



Local Enforcement Plan

**Consultation Draft
July 2013**

CONTENTS

	Page No.
1.0 INTRODUCTION	3
2.0 PRIORITIES AND TARGETS	4
3.0 DEALING WITH COMPLAINTS	6
4.0 DECISION MAKING	7
5.0 INFORMATION AND COMMUNICATION	10
APPENDIX 1 EXAMPLES OF HOUSEHOLDER TEAM CASES	12
APPENDIX 2 NATIONAL POLICY AND LEGAL CONTEXT	12
APPENDIX 3 LOCAL POLICY CONTEXT	13
APPENDIX 4 THE MAIN OPTIONS FOR ENFORCEMENT ACTION	13
ANNEX FREQUENTLY ASKED QUESTIONS	

1 **INTRODUCTION**

- 1.1 The New Forest District contains a variety of environments, including historic towns and villages, suburban areas, industrial estates and very attractive countryside and coast. Many areas are covered by national and international environmental designations, all are subject to high development pressure and all are valued by their residents.
- 1.2 The District Council deals with all planning matters outside the boundaries of the New Forest National Park. Within the National Park, planning, including planning enforcement, is the responsibility of the New Forest National Park Authority.
- 1.3 At New Forest District Council, planning enforcement is part of the Development Control section, within the Planning and Transportation Service. Generally, enforcement relating to householder development, such as house extensions, fences and outbuildings, is dealt with by the Householder Team; commercial and other more major cases are dealt with by the Enforcement Team. Examples of cases likely to be dealt with by the Householder Team are given in Appendix 1.
- 1.4 The National Planning Policy Framework (NPPF) recommends that local planning authorities publish a local enforcement plan to manage enforcement proactively and in a way that is appropriate to their area. This Local Enforcement Plan sets out priorities for investigation, explains what will be investigated and what will not, and outlines the council's general discretionary powers with regard to planning enforcement. The Plan sets out the priorities for responses to complaints and clarifies the timescales for response by enforcement officers. This document also sets out the council's approach to handling other planning related enforcement matters. Our Enforcement Policies are set out below in **BOLD CAPITALS**.
- 1.5 The national policy and legal context for planning enforcement is set out in Appendix 2 and further advice on Planning Enforcement can be obtained from the National Planning Portal (www.planningportal.gov.uk)
- 1.6 Contact details for the planning enforcement team are set out below. It is best to make contact using the online enforcement complaint form on our website or via the e mail address but in all cases make it clear your enquiry regards an enforcement matter.

Planning Services Administration Team
Planning and Transportation Services
New Forest District Council
Appletree Court
Lyndhurst
SO43 7PA
Telephone 023 8028 5345
E Mail dev.control@nfdc.gov.uk

2. PRIORITIES AND TARGETS

2.1 The Planning Enforcement Team receives a high number of allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to the maximum effect. Therefore each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused; the priority is determined by the Team Leader or Development Control Manager, and subsequently reviewed after the initial site visit.

POLICY 1

TO MAKE THE MOST EFFECTIVE USE OF RESOURCES, ALLEGATIONS ABOUT SUSPECTED BREACHES OF PLANNING CONTROL WILL BE INVESTIGATED THOROUGHLY AND ACCURATELY. THEY WILL BE ASSIGNED A PRIORITY RATING DEPENDING ON THE NATURE OF THE BREACH AND THE DEGREE OF HARM CAUSED. INDIVIDUAL CASES MAY BE RE-PRIORITISED AS THE INVESTIGATION PROGRESSES.

PRIORITY CATEGORIES

Priority	Examples (not exhaustive)
Priority1 Serious threat to health and/or safety. Threat of irreversible serious damage to the environment or amenity	Serious cases of unauthorised development. Serious traffic hazard; contamination / pollution being created or other extremely significant impact on the amenity of the surrounding properties or land. Works affecting the character of a listed building; demolition in a conservation area. Loss of or works affecting protected trees (in conjunction with joint working arrangements agreed with New Forest National Park Authority)
Priority2 A threat that is less immediate but harmful with potential to escalate	Building works or unauthorised use just commenced; Severe nuisance being created (noise, smells, congestion etc). Non-compliance with certain planning conditions (particularly pre commencement conditions)
Priority3 Other breaches likely to remain stable and other issues	Development completed; untidy site; Non compliance with other planning conditions. Satellite dishes; unauthorised display of adverts; new fences (adverts and fences may be increased in priority if highway safety issues are involved).

- 2.2 The time taken to determine each breach will vary depending upon the site, the people involved and the nature of the breach itself. However the Enforcement team will endeavour to achieve the targets for initial site visits as set out below:-

SITE VISITS

Priority	Site Visit Target
Priority1	Within 2 working days of registration of complaint. Ideally for serious matters on the day of receipt or next working day.
Priority2	Within 5 working days of registration.
Priority3	Within 10 working days registration.

- 2.3 Generally, Priority 1 and 2 cases will be referred to the Enforcement Team. Cases which are referred to the Householder Team will be mainly in the Priority 3 category but it will often be possible for the Householder Enforcement Officer to make a site visit well within the 10 day target period. A judgement on priority will be made, based on an assessment of how serious the impact of the breach is on immediate neighbours.
- 2.4 Policy P2 below sets out our targets for processing enforcement cases and keeping in contact with complainants and those responsible for alleged breaches.

POLICY 2: TARGET TIMESCALES

- a) **WE WILL PROMPTLY REGISTER CASES WHERE THERE IS EVIDENCE OF A BREACH OF PLANNING CONTROL AND ACKNOWLEDGE THEM BY LETTER OR E-MAIL WITHIN 3 WORKING DAYS OF RECEIPT ADVISING AS TO THE NAME OF THE INVESTIGATING OFFICER, THE PROCEDURES THAT WILL BE FOLLOWED AND HOW THE COMPLAINANTS CAN MONITOR PROGRESS VIA THE COUNCIL'S WEB SITE.**
- b) **WITHIN 15 WORKING DAYS OF THE REGISTRATION DATE OF A COMPLAINT NOTIFY THE COMPLAINANT(S) AND THOSE COMPLAINED AGAINST AS TO HOW IT IS INTENDED TO PROCESS THE MATTER. HOWEVER AT THIS STAGE IT MAY ONLY BE POSSIBLE TO ADVISE THAT THE ASSESSMENT IS TAKING PLACE AND IT MAY NOT BE POSSIBLE TO ADVISE THEM OF WHAT FINAL ACTION IS LIKELY.**
- c) **WE WILL MONITOR AND SEEK TO AGREE APPROPRIATE ACTION ON THE MAJORITY OF UNRESOLVED CASES WITHIN SIX MONTHS OF RECEIPT. EXCEPTIONAL CASES WILL OFTEN TAKE LONGER.**
- d) **WE WILL PROVIDE THE COMPLAINANT WITH AN UPDATE EVERY 6 WEEKS ON THE CURRENT SITUATION ON EACH CASE UNTIL THE CASE IS RESOLVED OR FORMAL ACTION IS STARTED.**

- e) **WE WILL ADVISE ALL COMPLAINANTS AND THOSE RESPONSIBLE FOR AN ALLEGED BREACH OF PLANNING CONTROL AS TO THE OUTCOME OF ANY INVESTIGATION AND WHAT ACTION, IF ANY, WE PROPOSE TO TAKE. IN CIRCUMSTANCES WHERE THE COUNCIL CONCLUDES THAT IT IS NOT IN THE PUBLIC INTEREST TO TAKE ACTION WE WILL GIVE AN EXPLANATION AS TO WHY THIS JUDGEMENT HAS BEEN REACHED.**

3 DEALING WITH COMPLAINTS

- 3.1 To avoid malicious complaints, anonymous allegations of breaches of planning control will not normally be entertained. However, every effort will be made to reassure anybody wishing to make a complaint that his or her details will be kept confidential so far as other legislation permits it to be.

POLICY 3

COMPLAINTS ABOUT ALLEGED BREACHES OF CONTROL WILL BE ACCEPTED BY LETTER, E-MAIL AND TELEPHONE OR BY PERSONAL CALLER AS LONG AS THE COMPLAINANT PROVIDES THEIR NAME, ADDRESS AND TELEPHONE NUMBER. ANONYMOUS COMPLAINTS WILL NOT BE ENTERTAINED.

POLICY 4

THE CASE OFFICER WILL AIM TO ADVISE ALL PARTIES OF THE ACTION PROPOSED TO BE TAKEN WITHIN 15 WORKING DAYS OF THE REGISTRATION DATE OF THE COMPLAINT.

- 3.2 This advice will generally set out:
- a) If there is no breach and the case is to be closed; or
 - b) If the enforcement investigation is ongoing; or
 - c) A request that a planning application is submitted within 28 days and to identify if it is considered that the unauthorised development could be made acceptable by the grant of conditional planning permission.
 - d) If planning permission is unlikely to be forthcoming and an application is not being sought, to set out the reasons for this by identifying the harm, the policy context and other material planning considerations. Where cases are more complex the timescale may be extended as required.
 - e) Where it is considered that **serious harm** would result and the unauthorised development could be NOT be made acceptable by the grant of a conditional planning permission, the site owner will be advised that the breach of planning control should cease within 28 days. The site owner will receive an explanation in writing why this course of action is justified by identifying the harm, the policy context and other material planning considerations.
 - f) If it is considered that it would not be expedient to pursue the case, that it will be closed and justification given for this decision.

g) If it is considered that it requires formal enforcement action that the file will be passed to the Council's legal department with a view to commencing formal Enforcement Action (e.g. Enforcement Notice/ Prosecution etc).

3.3 In those cases where the breach remains after the 28 day period and if a planning application (if requested) has not been submitted the LPA will consider the next appropriate action. A full planning assessment will be undertaken and the expediency of taking action will be considered.

4 DECISION MAKING

4.1 The Council recognises that effective enforcement is important as a means of maintaining public confidence in the planning system. In deciding whether to take enforcement action the council will have regard to the development plan and to any other material considerations, including national policies and procedures. (More details of the policy context are given in Appendices 2 and 3). In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Enforcement action is discretionary, and the council will act proportionately in responding to suspected breaches of planning control.

POLICY 5

WE WILL ONLY TAKE ENFORCEMENT ACTION WHEN IT IS CONSIDERED EXPEDIENT TO DO SO. FORMAL ENFORCEMENT ACTION WILL NOT BE INSTIGATED SOLELY TO REGULARISE BREACHES OF PLANNING CONTROL. IN TAKING FORMAL ENFORCEMENT ACTION THE COUNCIL WILL BE PREPARED TO USE ALL THE ENFORCEMENT POWERS AVAILABLE COMMENSURATE WITH THE SERIOUSNESS OF THE BREACH.

4.2 Where it is considered that it is likely that planning permission would be granted for the development, the person responsible would normally be invited to submit a retrospective planning application. Enforcement action is not taken simply because there has been a breach of planning control. It is not a "punitive" measure. The council would not take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity or the environment.

4.3 We will not actively invite a retrospective planning application where it is considered unlikely that planning permission would be granted. In those circumstances we would continue to provide advice on how to resolve the breach and would proceed with appropriate enforcement action as set out in steps 3.2 (d), (e) and (g) above.

4.4 We will seek to work with those in breach to voluntarily resolve contraventions to avoid formal action having to be taken. When this is not possible or appropriate, and it is considered expedient to take formal action to resolve a breach, appropriate and proportionate action will be taken. The main options for action are summarised in Appendix 4.

RETROSPECTIVE PLANNING APPLICATIONS

- 4.5 In some cases the owner of a site or a developer can apply for planning permission once they have already started work, but an owner or developer should never rely on 'retrospective permission' to get approval for unauthorised works. Retrospective permission means that permission is granted after the work has started. Although an offence has not been committed unless works relate to a listed building, a protected tree or are in breach of an existing Enforcement Notice, anyone doing this is taking a considerable risk and may face formal enforcement action, if the planning application is refused.
- 4.6 Our enforcement officers will only encourage an owner or developer to make a retrospective application if they consider that they may be granted planning permission for the development. However, our enforcement officers can only advise on this and cannot give any guarantees. It is also important that the Council's Pre-application Advice procedure is followed.

POLICY 6

THE COUNCIL WILL ALWAYS DISCOURAGE THE CARRYING OUT OF DEVELOPMENT WITHOUT PLANNING PERMISSION BUT WHERE RETROSPECTIVE APPLICATIONS ARE SUBMITTED THESE WILL BE TREATED ON THEIR INDIVIDUAL MERITS

ENFORCEMENT AND NEGOTIATION

- 4.7 We will endeavour to overcome any harm caused by unauthorised development by negotiation, wherever possible, but the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set in accordance with the priority accorded to the case.

POLICY 7

THE COUNCIL WILL ACTIVELY PURSUE, WHEN CONSIDERED PROPORTIONATE TO DO SO, BREACHES OF PLANNING CONTROL. WHERE EXTREME HARM IS IDENTIFIED THIS WILL NOT NECESSARILY INVOLVE WAITING FOR OR EVEN REQUESTING A PLANNING APPLICATION

POLICY 8

DECISIONS WHETHER OR NOT TO TAKE FORMAL ENFORCEMENT ACTION WILL NORMALLY BE DELEGATED TO AND MADE BY THE PLANNING ENFORCEMENT TEAM LEADER AS AGREED. REASONS FOR NOT TAKING ACTION WILL BE RECORDED IN WRITING AND MADE AVAILABLE FOR INSPECTION.

POLICY 9

THE COUNCIL WILL NOT ALLOW PROLONGED NEGOTIATION TO DELAY ESSENTIAL ENFORCEMENT ACTION.

POLICY 10

IN SITUATIONS WHERE AN UNAUTHORISED DEVELOPMENT MAY BE MADE ACCEPTABLE BY THE IMPOSITION OF APPROPRIATE PLANNING CONDITIONS, A PLANNING APPLICATION WILL BE SOUGHT TO REGULARISE THE DEVELOPMENT. WHERE SUCH AN APPLICATION IS NOT FORTHCOMING WITHIN AN AGREED TIME SCALE, AN ENFORCEMENT NOTICE MAY BE SERVED TO REGULARISE THE BREACH, TOGETHER WITH A SEPARATE STATEMENT THAT THE COUNCIL WOULD BE PREPARED TO GRANT PLANNING PERMISSION SUBJECT TO SPECIFIED CONDITIONS.

- 4.8 We will aim to ensure that where a development is considered to be acceptable, but which remains unauthorised, then the service of a notice along with a statement will protect the interests of future owners/developers.

POLICY 11

IN CONSIDERING WHETHER OR NOT TO TAKE ENFORCEMENT ACTION, THE COUNCIL WILL NOT GIVE WEIGHT TO NON-PLANNING CONSIDERATIONS.

- 4.9 Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds. Local opposition or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership disputes or breaches of covenant.

POLICY 12

WE WILL HAVE REGARD TO THE COUNCIL'S OBLIGATIONS AND POWERS UNDER OTHER LEGISLATION.

- 4.10 From time to time more effective and efficient outcomes can be achieved by use of powers outside the Town and Country Planning legislation.

POLICY 13

WE WILL PROMPTLY CLOSE CASES THAT DO NOT AMOUNT TO A BREACH OF PLANNING CONTROL OR WHERE IT IS NOT CONSIDERED EXPEDIENT TO TAKE ACTION

AND KEEP A PUBLIC RECORD AS TO WHY SUCH ACTION WAS CONSIDERED TO BE APPROPRIATE.

POLICY 14

IN ORDER TO AVOID UNNECESSARY DELAY, THE COUNCIL WILL ISSUE NOTICES “IN THE ALTERNATIVE” WHERE THERE IS UNCERTAINTY OVER THE NATURE OF THE BREACH.

- 4.11 The Council will use this Local Enforcement Plan when dealing with breaches relating to advertisements and will prepare specific separate advice and guidance on this topic.

5 INFORMATION AND COMMUNICATION

P15 ONCE A BREACH OF PLANNING CONTROL HAS BEEN ESTABLISHED THE WE WILL UPDATE THE COUNCIL’S WEBSITE WITH THE CASE DETAILS.

- 5.1 It is planned to develop the use of the website to keep all parties informed of progress. Once a final decision has been made on cases where a breach has been established this will be indicated on the website. As appropriate, where it is not considered expedient to take further action, the case will be closed as ‘non expedient’ the justification for this will be added to the website. Complainants’ details will continue to be kept confidential.
- 5.2 We aim to reach a final decision as to what action to take on all cases within a reasonable timescale. However, as every enforcement case is different and negotiations may be necessary to resolve the breach on some types of investigation this may take longer. Case officers will keep all parties informed of progress.

POLICY 16

WE WILL PROVIDE THE COMPLAINANT WITH AN UPDATE ABOUT THE CURRENT SITUATION ON EACH CASE EVERY 6 WEEKS UNTIL A CASE IS RESOLVED OR A NOTICE IS SERVED.

POLICY 17

WE WILL MONITOR ALL UNRESOLVED CASES WITH A VIEW TO CONCLUDING THEM WITHIN 26 WEEKS AND WILL SEEK TO RESOLVE 80% OF CASES WITHIN 26 WEEKS (SIX MONTHS) OF THE REGISTRATION DATE.

POLICY 18

IN ORDER TO ENSURE EFFECTIVE LIAISON AND COMMUNICATION WITH WARD MEMBERS AND TOWN AND PARISH COUNCILS, A LIST OF BREACHES UNDER INVESTIGATION WILL BE PROVIDED ON A REGULAR BASIS TOGETHER WITH AN

UPDATE ON PROGRESS ON INDIVIDUAL CASES. MEMBERS WILL BE EMAILED INDIVIDUALLY REGARDING BREACHES WITHIN THEIR OWN WARD.

- 5.3 Where appropriate, we will publicise enforcement cases where successful outcomes have been achieved.
- 5.4 It is crucial that enforcement procedures are open and transparent; that the community can see what is happening on enforcement issues; and that those who make complaints or are complained about, are advised as to progress and can identify why the final decision on any individual case was made.

DRAFT

Appendix 1 – Examples of Householder Team Cases

- Fences
- Extensions
- Outbuildings
- Hardstandings
- Domestic accesses
- Change of Use of residential outbuildings
- Change of Use of residential curtilage
- Residential satellite dishes and aerials
- Non compliance with conditions on householder development
- Shopfronts
- Expiry of temporary planning permissions

Appendix 2 – National Policy and Legal Context

The Council has the primary responsibility for taking whatever enforcement action is necessary within its area as Local Planning Authority. A private citizen cannot initiate planning enforcement action. The Council has powers to investigate and remedy breaches within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, the Localism Act 2011 and the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Enforcement provisions of the Localism Act 2011 extensively tackled some tactics previously adopted by developers that were seen as abuses, including twin tracking an appeal against an enforcement notice and an application for retrospective approval, time limits on concealed breaches and penalties and increased powers in relation to fly-posting and graffiti.

The Council, where appropriate, will consider the use of powers under the Proceeds of Crime Act 2002 to appropriate all assets gained by owners and occupiers through non-compliance with an enforcement notice.

The National Planning Policy Framework provides the following guidance on enforcement in paragraph 207:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

At the present time, Circular 10/97 “Enforcing Planning Control” together with its best practice guide remains extant and provides guidance on the use of the planning enforcement provisions of the Town and Country Planning Act 1990.

Appendix 3 – Local Policy Context

In considering whether or not it would be expedient to take enforcement action or to invite a planning application to regularise a breach of planning control, we will take account of the planning policies contained in:

- New Forest District Council Core Strategy Adopted October 2009
- New Forest District Local Plan First Alteration Adopted August 2005 (Saved Policies)
- New Forest District Council Sites and Development Plan Document – Proposed Submission Document January 2012 (More weight will be given as this document proceeds towards adoption)
- New Forest District Council Supplementary Planning Documents

These policies do not conflict with the National Planning Policy Framework

Appendix 4 –The main options for enforcement action are:

a) Breach of Condition Notice

The notice can be used where conditions imposed on a planning permission have not been complied with.

b) Enforcement Notice

This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the notice is a criminal offence.

c) Section 215 Notice

This notice can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area.

d) Stop Notice

The notice can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. Where Stop Notices are issued, the council may be liable to pay compensation if it is later decided that such a notice was not appropriate.

e) Temporary Stop Notice

These take effect immediately from the moment they are issued, and last for up to 28 days. A temporary Stop Notice would be only be issued where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area.

f) Injunction

This involves seeking an order from the court preventing an activity or operation taking place.

g) Direct Action

The council may enter land and take the necessary action to secure compliance when enforcement notices are in effect. The council will seek to recover all cost associated with carrying out works. This is only used in extreme cases where resources allow

DRAFT

ANNEX

FREQUENTLY ASKED QUESTIONS

- 1 What is a breach of planning control?
- 2 What is not a breach of planning control?
- 3 When has an offence occurred and will prosecution be commenced?
- 4 Why is enforcement action discretionary?
- 5 How is Expediency assessed?
- 6 What is the Legislative Context for enforcement action?
- 7 How do I report a breach of planning control?
- 8 Are complaints confidential?
- 9 What happens if you are complained against?
- 10 What are the normal outcomes of an enforcement investigation?
- 11 When will formal action be taken?
- 12 What types of formal action are their?
- 13 Why does enforcement sometimes take so long?
- 14 Why does the community at times have to provide evidence?
- 15 How do we deal with businesses?
- 16 What information is available on the web?
- 17 How do we monitor development?
- 18 How do I complain about the enforcement service?

1 What is a breach of planning control?

Common breaches of planning control include the unauthorised erection of a building or structure, the change of use of land or the display of an advertisement.

Other less frequent (but in some cases far more serious) breaches of control include:

- Unauthorised stationing of a caravan or mobile home;
- Failure to comply with conditions attached to a planning permission;
- Not building in accordance with the approved plans;
- Failure to properly maintain land so that it has an adverse impact on amenity (Section 215);
- Unauthorised engineering works – such as ground level changes;
- Failure to comply with a Section 106 Agreement.

2 What is not a breach of planning control?

The following are **not** normally breaches of planning control:

- Internal works to a non-listed building;
- Obstruction of a highway or public right of way and the parking of vehicles on the highway or on grass verges;

- Parking a caravan within the residential boundary of a property provided that it is ancillary to the dwelling;
- Clearing land of overgrowth, bushes and trees provided they are not subject to planning protection;
- Operating a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Boundary and High Hedge disputes;
- Deeds and covenants are not controlled under planning legislation;
- Permitted development under the Town and Country Planning (General Permitted Development Order);
- Trespass on land;
- Health and Safety Issues.
- Boundary disputes

3 When has an offence occurred and will prosecution be commenced?

The following matters are offences and prosecution proceedings could be instigated:

- Unauthorised works to a listed building;
- Unauthorised demolition in a conservation area;
- Undertaking demolition for which Conservation Area Consent has been granted without complying with a condition attached to the consent
- Unauthorised works to trees protected by a tree preservation order or in a conservation area;
- Failure to comply with an enforcement notice, a Breach of Condition Notice, a Section 215 Notice.
- Unauthorised advertisements

4 Why is enforcement action discretionary?

Just because a building, extension, structure, use or advert is in breach of planning or a related control this is not, in itself, a reason to take enforcement action. Even when it is technically possible to take action the Council is required to first decide if formal action would be “proportional and expedient”. In cases where it has been established that a breach of planning control has occurred an assessment of expediency will be undertaken to determine the next course of action and if it is proportional to take enforcement action. We will not take action against breaches of planning control which causes no material planning harm.

The key need is to decide as quickly as possible whether action is proportional and then to clearly document, in an open and transparent manner, why that decision was reached. Formal action is a last resort and those responsible normally have to be given the chance to put matters right. However, when the breach is causing serious harm or nuisance, formal action will not be delayed by protracted negotiation or a request for the submission of a planning application when it is obvious a refusal is likely to result.

5 How is Expediency assessed?

The expediency test will normally involve the Planning Enforcement officer assessing the following:

- Whether the breach of control is in accordance with the policies of the development plan.
- Consideration of other material planning considerations including whether the breach unacceptably affects public amenity; whether the breach unacceptably affects any existing land use or buildings that merit protection in the public interest
- What action is proportionate to the breach to which it relates
- Whether the breach could be resolved through the submission and subsequent approval of a planning application and if so if conditions restricting it are likely to be necessary
- Whether action would be proportionate and in the public interest

6 What is the Legislative Context for enforcement action?

When investigating breaches of planning control the Council will have regard to the principles of national Guidance.

Primary legislation:

- Town and Country Planning Act 1990 (as Amended)
- Planning (Listed Building and Conservation Areas) Act 1990 (as Amended)

Secondary legislation:

- The Town and Country Planning (use Classes) order 1987 (as amended)
- The Town and County Planning General Permitted Development Order 1995 (as amended)
- Planning and Compensation Act 1991
- Planning and Compulsory Purchase Act 2004

Key Guidance

- The National Planning Policy framework 2012. Paragraph 207
- The Town and Country Planning (Control of Advertisement) Regulations (England) regulations 2007
- Circular 10 /97 Enforcing Planning Control

7 How do I report a breach of planning control?

The Council will investigate all complaints received where the complainant has included the exact location of the land, a clear description of what has happened and when and full contact details. The following information is also useful:

- What harm or loss of amenity the complainant believes is being caused?
- Names, addresses and phone numbers of any owners, occupiers or builders involved.

- In the case of an alleged unauthorised use, an idea of the nature of the activities, the frequency of the activity and the hours it takes place.

Complaints received with inadequate information cannot be registered. Please note we cannot comment on the matter at the time the complaint is being made.

Complaints should, ideally, be made on line using the online enforcement complaint form available on the New Forest District Council website www.nfdc.gov.uk

Otherwise, complaints can be made by telephone when you will be asked a series of questions to enable completion of the complaint form on your behalf (Tel 023 8028 5345), or in writing.

8 Are complaints confidential?

The Council will treat complaints in confidence so far as possible and subject to any relevant law or court order. In accordance with the Data Protection Act 1998 the Council will not disclose the identity of the complainant; however it is sometimes possible for the individual subject of the complaint to make assumptions about who may have made the initial complaint. If complainants are worried about giving their name and address they can contact their local Ward or Parish Councillor or their Parish/Town Council who may be willing to make the complaint on their behalf.

If a case proceeds to formal action we may need the evidence of a complainant to substantiate the matter. If this is the case the Council would not be able to maintain the anonymity of the complainant. The complainant will be made aware of this prior to formal action taking place.

9 What happens if you are complained against?

If you are contacted by the Council about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it) and to explain your side of the case.

Once a complaint is registered a member of the Enforcement Team will visit the site to ascertain the nature of the complaint and determine if a breach of planning control has taken place. This may be without any prior warning to the owner or any tenants / employees at the site. Section 196A of the 1990 Act (as amended) gives officers the authority to enter any land and wilful obstruction of a person exercising a right of entry is an offence which can lead to prosecution. Please note that admission to any building used as a dwelling house cannot be demanded as of right unless twenty-four hours' notice of the intended entry has been given in writing.

If the allegation refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved you will be advised of the details of the alleged breach and, when relevant, how it can be rectified. You may be served with a Planning Contravention Notice which requires you to provide information concerning the alleged development and is used to establish what has occurred and details of those with an interest in the land. Failure to provide information in response to

a Planning Contravention Notice is an offence for which Court proceedings could be taken.

In the event of a breach being established, your co-operation will be sought to correct the breach either by removing or modifying the unauthorised development or by ceasing the unauthorised works. A 28 day period is the standard time given; however this time period will be adjusted accordingly depending on the nature of the breach Time will be allowed for you to do this and in some circumstances you may be invited to submit a retrospective planning application.

If compliance is not secured through negotiations or the retrospective planning application, where relevant, is refused formal action may be instigated (see above).

10 What are the normal outcomes of an enforcement investigation?

No breach – If, after a site visit, there is found to be no breach of planning control; for example the development is permitted development, it is consistent with an existing approval or simply is not within the control of planning legislation.

The Case will be closed and the complainant and those responsible for the alleged development / use advised accordingly

Breach of planning control but not expedient to pursue – Enforcement action is discretionary so if a technical breach has taken place, for example a house extension that is only marginally over permitted development limits or would be likely to gain planning permission further action will rarely be appropriate.

The Case will be closed as non-expedient and the complainant and those responsible for the breach advised accordingly

Development is lawful - This is where there has been a breach but the activity has been going on for so long or the structure has been substantially complete for such a long time that the breach is immune from any enforcement action given the national legislation that applies.

The Case will be closed as lawful by default and the complainant and those responsible for the breach advised accordingly

Attempt to negotiate a resolution - The first priority is always to try to resolve a breach of planning control through negotiation. This could involve the cessation of a use or the removal or modification of unauthorised development. Such action will always include a requirement to meet a reasonable timescale. A 28 day period is the standard time given but this time period may be adjusted depending on the nature of the breach and we will not allow unnecessary or unproductive negotiations to hamper or delay enforcement action.

The complainant and those responsible for the breach will be advised accordingly

Invite a retrospective planning application- In some cases the most appropriate way to rectify a breach of planning control that appears likely to be acceptable is to invite the relevant party to make a retrospective planning application for the development or change of use that has occurred. Where permission is unlikely to be granted, an application would not normally be invited. In such cases the relevant party will be made aware of the concerns that the LPA have and that refusal would be likely.

The enforcement case will be closed once a valid retrospective planning application is submitted. The complainant and those responsible for the breach will be advised accordingly. If the planning application is refused a new enforcement case will be opened

Formal action – In some cases where due to the serious harm that is caused it is highly likely that a retrospective application would be refused an application will not be requested as it would be unlikely to produce a positive result and is often a waste of time and money for all concerned.

The complainant and those responsible for the breach will be advised accordingly and the case details displayed on our web site.

11 When will formal action be taken?

Where it is considered expedient, and if negotiation or submission of a retrospective planning application does not secure compliance with what the Council considers acceptable then formal action will be taken. The nature of the breach will dictate what route is pursued.

If an enforcement notice is issued, it can be challenged by way of an appeal to the Secretary of State, or challenged in a Court of Law where appropriate. However there is no right of appeal against a Breach of Condition Notice. The Council is unable to take further action to secure compliance with an enforcement notice until an appeal or Court of Law decision is received and any compliance period passed.

If there is no appeal or the Notice is upheld at appeal but the Notice is still not complied with, the responsible persons are open to the risk of prosecution; alternatively the Council may take direct action to undertake the appropriate works and recover the costs from the responsible person(s).

12 What types of formal action are there?

The Council has a range of powers under the Town and Country Planning Act 1990 that it can use to remedy breaches of planning control. Some of these are listed below.

- **Planning Contravention Notice** – A notice requiring persons to divulge information in respect of land and activities.

- **Breach of Condition Notice** – A notice to secure compliance with conditions specified within a planning permission.
- **Enforcement Notice** – A notice which details the steps required to remedy the situation. This notice can also be served in conjunction with a stop notice (below).
- **Stop Notice / Temporary Stop Notice** – A notice requiring unauthorised activities to cease.
- **Section 215 Notice** – A notice that allows the council to secure the proper maintenance of land and buildings.
- **Advertisement Notice** – A notice advising that the Council will remove unauthorised signs.

Additional discretionary powers exist to give formal cautions, serve injunctions, take direct action, and require the discontinuance of an advertisement and to prosecute.

13 **Why does enforcement sometimes take so long?**

It is often frustrating to complainants or the community that 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 perpetrator without pursuing formal action;
- Consideration of an application seeking to remedy the matter; or awaiting determination of an appeal against formal Notices.

14 **Why does the community at times have to provide evidence?**

The Council only has a small Planning Enforcement Team and receives a very high number of complaints every year. When an enforcement investigation involves the use of land, evidence about what is happening and the impact of the activities is required if the matter is to be pursued. The people best equipped to provide this are the local community and they will be advised on how to assist. The owner/occupier of the land will be made aware that monitoring is taking place.

15 **How do we deal with businesses?**

If an Enforcement Notices is served on a business a longer compliance period may be included to allow time for the a business to re-locate

16 What information is available on the web?

We use the web extensively so as to publicise planning information and in particular that regarding planning applications and enforcement activities. In terms of enforcement the Register of Enforcement notices is accessible on line, as is basic information regarding all investigations that have concluded that a breach of control exists and against which action is being taken. As part of ongoing improvements it is anticipated that information on current cases, where a breach of planning control has been established, will be provided along with a statement of the Council's justification for closing a case as non-expedient.

It is hoped to improve the level of information available over time; however, the need to retain the confidentiality of the complainant needs to be protected.

17 How do we monitor development?

We check the submission of details required for compliance with conditions attached to planning consents when these developments are dealt with by the Council's Building Control Service.

18 How do I complain about the enforcement service?

In the first instance, all complaints should be addressed to:

The Development Control Manager New Forest District Council Appletree Court Lyndhurst Hampshire SO43 7PA

If a complainant remains dissatisfied with the written response from the Development Control Manager, then they can ask that the matter be investigated by the Head of Planning and Transportation. They can also pursue the complaint further through the Authority's Complaints Officer in accordance with the Authority's formal corporate complaints procedure. The Authority will always strive to resolve a complaint locally but if this is not possible the complainant will be advised on how to pursue the matter further with the Commissioner for Local Administration (the Ombudsman.)