

<b>MEETING:</b>	<b>PLANNING COMMITTEE</b>
<b>DATE:</b>	<b>3 NOVEMBER 2010</b>
<b>TITLE OF REPORT:</b>	<b>PROPOSED REVISED PLANNING ENFORCEMENT POLICY</b>
<b>REPORT BY:</b>	<b>ASSISTANT DIRECTOR – ENVIRONMENT, PLANNING &amp; WASTE</b>

## Purpose

To update the Council's Planning Enforcement Policy.

## Recommendation

### THAT:

**Members make comments on the revised policy which will be forwarded to the Cabinet Member, Environment and Strategic Housing for his approval as a Policy of the Council to come into effect immediately thereafter.**

## Introduction and Background

- 1 The current Planning Enforcement Policy was approved by a Key Decision in 2007 and is published on the Council's website. In June 2010 the Development Management Team was reorganised to reflect changes to the Planning Committee structure. This resulted in a reduction from 3 development management areas to 2, but with an enforcement team reporting to its own Team Leader, to enable a more consistent approach to this activity across the County. This has afforded an opportunity to review and renew the enforcement policy and to acknowledge Members' keen interest in this subject. It is therefore appropriate to seek approval for an updated Policy at this time.

## Proposed Changes

- 2 Having reviewed the Policy the fundamental strategy, principles and powers have not changed since 2007. There is a change however in the requirement to provide feedback on cases to complainants, which are to be acknowledged within 5 working days, and to keep Members informed at the outset of cases and as they reach significant stages.

The introduction of the Civica system allows a more refined monitoring of the performance of the Enforcement Team and of the cases investigated.

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Further information on the subject of this report is available from  
Mr M Tansley on (01432) 261815

## **Appendices**

### **PLANNING ENFORCEMENT POLICY**

## **PLANNING ENFORCEMENT POLICY**

This Planning Enforcement Policy was approved by the Cabinet Member (Environment and Strategic Housing) on XXXXX 2010. Prior to this approval the draft policy was reported to the Planning Committee on XXXXXXX 2010. This final version incorporates the comments made at that Committee.

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### **1. AIMS OF POLICY**

- 1.1 To control unauthorised development, works and operations and ensure effective compliance with planning permissions, listed building and other related consents and regulations through an approach to enforcement that is proportionate, targeted, consistent and clear.

### **2. ENFORCEMENT POWERS**

- 2.1 There are several tools available to the Council to deal with breaches of planning control under the Town and Country Planning Acts.
  - Requisition for Information - often served to gather information on ownership of land or buildings prior to serving one of the notices listed below.
  - Planning Contravention Notice - can be served where it appears that there may have been a breach of planning control and the Council requires information about activities on the land or nature of the occupier's interest in the land.
  - Breach of Condition Notice - can be served where there is a failure to comply with any condition or limitation imposed on the grant of planning permission.

- Enforcement Notice - can be served to remedy an actual breach of planning control by requiring an unauthorised use to stop or building works to be removed. A notice can also be served to restrict or condition a particular operation, which is otherwise unacceptable. There is a right of appeal against the notice.
- Stop Notices - can be served in conjunction with an Enforcement Notice to require unauthorised activities to cease before the Enforcement Notice comes into effect. In practice the threat of claims for compensation are a real deterrent to serving this type of notice.
- Temporary Stop Notices - can be served to require unauthorised activities to cease for 28 days, they are not required to be served with an enforcement notice.
- Injunctions - can be sought in the County Court or High Court to restrain any actual, or expected, breach of planning control.

2.2 The Council may initiate a prosecution in all cases where the requirements of a notice or injunction are not met in the stated timescale.

2.3 In addition to the powers outlined above, Planning Services is also responsible for investigating and controlling the following:

- Unauthorised works to Listed Buildings - It is an offence to carry out unauthorised works to a Listed Building or demolish it without consent. Prosecution can be pursued under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively the Act also includes the power to serve a Listed Building Enforcement Notice to which there is a right of appeal.
- Unauthorised works to protected trees - It is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order. Works to trees in a Conservation Area should be notified to the Local Planning Authority in advance. In both instances the Council has power to prosecute offenders and require the planting of replacement trees.
- Unauthorised removal of hedgerows - Under the Hedgerow Regulations 1997, the Council is responsible for protecting 'important' hedgerows. It is an offence to remove a rural hedgerow if the owner has not served a Hedgerow Removal Notice on the Council or where the Council has served a 'Hedgerow Retention Notice'. Enforcement of the Regulations may involve prosecution, requiring the planting of a replacement hedgerow or the service of an injunction to restrain any actual or apprehended offence.
- Unauthorised advertisements - The Council may prosecute any person who displays an advertisement in contravention of the Advertisement Regulations.
- Land adversely affecting amenity - Section 215 of the Town and Country Planning Act 1990 enables a Local Planning Authority to serve a notice requiring steps to be taken to remedy the condition of land where it is not being suitably maintained and is an eyesore as a result. There is a right of appeal to the magistrates' court.
- Contraventions of Hazardous Substances Control - It is a criminal offence under the Planning (Hazardous Substances) Act 1990 to exceed controlled quantities of hazardous substances or fail to comply with a condition on Hazardous Substances Consent. Prosecution is through the Magistrates Court. The Council can also serve a contravention notice and apply for an Injunction.

- Within Hereford Area of Archaeological Importance it is an offence to undertake any operations which disturb the ground, flood or tip without giving 6 weeks notice to the Council who are the administering authority.
- The Council also has powers to carry out works to protect listed buildings under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **3. ENFORCEMENT PRACTICE IN HEREFORDSHIRE**

- 3.1 A wide variety of enforcement enquiries are received by the Council each year. Many of these are dealt with quickly as investigation reveals there is either no breach of control, or a minor technical breach is discovered which can be easily resolved. More serious cases may require formal enforcement action.
- 3.2 The types of enforcement cases encountered in Herefordshire vary widely. They include breaches of planning conditions, unauthorised development and changes of use such as the siting of mobile homes on agricultural land.
- 3.3 The Council is also responsible for taking action against unauthorised works to listed buildings, works to or the removal of protected trees without consent, the removal of hedgerows in contravention of the Hedgerow Regulations, and contravention of procedures that operate within Hereford Area of Archaeological Importance.
- 3.4 The Enforcement Team is based in the Development Management team.. It investigates cases from initial complaint through to the service of formal notices, appeals and court action. Historic Buildings Officers are closely involved in cases involving unauthorised works to Listed Buildings.
- 3.5 Other officers in the Service take the lead where the unauthorised removal of trees and hedgerows are involved.
- 3.6 The Enforcement team and other officers also work closely with the Building Control team who inform them when work has started on site and make an initial check on whether development is proceeding in accordance with the approved plans.
- 3.7 The Legal Practice Manager and senior officers in the Service have powers delegated by the Planning Committee to make decisions on whether to take enforcement action. In addition, the decision to prosecute rests with the Legal Practice Manager. The Council's Legal Services team provides legal advice on cases as required and handle the serving of Enforcement Notices and prosecutions.

### **4. ENFORCEMENT STRATEGY**

- 4.1 Public confidence in the development management process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the local planning authority to intervene before serious harm to amenity results from it.
- 4.2 The Council has discretion to take enforcement action when it regards it as expedient. In taking action the Council will be guided by the following considerations that are set out in Planning Policy Guidance Note 18.
- The Council has the primary responsibility for taking whatever enforcement action is necessary in the public interest.

- The Local Government Ombudsman may find 'maladministration' if the Council fails to take effective enforcement action which is plainly necessary within a reasonable timescale.
- In considering any enforcement action under the Planning Acts the decisive issue 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.
- 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.
- The local planning authority will normally make an initial attempt to seek a negotiated solution by persuading the owner or occupier of the site to make an application and/or cease work. However, negotiations will 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.

- 4.3 Early identification of breaches of planning control is important to ensure that in the longer term as little potentially abortive work as possible is undertaken. This means that potential remedies are less costly to the contravener and use less officer time and hence make best use of available resource. To this end upon commencement of development, as notified by the Building Control team, planning file will be checked for compliance with conditions. Any found to be outstanding will result in an initial letter seeking resolution of those breaches. Failure to take action within the prescribed period could result in the service of breach of condition notices and against which there is no appeal.
- 4.4 Enforcement action under the Hedgerow Regulations and within Hereford Area of Archaeological Importance will be pursued in accordance with Government guidance and accepted best practice. All officers will continue to work together to ensure a unified approach to planning enforcement matters.

## 5. PRINCIPLES

- 5.1 The Council signed up to the Enforcement Concordat in November 2000. This document was drawn up by the Access to Business Group and sets out the principles under which all local authority enforcement functions should be administered.
- Performance will be measured against agreed **standards**.
  - There will be **openness** in dealing with business and others.
  - Enforcers will be **helpful, courteous** and **efficient**.
  - Complaints procedures will be **publicised**.
  - Enforcement decisions will be taken in a **proportionate** manner.
  - Enforcement Officers will strive for high standards of **consistency**.

## 6. ASSESSING THE NEED FOR ENFORCEMENT ACTION OR PROSECUTION

In deciding whether enforcement action or prosecution is expedient the Council will take the following steps:

- 1 Establish the facts - to find out what is happening on a site or in a building, to establish the identity of the owner/occupier and the relevant planning history of the site.

In doing this the Enforcement Officer may do any or all of the following:

- Visit the site. This will usually be unannounced and photographs may be taken. Where circumstances require it the site visit may be done under warrant.
- Interview the owner and/or occupier. Such interviews are used to obtain information about the alleged breach of planning control and to give information about the enforcement process and options available.
- Occasionally, in serious cases where an offence may have been committed, it may be necessary to conduct an interview under caution as required by the Police and Criminal Evidence Act 1984.
- Issue of Planning Contravention Notice or other statutory request for information.
- Check the Council's files for planning permission, planning conditions or other correspondence, which may be relevant to the alleged breach of planning control.
- Make enquiries with other statutory bodies and enforcement agencies to co-ordinate action.