

MEETING:	PLANNING COMMITTEE
DATE:	24 NOVEMBER 2010
TITLE OF REPORT:	PROPOSED REVISED PLANNING ENFORCEMENT POLICY
REPORT BY:	ASSISTANT DIRECTOR – ENVIRONMENT, PLANNING & WASTE

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 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.

Appendices

PLANNING ENFORCEMENT POLICY

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

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.

2. Analyse the information gathered - Enforcement officers will discuss their findings with planning officers, Historic Buildings Officers and other professionals as appropriate.

The Enforcement Officers will consult relevant legislation and the development plan for Herefordshire to establish the degree of harm to interests the Council has a duty to protect.

In addition, before any formal enforcement action is taken the provisions of the Human Rights Act 1998 will be taken into account. Essentially this will involve consideration of whether taking action, or not taking action, will interfere with one of the convention rights. The rights of both the complainant and the offender have to be taken into account.

3. Decide which of the following categories the breach of control falls into:-
 - a) Development that does not constitute a breach of planning control.

- b) Development that is permitted development and therefore does not require a planning application
 - c) Development that is exempt from enforcement action due to the passage of time and is considered lawful.
 - d) Development or works judged to be of a type or degree that it would not be expedient to take enforcement action.
 - e) Development or work that requires permission or consent and there is a reasonable chance that permission or consent will be granted
 - f) Development or unauthorised works that require enforcement action or prosecution (in appropriate cases) to be commenced immediately.
 - g) Development or works that appear to fall within the remit of another enforcing agency will be referred to the agency concerned.
4. Prepare a report - Where it is decided to take action a report will be written for consideration by a named senior officer who has delegated powers to authorise enforcement action or prosecution. A report is also prepared where a breach has occurred but it is not considered expedient to take formal action.

7. Service Standards

7.1 The following service standards and priorities are set for dealing with complaints.

- a) In general, complaints will be accepted by telephone, via the Council's website or directly by email, via the Info shops, or in writing and recorded on a Complaints Form. There are occasions when the complainant will be requested to submit their complaint in writing particularly where it is anticipated that a serious breach has occurred. Anonymous calls and letters will be dealt with at the discretion of the Enforcement Officer in consultation with the Team Leader and/or Development Manager.
- b) The Enforcement Officers will endeavour to acknowledge written complaints within 5 working days, where appropriate in a manner consistent with the Council's published customer standards, which apply across all services.
- c) Complainants will normally be informed of progress in writing, by email or by telephone within 10 working days of the alleged breach being reported. They will be updated as appropriate and informed of proposed action, if any, within 10 working days of a decision on the case being made. In protracted cases the case officer/enforcement officer will keep the complainant advised of progress at appropriate intervals, and which in any event should not be greater than 3 calendar months.

- d) Local Members will be notified by e-mail of investigations being undertaken within their Ward and advised of progress at appropriate intervals.
- e) The Council will not divulge the details of the complainant to any person against whom the complaint is lodged. There may however be cases where the complainant's evidence will be crucial to successful enforcement action and an approach will be made to request that they act as a witness.

7.2 Where a breach of planning control has taken place it will be dealt with in accordance with the priorities set out in Section 8 of this Policy.

8. Priorities for Action

Level 1 – High priority where there is a serious and urgent risk that the breach will result in irreversible damage to material planning interests. A site visit and investigations will be commenced within 1 working day for:

- Breaches of Listed Building control where demolition or alterations are taking place which are known to detract severely from the special architectural and historic interest of the listed building.
- Breaches of planning control in Conservation Areas or AONBs where there is clear evidence that immediate, irreparable and significant damage would be caused to the character or appearance of the Conservation Area, or the special landscape character of an AONB.
- Removal of hedgerows, works to trees protected by a Tree Preservation Order and works to trees in Conservation Areas, where these hedges or trees make a major contribution to the County's natural heritage and are under immediate threat.
- Breaches of control or conditions causing significant irreversible damage to the environment.
- Breaches of planning control which are resulting in serious damage to the biodiversity of a site in an area subject to special protection such as an SSSI, SAC or SWS.
- Breaches of Planning Control which are resulting in permanent and serious damage to the archaeological interest of a site, especially where it is a Scheduled Ancient Monument.

Level 2 - Medium priority for breaches involving building operations. A site visit and investigations will usually be commenced within 5 working days for:

- Breaches of planning control involving building work which would be significantly contrary to landscape and conservation policies set out in the development plan.

- Breaches of planning control or conditions which results in serious harm or loss of amenity or nuisance to a neighbourhood.

Level 3 – Low priority where investigations and, if necessary, a site visit will be commenced within 10 working days for:

- Breaches of Advertisement control
- Development involving small domestic structures such as sheds or fences.
- Breaches of control where the use is likely to be temporary and capable of being resolved without formal action.
- Breaches not included in levels 1 and 2 above.

Following the initial investigation it is possible that individual cases will be re-classified to a different priority level and the programme of action adjusted accordingly.

9. Monitoring of Planning Conditions and Legal Agreements

- 9.1 Monitoring planning conditions is an integral part of a pro-active enforcement policy. Enforcement Officers will monitor conditions on planning permissions and other consents and approvals to ensure they are complied with in consultation with Building Control Surveyors and officers from the Conservation section.
- 9.2 The increasing use of legal agreements under section 106 of the Town and Country Planning Act and section 278 of the Highways Act is generating significant work in monitoring their implementation. Agreements may require work to be carried out within a specific timescale, control occupancy, make financial contributions or involve the provision of facilities such as open space.
- 9.3 Monitoring is an important function in the Council's role in development management. Within the resources of the team the investigation of reported breaches of planning control will be dealt with in line with the priorities set out above. In some cases the 'development team' approach, involving officers from outside the Planning Service and project management techniques will be used to ensure the proposed scheme is implemented in accordance with the approved plans and agreements.

10. Case Management

- 10.1 All complaints will be recorded on the Council's Civica computer system. Action will follow the steps set out in this Policy. The Enforcement Officer will investigate, consider and make a recommendation on each case. The decision whether or not to take action will be made by the Enforcement Officer in consultation with the appropriate senior officer and recorded on the Civica system. All current cases will be reviewed with the Enforcement Team Leader on a regular basis.
- 10.2 In cases where action is proposed a review of the case will be set out in a report and signed by an officer named in the Council's Scheme of Delegation in order that the action is properly authorised. Where an Enforcement Notice or prosecution is involved the case is sent to Legal

Services for the appropriate notice or summons to be issued.

- 10.3 Enforcement appeals will be dealt with jointly by enforcement officers and the case officer for any related planning application or such other planning officer as allocated by the Enforcement Team Leader.
- 10.4 The enforcement officers will also work in partnership with officers from Environmental Health and Community Protection where direct action is required to deal with fly posting and other unauthorised advertisements.

11. Information and Publicity

- 11.1 Complainants will be informed of any action, or otherwise, the Council is proposing to take in accordance with this policy.
- 11.2 Where appropriate, publicity will be given to cases where enforcement appeals have been successful or have resulted in a successful prosecution.

12. Performance Monitoring

- 12.1 A report setting out enforcement statistics will be submitted to the Planning Committee every six months. Reports will include:
- Numbers of complaints received
 - Number and types of notices issued
 - Details of outcomes of cases
 - Results of enforcement appeals

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July 2010