be applied for to stop either a breach, which is already occurring, or one which the authority has reason to believe may occur.

### **HOW DOES THE ENFORCEMENT PROCESS WORK?**

Breaches of planning control are brought to the attention of the authority by officer/Member observation, by Parish Councils' and by members of the public. The staff deals with hundreds of queries each year, many of which relate to matters which do not involve a breach in planning control. Of those that do, it is possible in most cases to remedy the breach by negotiation with the person alleged to be in breach of planning control for the voluntary removal or correction of the problem, or where the development is likely to be acceptable, submission and approval of a planning application, thus resolving the breach of control.

The officers' role in dealing with the breaches of planning control is not an easy one. They are helping the innocent and unknowing in one moment, and

being expected to 'police' the deliberately non-conforming developer the next. At the end of the day, success must be measured by what happens on the ground, whether a remedy is achieved by persuasion or more formal means, or whether it is simply accepted that what has happened, although it may not have received planning permission, is, nevertheless, acceptable.

To to new developments to ensure that they are being carried out in accordance with approved plans and conditions a close working relationship needs to be established with applicants, agents, developers and the local community. The Council recognises that this is an important area of work if all the effort which goes into achieving a good proposal on paper, is wasted through poor implementation during the construction process.

### **WHY CAN'T THE COUNCIL ENFORCE EVERY DETAIL ON AN APPROVED SCHEME, OR TAKE ACTION AGAINST ALL UNAUTHORISED DEVELOPMENT?**

The government's attitude towards enforcement is set out in planning policy guidance note 18 (PPG18). While PPG18 acknowledges that planning authorities must take enforcement action where it is necessary, it nevertheless makes it clear that there will be no support for action in respect of where you breach which causes no harm to amenity or which is taken simply to 'regularise' a development through forcing the submission of a planning application.

It is always in the interests of the owner of a property to obtain planning permission for any development which is being carried out. If the owner chooses not to make an application, and the development is, in every major respect acceptable, then no action should be taken. If action were taken, and it resulted in an appeal to the Secretary of State, then there is a clear risk the costs would be awarded against the Council.

The Council is committed to enforcing against development, which is inappropriate, but in many cases variations from approved plans result in a development, which is as acceptable, as previously approved. Minor variations are therefore either approved, or it is decided simply to take no action.

In cases where it is decided not to take action, or where a retrospective application or amendment is approved, the judgement is always made on the basis of whether the development would have been considered acceptable had an application been submitted prior to the Development being carried out. The suggestion that if you do it first and ask later, you get away with it has no foundation, and if retrospective applications are approved, it should not be regarded as the Council being soft, on those who breach planning regulations.

### **WHY DOES ENFORCEMENT ACTION TAKE SO LONG?**

The alleged breach of control must be carefully investigated. If it is concluded that the matter needs to be pursued, then agreement to action has to be obtained from elected Members. After a decision to take action has been

made, enforcement notices have to be served. The notices have to carefully drafted otherwise they will be challenged if they do not comply with legal processes. Once the notice has been served the person in breach of planning control has 28 days to appeal to the Secretary of State. If they decide not to appeal, then the notice takes effect, and they have a minimum of a further 28 days to comply with its requirements. The period of compliance can however be longer than 28 days depending on the nature of the work required to resolve breach of control. If the person in breach of control appeals to the Secretary of State then any further action is suspended until the result of the appeal is known. An appeal can take many months to decide.

If the appeal is allowed, then the enforcement notice is quashed and in the majority of cases no further action can be taken.

If the appeal is dismissed, then the period for compliance with the notice comes into effect once again. If, after that period has elapsed, the developer has not complied with the requirements of the notice, then they are guilty of an offence and can be prosecuted.

Some people in breach of planning control are prepared to appeal in front of a magistrate time and time again, and appear happy to face the consequences generally of being fined, particularly as in many cases, magistrates do not fine the statutory maximum.

## **THE COUNCIL'S APPROACH TO ENFORCEMENT**

The Council accepts the principles established by enforcement concordat, which establishes the following: -

Performance will be measured against agreed standards

- There will be openness in dealing with businesses and others.
- Enforcers will be helpful, courteous and efficient.
- Complaint procedures will be publicised.
- Enforcement decisions will be taken in a proportionate manner.
- Enforcement officers will strive for high standards of consistency.

## **OBJECTIVES**

The objectives of the Council's approach will be to: -

- Remedy the undesirable effects of unauthorised development
- Bring unauthorised activity under control to ensure that the credibility of the planning system is not undermined.
- Strike a balance between protecting amenity and other interests of acknowledged importance, and allowing acceptable development to take place.

## **ACTION**

Action will be dependant on the nature and seriousness of the breach of control having regard for the following:

The Devon Structure Plan, The Local Plan and other appropriate supplementary planning guidance. The Council however, is mindful that enforcement action is a discretionary power to be taken only when it is expedient to do so and any action should be demonstrable with the breach of control. It must be remembered that it is not an offence to carry out development without first obtaining planning permission. The planning Act specifically provides that planning permission may be granted to regularise development already carried out. Enforcement action cannot simply remedy the absence of planning permission where development carried out is acceptable on its planning merits.

The Council is however, committed to taking effective enforcement action where it is essential, effects the amenity of the area, public or highway safety, and the integrity of the development control process within the district. In each case the following options will be considered

Where there is a minor breach with no significant effects – no further action  
Where the breach is likely to be agreed by granted permission – invite application for planning permission.

Where breach is immune from enforcement action due to the passage of time – invite an application for a lawful development certificate.

Where there is a breach of planning control and permission is unlikely to be granted – take enforcement action which may include an enforcement notice, breach of condition notice, stop notice, injunction, or other action as appropriate depending on the seriousness of the breach and the environmental effects.

Where a breach of condition notice has not been complied with the person responsible will be prosecuted.

Where an enforcement notice takes effect and has not been complied with, the individual is likely to be prosecuted and the Council will consider using its default powers to take direct action to remedy the breach of control, recovering the cost from the owner, or placing a legal charge on the land.

## **WHAT ARE THE PRIORITIES FOR ACTION?**

While enforcement is an important area of the section's work, which generates a great deal of interest within the community, there are other pressures on time. The Council has therefore established a priority for dealing this area of the service to enable staff to manage the workload. The list is in order of importance for action: -

- Unauthorised works of demolition or other unauthorised works to listed buildings or buildings in conservation areas, unauthorised work to trees protected by a tree preservation order, any other unauthorised works to the statutory protected sites (e.g. sites of scientific importance). This area of enforcement work is considered to be of high priority in view of the protected nature of the subject

matter, and the significant effect of unauthorised works to protected areas.

- Unauthorised development, which is taking place at the time of the complaint. This area of work is considered a priority because early investigation may result in cessation of activity before formal enforcement action is necessary.
- Monitoring of compliance with planning conditions and the implementation of development in accordance with approved plans. Within this area of work, Members have agreed the following priorities for proactive monitoring: -
- Applications which have been controversial and have caused concerns identified by the Development Control Committee;
- Applications not subject to visits by the Council's building control service;
- Random sampling of other applications to encourage developers to comply with approved schemes.

Members have also identified the monitoring of agricultural occupancy conditions as an important area of work.

- Complaints received which have a significant impact on the policies and provisions of the development plan.
- Outstanding complaints received by more than one complainant. This criteria seeks to prioritise those alleged breaches of planning control, which have a wider environmental impact than just affecting the immediate neighbour.
- Any other complaints with an identified complainant and clear evidence of a material breach in planning control.
- Anonymous complaints will have the lowest priority. The Council wishes to discourage anonymous complaints to help minimise trivial or malicious complaints. It should be noted that all complainants have the right to request that the names and other details are kept confidential to the Council, and therefore there should not be a need for unidentified complainants.

Other controls which the council may use to resolve planning problems

- Building control – prosecution for offences where work is carried out without consent, which affects the character of the building.
- Conservation areas – unauthorised demolition
- Trees – prosecution for unauthorised works to a protected tree.
- Advertisement prosecution – prosecution for unauthorised display and discontinue its action against advertisements that have been in place for a long period.
- Untidy sites – adversely affecting the amenity of an area – service of notice under section 215 of the town and country planning act 1990 followed by prosecution and/or direct action for non-compliance.

## **FIND OUT MORE**

This is a summary of the enforcement process within South Hams. If you have any views or questions on how the enforcement system affects you, please contact us. If you are considering doing anything that you think might need planning permission, talk to the development control section first. Our advice is free. If you do any work that needs planning permission, but you don't have that permission, it could be very costly indeed.

## **HOW TO CONTACT US**

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