



## **The Planning Enforcement Policy**

### **The Planning Enforcement Service**

The Planning Enforcement Service comprises of one full time Planning Enforcement Officer.

### **Scheme of Delegation**

The task of Planning Enforcement has been delegated to officer level in accordance with Part 8 of the Constitution of Worcester City Council.

### **The Aim of the Planning Enforcement Service**

To investigate breaches of planning control within Worcester City, and, where it is expedient to do so, secure compliance by negotiation, or by the use of the appropriate enforcement powers.

As set out by the National Planning Policy Framework enforcement action is discretionary, and in accordance with this framework the Planning Enforcement Service will act proportionately in responding to suspected breaches of planning control.

### **The Test of Expediency**

When assessing whether to instigate enforcement action the following will be considered:

- i. the proposed action must be in the public interest;
- ii. the breach must be sufficiently harmful to justify taking action;
- iii. the proposed action must be reasonable and commensurate with the breach in planning control to which it relates;
- iv. the action undertaken should be cost effective;
- v. whether or not the development is in accordance with planning policies.

## The Policy

This policy sets out how the Planning Enforcement Service will operate in an effort to resolve breaches in planning control. It explains what **priorities** will be assigned to the different types of breach, what **methods** will be used in order to manage the breach, and what **expectations** people can have when dealing with the Planning Enforcement Service.

## Priorities

The Planning Enforcement Service receives approximately 280 complaints in a year from members of the public, councillors, officers within the Council and other professional agencies. These complaints can be received in writing (email and letter), or verbally (in person or over the telephone).

When a complaint is received it will be logged on the Planning Enforcement Database. When receiving a complaint it is sometimes difficult to assess the seriousness of the breach. Frequently, the Planning Enforcement Service is asked to investigate matters that do not turn out to be breaches of planning control. This is because a complaint is about development that is already permitted, or it relates to matters that are not controlled by planning legislation.

A temporary level of priority will be assigned to a complaint. The case will be assigned an official priority rating after an initial investigation has been carried out. If further action is required the complainant will be advised as to what methods will be carried out in order to regularize the breach. At this stage the complainant will be encouraged to make contact with the Planning Enforcement Officer if progress reports are required.

### High, Medium, or Low.

Initially a complaint will be assigned a priority which will be either High, Medium or Low. Examples of each category are as follows:

**High:** Complaints about works that are causing irreparable damage to listed buildings, development that has a severe and harmful effect to the local amenity.

These cases will be investigated within **3 working days**.

**Medium:** Complaints about unauthorized structures, breaches of planning conditions.

These cases will be investigated within **10 working days**.

**Low:** Unauthorized adverts, developments that are not in accordance with the relevant planning permission, untidy land, complaints about Houses in Multiple Occupation.

These cases will be investigated within **14 working days**.

## **How the case will be investigated**

Once the case has been logged an initial priority level will be assigned. Where appropriate the Planning Enforcement Service will check existing enforcement and planning records to verify if there is any information that may help the investigation. This may include consultation with other departments of the Council, other statutory organizations, or members of the public.

If required a site visit will be undertaken. When a site is visited those present on site may be questioned, or, if need be, cautioned in accordance with the Police and Criminal Evidence Act 1984. At the site visit photographs will be taken of the alleged breach to enable the Planning Enforcement Officer to keep a record of the site under investigation and be used to make further assessments of the case.

An assessment will then be made to determine whether a breach in planning has occurred. A priority level will be assigned to the case. Subject to a review, the priority level of a case may be changed.

## **Priority Level**

### **Level 1**

A serious breach has been identified. It is deemed that immediate enforcement action is required. Owing to the seriousness of the breach, little, or no time, will be assigned to negotiate for the breach to be remedied voluntarily. Failure to negotiate an appropriate remedy for the identified breach will result in the instigation of formal enforcement action.

### **Level 2**

A serious breach has been identified. A reasonable time period will be allowed to remedy the breach of planning control. Failure to negotiate an appropriate remedy for the identified breach will result in the instigation of formal enforcement action.

### **Level 3**

A significant breach of planning control has been identified. Where the breach may be remedied by a scheme that would be recommended for approval an application for planning permission will be invited. Where the breach can be remedied by the removal or cessation of the development a timescale in which to comply will be proposed to the contravener. The failure of the contravener to comply with this timescale will result in formal enforcement action.

### **Level 4**

A breach of planning control has been identified. Attempts will be made to remedy the breach by negotiation, however, protracted involvement, and the need for formal action will be weighed against the expediency of pursuing the matter further, especially in relation to diverting resources towards dealing with cases assigned a higher priority. These cases will be reviewed on a quarterly basis.

## **Level 5**

A minor breach has been identified. However, owing to the nature of the breach action regarding the case will be suspended until such time as the workload will allow further action. These cases will be reviewed on a quarterly basis. If no further complaints are received after the time of the last review the priority level may be reduced to a level 6.

## **Level 6**

A breach of planning has occurred but it is considered not expedient to pursue.

## **Level 7**

No breach of planning control has occurred.

## **Methods**

### **Planning Contravention Notice**

After initial investigations, if it is necessary to gather further information to establish the full extent of the breach, or, where after initial investigations it is still unclear as to whether a breach has occurred, a Planning Contravention Notice may be issued to those parties thought relevant to the investigation. If the Planning Contravention Notice is not returned within the statutory time period if it is deemed expedient to do so prosecution proceedings will be instigated under the provisions of the Town and Country Planning Act 1990 (as amended), for committing the relevant offence.

### **Requisition for Information**

Where it is important to obtain clarification about the ownership of land or premises subject to an enforcement investigation, a Requisition for Information under Section 330 of the Town and Country Planning Act 1990 (as amended), will be issued. If the Requisition for Information is not returned within the statutory time period **and** if it is deemed expedient to do so prosecution proceedings will be instigated under the provisions of the Town and Country Planning Act 1990 (as amended), for committing the relevant offence.

### **Land Registry Search**

Where it is important to obtain clarification about the ownership of land or premises subject to an enforcement investigation and these details are required at short notice the Planning Enforcement Service will obtain the information via a land registry search.

## **Tidy Up Notice**

Where it is thought that land or premises are in such a poor state of condition that it is detrimental to the amenity of the surrounding area the Planning Enforcement Service will write to the owners, or occupiers of the land (whichever appropriate), and request that the land be tidied up to the satisfaction of the local planning authority.

Correspondence will be issued in accordance with the Government Guidelines provided in the *Town and Country Planning Act 1990 Section 215 Best Practice Guide*. If initial requests fail to ameliorate the site in question within a reasonable time period, where it is expedient to do so, a tidy up notice will be served under Section 215 of the Town and Country Planning Act 1990 (as amended).

## **Monitoring Development**

Statistically, the number of reported breaches in which a development with planning permission is not carried out in accordance with the approved plans is low. Therefore, sites with planning permission will only be monitored if a breach of planning control is suspected.

## **Breach of Condition Notice**

Where planning permission has been granted subject to conditions, and it appears to a local planning authority that there has been a breach of a condition, Section 187 of the Town and Country Planning Act 1990 (as amended), enables the authority to issue a Breach of Condition Notice to require compliance with the relevant condition. Where there has been a breach of a planning condition, and if it is considered expedient to do so, a Breach of Condition Notice will be served.

## **Enforcement Notice**

Where it appears to a local planning authority that there has been a breach of planning control, and it is expedient to do so having regard to the provisions of national planning guidance, the development plan and to any other material considerations, Section 172 of the Town and Country Planning Act 1990 (as amended), enables the authority to issue an enforcement notice to require the breach to be remedied. Similar legislation to issue a Listed Building Enforcement Notice is contained within the Listed Buildings and Conservation Areas Act 1990.

Where there has been a breach in planning control and it is felt that the breach cannot be resolved by negotiation, or, a development has failed to obtain retrospective planning permission, an enforcement notice will be issued if it is deemed expedient to do so by the Planning Enforcement Service.

In the event that an enforcement notice is to be served it will be issued as soon as is practicable. If it is the intention of the local planning authority to refuse a retrospective planning application it may choose to issue a decision to refuse the application and an enforcement notice at the same time. This will enable the contravener to appeal both the decision to refuse the application and appeal the enforcement notice at the same time.

## **Stop Notice**

If an enforcement notice has been issued to regularize a breach of planning control that is causing significant immediate harm to the amenity of the area the provisions section 183 of the Town and Country Planning Act 1990 (as amended) enable a local planning authority to issue a stop notice to require the cessation of unauthorized works, or the unauthorized use of land or premises before the time period in which the enforcement notice comes into effect. Where it is thought that significant or substantial harm is being caused by a breach of planning control for which an enforcement notice has been served, a stop notice will be served if it is deemed expedient to do so.

## **Temporary Stop Notice**

A temporary stop notice has been designed to enable a local planning authority to require the immediate cessation of a breach of planning control for up to 28 days. Where it is thought that a breach of planning control is sufficiently harmful and it is thought expedient to require the cessation of the breach immediately, a temporary stop notice will be served.

## **Discontinuance Notice**

Many advertisements can be displayed without the need to obtain Advertisement Consent from a local planning authority. These advertisements are classified as having deemed consent, and details of which type of advertisements do not require an application are listed in the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). However, there are times when, in the interests of public safety, or public amenity, the Council may wish to withdraw deemed consent for the display of such an advertisement. In such cases a discontinuance notice will be issued in order to rescind deemed consent for the display of the advertisement.

Where it is thought that an advertisement with deemed consent is harmful to public safety or amenity, and attempts at negotiation to either remove or improve the advertisement have failed, a discontinuance notice will be served if it is considered expedient to do so.

## **Removal Notice**

Where an advertisement is deemed to be illegal, the Council may issue a removal notice which will require the removal of an advertisement within 2 days. Where an advertisement is deemed to be illegal and is displayed on a structure the Council may issue a removal notice which will require the removal of the structure within 22 days. In the event that a removal notice is not complied with Council can remove the advertisement or structure and dispose of it accordingly. Contraveners can be charged for the removal of advertisements and the structures subject to the notice. All of this action may be taken in conjunction with a prosecution if it is deemed expedient to do so.

## **A-boards**

If an A-board is being displayed in accordance with Worcestershire County Council's A-Board Policy it is not expedient to require those displaying an A-Board to apply for express consent and therefore no enforcement action will be taken.

If an A-board is not being displayed in accordance with Worcestershire County Council's A-board Policy then the Planning Enforcement Service can take enforcement action by any of the following means:

- i) The issuance of a fixed penalty notice
- ii) The issuance of a removal notice and direction action in the event that the advertisement is not removed
- iii) The instigation of prosecution proceedings

## **Prosecutions**

Carrying out development without planning consent is not a criminal offence. However, failure to comply with the requirements of a formal notice, unauthorized works to a listed building, or a breach of the advertisement regulations, constitutes to a criminal offence. Where a criminal offence has been committed the contravener will be prosecuted if it is considered expedient to do so.

## **Fixed Penalty Notices**

Where an advertisement is being displayed illegally if it is deemed expedient to do so the Council will issue a fixed penalty notice.

## **Injunctions**

The Town and Country Planning Act 1990 (as amended), permits the Local Planning Authority to obtain an injunction from the Crown Court to prevent an individual from continuing to carry out a breach of planning control. Where a breach of planning control is considered to be extremely harmful the Planning Enforcement Service, in consultation with the appropriate legal advice, may seek an injunction if it is considered expedient to do so.

**The authority to serve formal notices and to instigate legal proceedings will be obtained in accordance with the Council's Scheme of Delegation.**

## **Expectations**

Those dealing with the Planning Enforcement Service can expect the following with regard to:

### **Respect for confidentiality**

All complainant details will be kept in the strictest confidence. However, under the provisions of the Freedom of Information Act 2000, the Planning Enforcement Service may have to disclose information upon request if the release of this information is deemed to be in the public interest. All requests for information will be in accordance with the exemptions cited under the Data Protection Act 1998.

### **Anonymous Complaints**

Complaints of an anonymous nature will not normally be investigated. However, significant breaches of planning control may be investigated at the discretion of the Planning Enforcement Service. No information about any case will be provided to an enquirer who wishes to remain anonymous.

### **Personal Relations**

The Planning Enforcement Service will be impartial and professional at all times. It is understood that planning enforcement issues may result in members of the public being informed about decisions that they may find disappointing. Therefore, the Planning Enforcement Service will strive to ensure that where possible full explanations for the outcome of an investigation or enforcement action will be provided.

### **Attempts to resolve by negotiation**

Depending on the nature of the breach, the Planning Enforcement Service may seek to secure voluntary compliance with a breach of planning control by informal negotiations either in person, by telephone or in writing before recourse to formal action.

However, the Planning Enforcement Service will not let protracted negotiations stand in the way of taking positive action to resolve a breach of planning control.

### **How long the process will take**

The aim is to remedy breaches of planning control as soon as is practicable. To ensure that enforcement action is as effective as possible, the Planning Enforcement Officer will carefully follow all the necessary steps as set out by the legislation. Any deviation from correct procedures could lead to enforcement action failing on a technicality despite the planning merits of the case.

This process can be very frustrating for complainants because it may seem that nothing is happening for long periods of time. The Council has taken steps to speed up what is has to do by delegating authority to take enforcement action to officer level. This means that it does not have to wait for a decision to be made by a committee of the Council.



Formal enforcement action can take a long time to achieve results. If an appeal is lodged this will inevitably slow the process down whilst the timescales set down by the appeals process are followed.

Whilst every effort will be made to keep to the timescales provided in this policy it is accepted that because of the limited resources and the complexity of enforcement procedures there may be times when the timescales set may be inappropriate, or hard to achieve. In the event that a set of timescales cannot be feasibly met the priority of a case may be reviewed. Where appropriate a case may be re-assigned to a new priority level and designated a revised timescale.

## **More Information**

Enquiries or complaints about possible breaches of planning control can be made to the Council's Planning Enforcement Service via the Hub by telephoning 01905 722233, or by email using the facility on the website. Alternatively, complaints in writing can be sent to Worcester City Council, The Guildhall, High Street, Worcester, WR1 2EY

Worcester City Council is only responsible for planning enforcement within the City itself. Possible breaches of planning control in the surrounding rural areas should be reported the appropriate district councils:

Malvern Hills District Council: ph. 01684 862151.

Wychavon District Council's Planning Department: ph. 01386 565565.

Worcestershire County Council is responsible for breaches of planning control relating to minerals and waste disposal throughout the county area as well as matters relating to the Highway: ph. 01905 763763.

## **Complaints**

If members of the public are dissatisfied with the Planning Enforcement Service there is the option to the Council's official complaints procedure, details of which are on the Council's website.

If members of the public are still not satisfied they can complain to the Local Government Ombudsman, PO Box 4771, Coventry CV4 0EH. [www.lgo.org.uk](http://www.lgo.org.uk)

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