

TITLE	DEVELOPMENT MANAGEMENT PLANNING ENFORCEMENT SERVICE
FOR CONSIDERATION BY	Corporate Services Overview and Scrutiny Committee
WARD	None Specific
STRATEGIC DIRECTOR	Heather Thwaites, Director of Development and Regeneration

ISSUES PAPER

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REPORT PREPARED BY Heather Thwaites,
Director of Development and Regeneration

PURPOSE OF REPORT

To provide information about the enforcement service, the key issues and to outline enforcement processes with a view to identifying improvements.

BACKGROUND

The object of enforcement is to secure compliance preferably voluntarily and to only resort to formal action as a last resort. This is the regulatory basis for enforcement and it is often a misunderstanding of this principle, which causes tension with the Council's customers.

Wokingham BC has an enforcement team comprising of 3 dedicated enforcement officers managed by a Development Management Team Leader and this forms part of the Development Management Service. The team deals with an average of 700 cases per annum. Enforcement Officers focus on the investigation of breaches of planning control while the expediency reports are undertaken by the Development Management Planning Officers.

The team faces a high level of public expectation about what the enforcement service should achieve. There is a clear framework within which enforcement activity must operate as contained in the Council's Enforcement Policy (attached) which is available on the council's website. Government policy is set out in the National Planning Policy Framework and government circulars. Development Management also have an Enforcement Procedure in addition to this guidance and policy.

On several occasions the disparity between expectations and what is possible leads to formal complaints from aggrieved parties. This can be either from the person who has undertaken the breach of planning or the affected parties. Nevertheless, taking all issues into account, the service in Wokingham is considered effective compared to services provided by other Councils (see figure 2 page 6).

The enforcement service operates to serve all of the Council's residents. Although, customers of the enforcement service include neighbours and other affected parties who often advise the Council of potential breaches of planning control and expect the Council to take appropriate action, the people who have undertaken unauthorised development may also be residents who were not aware of the planning regulations and are also our customers. Whilst there may also be those who deliberately flout planning regulations, they need to be dealt with impassionately by the same procedure.

Planning enforcement is discretionary and we therefore must have a system of enforcement to consider whether to use this discretion. We are therefore required to

consider cases in which development is carried out either without planning permission or in breach of the conditions or limitations attached to a grant of planning permission. There is no requirement to take action, however it is where cases of harm where there is justification for action which should be pursued. Parliament has always declined to make a breach of planning control an offence punishable by the courts with the exception of adverts, listed building and tree preservation order offences. Instead, local planning authorities have been authorised where expedient to serve a notice on the owners of land to remedy the situation. It is only when such notices are ignored that the local planning authority can prosecute the offender through the legal process.

The focus of the enforcement system is to seek that unauthorised development is resolved through negotiation. Even where it becomes evident that a negotiated solution cannot be found, it is important to note that the local planning authority should not automatically issue an enforcement notice in respect of every unresolved breach of planning control. Statute requires that they should be satisfied that it is expedient to issue the notice, having regard to the provisions of the Development Plan, i.e Wokingham's Core Strategy and other related documents. In deciding whether to take enforcement action the courts have held that the personal circumstances of the occupiers of the land should be taken into account.

PLANNING ENFORCEMENT ACTIVITY IN WOKINGHAM 2011-2012

The key stakeholders of the Enforcement Service are both the neighbours who are affected by breaches of planning control and the person(s) who have carried out a breach of planning control. The service has to manage a number of approaches with regard to possible unauthorised development. In every case the issues are investigated and then a decision made and documented whether to pursue enforcement action or not.

Requests for Service

On a day to day basis the enforcement team responds to enquiries which generally arrive via Wokingham Direct and are then recorded as Requests for Service (RFS) and allocated to an enforcement officer to investigate. During 2012 approximately 600 RFSs were received by the enforcement team in addition to the over 200 outstanding issues at the beginning of the year. The ward member(s) and parish/town council are notified of RFSs received.

The chart below (figure 1) illustrates that the majority of RFSs received (64%) are not breaches of planning control. Despite this, the complaint has to be investigated by an enforcement officer and the Council seeks to carry out this investigation within 10 working days of the receipt of the complaint. This investigation includes a planning history search, a site visit and reference to the regulations. In some cases, this process can be relatively straight forward. However, sites with complex planning history and conditions, or a mixed use development can be very complicated and determining if there is a breach can take a great deal of investigation. Sometimes, establishing if a breach has occurred also requires consultation with the Council's legal team. For complex cases or where legal advice is required, it is likely to take more than 10 working days to identify if there is a breach of planning control.

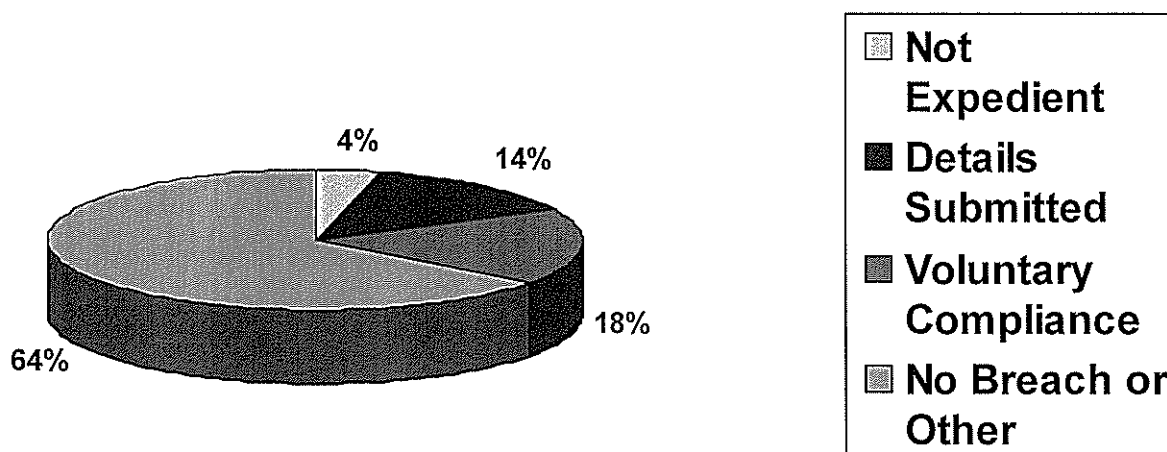
Given that the majority of requests for service received are not breaches of planning control and that there is an emphasis on a negotiated solution when it is determined that a breach has occurred, it is important that all customers whether it is those who have complained or those who have undertaken the development, are treated fairly and that the case is dealt with objectively by the service.

If it is established that there is no breach, then the Council sends written notification to the complainant, the ward member(s) and the town/parish council. This notification letter has recently been revised to allow more information about the alleged breach to be reported, and to explain why it has been found that no breach has taken place.

When A Breach Is Identified

If a breach is identified, the planning enforcement team have a number of options available and there is 'no one size fits all' approach as the circumstances vary depending on the nature of the unlawful development, the characteristics of the site, and the relevant planning policy. Given the emphasis is placed on a negotiated solution the service of an enforcement notice is not seen as the most desirable solution and should only be used when all other opportunities for a negotiated solution have been exhausted. It will never be reasonable to take action just because there is a breach of planning control as there must be harm and conflict with planning policy. Action must not be simply to punish a person who has undertaken a breach and any action must be proportionate to the breach of control.

Figure 1: Enforcement outcome summary 2012



In 2012, 64 % of cases, investigation by the Council's Planning Enforcement team found there was no breach of planning control. This supports the Council's approach to treat all cases objectively and sensitively. In the 36 % of cases, there was a breach identified. In these cases the planning enforcement officer contacts the owner and/or occupier of the land to negotiate compliance. Often residents are not aware that they have undertaken development that requires planning permission and the enforcement officer must help them understand the position and help explain the options open to them to address this. Compliance can take two forms. Firstly the removal of the unauthorised development or cessation of the use, which accounts for 18% of closed cases. Alternatively, the submission of a planning application and the approval of this, which account for 14% of closed cases.

The remaining complaints that are breaches and that are not resolved through compliance or negotiation, are the subject of expediency decisions which assess the appropriateness of taking enforcement action. In 4% of the total RFSs received by the Council, the expediency decision is taken not to pursue enforcement action.

In the table above, breaches that are subject of formal enforcement action are not shown separately and in 2012, only 40 were not resolved informally. Of these, 19 were the subject of formal enforcement action and 21 were considered not expedient to pursue.

Compliance

In the event that there is compliance by the removal of the unlawful development or use, then the case is closed and the compliant, ward member and the town/parish council are informed via a letter.

Planning Application – Regularisation

If a planning application for the unlawful development is submitted, the Council must determine this in the normal way. The normal consultations will take place with neighbours, the parish and town councils and ward members. This can be 'listed' for consideration by the Planning Committee by the local ward member if it is a delegated item. In considering a planning application, that the development has been undertaken without the appropriate permission or consent cannot be a material planning consideration and the unlawful nature of the use cannot have any influence of the final acceptability of the scheme in planning terms, or affect the outcome of the application. The circumstances of the applicant however, will need to be considered. Sometimes, applications are not invited if the development is unlikely to be granted planning permission but there is nothing to prevent an application being submitted and the Council cannot refuse to determine this in most cases. It is normal practice that when an application is being considered by the Council, no formal enforcement action will be progressed.

Both of the above processes can take some time and if the person who has undertaken the unauthorised development has indicated that they are willing to try and resolve this informally, then the council will allow them a reasonable amount of time to do this. For example, a few months is often given for a building to be demolished and removed or for a use to find alternative premises and if occupied, the Council may give even more time to allow relocation. Wokingham Borough Council may be liable to deal with any homelessness. If an application is submitted, it often takes several months for plans to be drawn up and the application to be considered by the Council. The Enforcement Officer will monitor the situation. It is usually recommended that complainants and interested ward and town/parish members contact the Enforcement Officer for updates at this stage. Generally, no constant updates are provided until some action has taken place but the enforcement officer will always be willing to explain the latest position where required. It is difficult to agree a standardised update timescale for enforcement cases because they do not generally follow a set process. However the most controversial and sensitive cases are included in a sensitive sites list which provides updates to all ward members on a monthly basis from February 2013 onwards.

Expediency

The government guidance requires Local Authorities to be reasonable in seeking compliance. However, sometimes while compliance is agreed by land owners, it is not always forthcoming and the enforcement team do pursue cases to make sure that appropriate steps are being taken by those who have undertaken the unauthorised

development. If it becomes evident no action is being taken to comply either to remove/cease the development or through the submission of the planning application, then an expediency decision is taken about the appropriateness of formal enforcement action.

Up to this stage, while the cases is recorded on the Council's data base, no formal reports have been prepared by the Development Management service about the unauthorised development unless it has been subject of a planning application. However, when making an expediency decision, the unauthorised development is formally assessed in the same way an application is. Expediency addresses the following areas:

- Establishing the nature of the breach
- Evidence that a breach has taken place
- Determining that the development is unauthorised in planning terms
- Assessment of the planning merits of the case
- Expediency of taking formal action.
- Recommendation about the type of enforcement action
- Requirements of the action and the timescale for compliance.
- An assessment of occupier needs
- Human rights

If it is clear that there is a breach of planning control, then in order to determine expediency of taking formal action, a full planning assessment of the case is taken. In this assessment, that the development is unauthorised is not a material planning consideration and will therefore not effect the expediency decision in the same way as outlined above, when assessing planning applications for unauthorised development. In essence, if the planning assessment concludes that planning permission would have been granted in the event that an application was to be submitted, then it is considered not expedient to pursue the breach through the service of a formal enforcement notice. If however, it would be acceptable but only subject to conditions, as no planning application has been submitted then enforcement action would be pursued. For example, if a new business use was acceptable but only subject to controls over hours of operation but no application has been submitted to secure this, then there harm would result and an enforcement notice would be served requiring that cessation of the use. If the planning assessment found that the development was not acceptable irrespective of conditions, then the expediency decision would be to pursue enforcement and to serve a notice.

Where consideration of expediency is undertaken, this will always be documented in a report irrespective if the conclusion is to take formal action or not. These expediency reports are all checked and authorised by a Development Management Team Leader in the same way as delegated planning applications. If it is concluded that it is not expedient to pursue enforcement action, the case will be closed and complainants, ward members and town/parish councils are notified of this. From February 2013, the expediency report has been included with this notification to indicate why it is considered not expedient to pursue the breach. It is important to note that the significant Council resource to pursue enforcement action will not have any influence over the expediency decision or the decision to take action if the harm of the development can be substantiated by the Council.

Human Rights

The impact of action on an individual's human rights under the Human Rights Act is assessed as part of the expediency procedure. This legislation came into force in October 2000. Article 1 relates to peaceful enjoyment of the property and Article 8 relates to respect for family life. The right of individual landowners have to be balanced against the

rights of neighbours and the impact of the development on the wider area. Central to all planning decisions is the need to balance private rights with the public interest and human rights must be taken into account in every planning and enforcement decision.

Formal Enforcement Action

Where it is determined that the breach results in significant harm in planning terms, the Council will decide to take action. The enforcement notice or other notice such as Breach of Condition Notice is prepared and then is formally checked by the Council’s legal team before being authorised by the Head of Development Management. The notice is formally served on all persons with an interest in the land. The enforcement notice will include the description of the breach, the reason for service, the requirements of the notice and the timescale for compliance. This timescale must be reasonable. For example, for unauthorised dwellings 12 months is given to allow the occupiers to find alternative accommodation. In 2012, 15 Enforcement Notices and 2 Breach of Condition Notices were served.

In the case of adverts, the enforcement action is prosecution through the courts as to display an unauthorised advert is a criminal offence. In 2012, there were 6 successful prosecutions against advertisements.

Figure 2: Comparison with other Berkshire Districts 2012: (HCA statistics)

	Enforcement Notice	Stop Notice	Temporary Stop Notice	Breach of Condition Notice	Planning Contravention Notice	Planning Injunction
Wokingham	16	-	-	2	43	1
Bracknell Forest	14	-	1	5	17	-
Reading	4	-	-	1	16	-
Slough	17	-	1	1	5	-
West Berkshire	11	-	-	1	13	-
Windsor & Maidenhead	19	-	-	-	8	-

To try to provide a balanced view of the activity of neighbouring Authorities a scoring system has been used as shown in the table below. These scores allow a measurement of all enforcement activity undertaken (except prosecutions and cautions for which data is not available) by the neighbouring Authorities.

Figure 3: Relative complexity of enforcement activity

Enforcement Activity	Score (based on complexity)
Planning Contravention Notice	1
Breach of Condition Notice	2
Enforcement Notice	3
Temporary Stop Notice	4
Stop Notice	5
Planning Injunction	6

Figure 4: Enforcement Activity (June 2011-12): Homes and Communities Agency

	Enforcement Activity
Wokingham	101
Bracknell Forest	73
Reading	30
Slough	62
West Berkshire	48
Windsor & Maidenhead	65

This scoring exercise shows that, in terms of planning enforcement, Wokingham is significantly more active than its peers.

Appeal

There is a right of appeal against the enforcement notice but not a breach of condition notice. An appeal can be made the following grounds and/or a combination of these:-

- (a) that planning permission should be granted
- (b) that the breach of controlled alleged in the notice has not occurred
- (c) that there has not been a breach of planning control
- (d) that at the time the notice was served it was too late to take enforcement action
- (e) that the notice was not served properly
- (f) the steps for compliance are excessive
- (g) the time for compliance is inadequate.

It is essential that the decision to take action is clearly audited (by the expediency report) to enable the Council to successfully defend the enforcement action. In the last 2 years, 13 appeals have been determined by the Planning Inspectorate and 12 of these appeals have been successful. If an appeal is dismissed by the Planning Inspectorate and the Enforcement Notice is upheld, then sometimes the notice is amended by the Planning Inspector and the time period for compliance then runs from the date of the Inspector's decision.

Legal Action

Compliance with the notice is checked by the Council's Enforcement Officer at the end of the compliance term. If this has not been complied with then prosecution proceedings usually commence. This process is undertaken by the Council's legal team and prosecution can take some months depending on court timescales. The courts can impose fines up to £20,000 for non compliance with an enforcement notice. However, the fine can be significantly greater if imposed by higher courts.

There have been cases when the courts have fined transgressors but they have still not complied. In these cases, the Council can take direct action to remove the breach and attempt to claim back the costs in doing this. Alternatively an injunction can be sought and if granted and not complied with, there is a risk of imprisonment. If the transgressor has failed to comply with notices and gained money from this, the Council can now seek to reclaim some of the proceeds under the Proceeds of Crime legislation. An example of where Wokingham Borough Council has sought to do this is in respect of unauthorised activity at Walkers Yard and Eversley Road in Arborfield.

The timescale for the whole enforcement process can be several years but timescales are very varied. It largely depends on the willingness of the transgressor to comply or whether

they choose to challenge the action. The process for enforcement action whether formal or informal varies significantly and is dependant on the case, the material considerations, the degree of challenge and legal process.

PUBLICITY AND COMMUNICATIONS

There is an opportunity to consider how Wokingham could increase the promotion of enforcement activity in a positive light. For example, approximately 65 % of cases are dealt with within less than 8 weeks of a complaint being received. Another example is where we were successful in the prosecution of an individual for failing to comply with an enforcement notice requiring demolition of an unauthorised dwelling in the Green Belt. Due to considerable effort by the planning enforcement officer a fine of £12,000 reduced to £8,000 due to an early guilty plea was secured. This was publicised by the council in a press release.

ACTIONS TO ENHANCE ENFORCEMENT SERVICE

Recent improvements have taken place to improve communication with stakeholders, Town and Parish Councils and ward members and these include:

- Improved information in RFS closure letters about why the cases have been closed
- Including expediency reports with the notification letters when it has been determined that it is not expedient to pursue enforcement action
- Sensitive enforcement site information to be circulated monthly to all ward members
- Officer visits to town and parish councils to explain the enforcement process
- Member briefings about enforcement priorities

Suggested further actions to enhance the enforcement service to better meet the expectations of all stakeholders

- Arising from Audit we have been asked to consider providing enforcement leaflets for local councillors
- Clear statement about enforcement priorities
- Revised enforcement policy
- Enhanced information available on the council's website about enforcement processes
- Publicity about when negotiated solutions have been successful including updates to members, Town and Parish Councils.
- Press releases when successful enforcement action has been undertaken
- Wokingham Borough Council members and members of town and parish councils to spend a day with an Enforcement Officer.

CONCLUSION

The Council's enforcement team experiences a high workload and investigates all complaints. The majority of complaints received are about issues that are not breaches of planning control and the enforcement service must treat all customers, both those who have undertaken the development and those who have complained, sensitively. All of these have to be fully investigated and this takes a significant level of resource. If a breach of planning control is identified, the emphasis is to seek a negotiated solution. This can involve removal of the unauthorised development or regularisation by submission of a planning application. The Council's enforcement officers spend significant time trying to resolve issues through negotiation and approximately 93% of all breaches are resolved this way. This demonstrates how successful the informal approach is to resolve issues but this process often takes several months and can appear as though as if the Council is not responding to complaints. However reasonable support and timescales must be given to enable breaches to be resolved.

In the remaining 7% of breaches that are not resolved through negotiation, the Council must undertake an expediency decision which will consider the proposal in planning terms to determine if it is acceptable. If it is determined that planning permission would be likely to be obtained for the development if an application was submitted, then formal action would not be pursued. However, if determined that the development is not acceptable, then formal action will be taken. Wokingham Council is more active than its neighbouring Berkshire authorities in taking enforcement action.

Once formal action is undertaken, there are various options open to transgressors such as appeal and non compliance. These increase the timescales significantly. Only in extreme cases is formal legal action taken.

There is a very high level of member and public expectation of the enforcement service. However, all involved whether it is those complaining about development or the people having undertaken the development are the Council's customers and the Council must treat all of its customers fairly and objectively. The Council must work within the law and government guidelines. In this context, the team is successful in resolving breaches of planning control although there are means available to transgressors to increase the timescales and resources necessary to secure this compliance. In the past there are examples of when enforcement action has not undertaken effectively and this has affected public and member perception of the service. Today, the team is more active than in neighbouring councils, is well managed, and committed to delivering an effective and successful enforcement service. There is an opportunity to help increase an understanding of the system to help manage expectations and reputation of the service. Actions to help secure this rest on greater communication and also increasing awareness of success especially that achieved through negotiation.

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WOKINGHAM BOROUGH COUNCIL PLANNING ENFORCEMENT POLICY

INTRODUCTION

1. The Borough Council is firmly committed to providing an efficient and effective enforcement service. In considering whether to initiate enforcement action against unauthorised development the Council will assess whether the breach of planning control unacceptably affects public amenity or causes harm to land or buildings.

2. This policy applies to the enforcement activities carried out under the legislation enforced by the Enforcement Team of the Planning Services Department. The relevant background legislation to these powers is contained primarily within the Town and Country Planning Act 1990. This legislation is supported by Government advice in the form of Planning Policy Guidance notes together with circulars.

3. Enforcement in the context of this policy includes action carried out in the exercise of or against the background of, statutory enforcement powers. This is not limited to the formal service of notices, including if necessary the use of the power of prosecution, but will also include investigation of alleged breaches of planning control as they relate to planning conditions and the monitoring of sites to ensure compliance with the approved details/conditions etc.

4. Whether or not the Council takes formal enforcement action is discretionary. In exercising that discretion the Council must have regard to the following:

- Is planning permission required?
- Does planning permission exist?
- How long has the building or use been in existence?
- Is the unauthorised use or activity causing harm with regard to development plan policies or other material considerations? (more commonly known as the test of expediency)

5. This policy document sets out a framework within which decisions can be made when dealing with breaches of planning control. The enforcement policy has been formulated with regard to the Planning Acts, the central government Enforcement Concordat, relevant Government Guidance and Circulars, the Council's Development Plan policies, Disability Discrimination Act, Freedom of Information Act, the Human Rights Act and the Regulation of Investigating Powers Act.

6. The Council has powers of enforcement in relation to other services such as highways, environmental health, listed buildings and trees. These services are coordinated so that investigations are carried out under the appropriate legislation.

7. The Council is committed to treating all recipients of enforcement action fairly, keeping them informed of action being planned, or taken, at each stage, and informing them of any rights of appeal. In particular regard will be had to the Human Rights Act 1998. However when decisions are taken

relating to enforcement action the public interest must be taken into account. Decisions will, therefore, be taken by balancing private rights, the public interest and the resources required to take action.

VOLUNTARY COMPLIANCE

8. Where a breach of planning control causes unacceptable harm in planning terms then the removal of the problem will be sought. As a general principle, unless harm is so severe as to demand immediate action, the transgressor will be given the opportunity to voluntarily comply. This will usually involve a written request specifying that a building or use is unacceptable and must either cease or be removed. In this way it is envisaged that a negotiated solution and timescale for removal can be agreed. This is the most desired outcome as it represents the most efficient use of resources and offers a more effective solution than having to rely upon formal enforcement action.

PRIORITIES

9. It is important to progress enforcement cases quickly and efficiently at every stage. The Council will seek to ensure that all reported breaches of planning control are resolved as quickly as possible. However to enable the most efficient and effective use of Council resources the following order of priorities are followed when investigating and resolving alleged breaches of planning control:

- i) Any unauthorised development or non-compliance with a planning condition or legal agreement which is causing immediate and irreparable harm to the environment or public safety.
- ii) Any breach of planning control causing serious loss of residential amenity.
- iii) Unauthorised demolition or partial demolition of a building which it is essential to retain.
- iv) Unauthorised works to a listed building or unauthorised development in a Conservation Area.
- v) Unauthorised development which has been undetected where the time limit for enforcement action will expire within the next six months.
- vi) Any breach of planning control causing a limited degree of disturbance to local residents or the environment.
- vii) Unauthorised advertisements.
- viii) Any other breach of planning control.
- ix) Pro-actively monitoring building control and development control applications for breaches of planning control.
- x) Pro-actively monitoring conditions, planning agreements and development constructed in accordance with the approved drawings.

These priorities will be reviewed from time to time and may be amended.

PROCEDURE FOR DEALING WITH COMPLAINTS

10. The Council investigates all complaints or Requests for Service (RFS) which are brought to their attention and will undertake a site visit if necessary to establish the facts. This site visit will normally take place within 5 days of receiving the complaint. Written complaints are preferred as this improves accuracy and may be required as evidence.

11. When a complainant makes a RFS the Council will require the following:

- i) Accurate site location including Parish where possible;
- ii) The exact nature of the problem; and
- iii) The date or time that the breach commenced.

12. In addition it is helpful to provide the following information:

- i) The name, address and telephone number of the complainant;
- ii) The name, address and telephone number of the owner/occupier of the land in question; and
- iii) Any relevant background information such as previous problems or breaches.

PROTECTION OF COMPLAINANTS

13. The identity of complainants is treated as confidential and the general public do not have access to enforcement files. However, if the breach cannot be resolved through negotiation, the investigation may proceed to formal action resulting in a Public Inquiry or prosecution action in Court. In these circumstances it may not be possible for the Council to guarantee the anonymity of the complainant. In these cases the complainant will be informed before the Council goes to court.

THE DECISION TO TAKE ENFORCEMENT ACTION

14. In investigating all RFS an assessment will be made to establish whether planning permission is required, including whether development within the meaning of the Planning Acts has actually taken place or whether it is permitted by a Development Order. Detailed research is often required to establish this and the person with ownership or control of the site will be given the opportunity to discuss the matter with an enforcement officer.

15. Where there is doubt and the owner or occupier is actively pursuing an application for a Certificate of Lawful Use in an attempt to establish the position, enforcement action will normally be held in abeyance pending the determination of the application.

16. Where an owner or occupier is asked to supply information and this is not forthcoming within a reasonable time period, the Council may issue a Planning Contravention Notice to clarify the situation.

17. The decision to take enforcement action will be based on evidence gained through the investigation process. An assessment of the unauthorised development will be made against any relevant policies within the Development Plan and Local Development Frameworks together with Supplementary Planning Guidance and advice notes, Central Government advice contained in Planning Policy Guidance Notes and Planning Policy Statements and Circulars. Decisions as to whether enforcement action will be taken or not will primarily be based upon the policies and guidance contained within these documents.

18. In accordance with Central Government advice the Council will attempt to persuade an owner or occupier of land to voluntarily remedy any harmful effect of unauthorised development. However, the Council will not

allow negotiations to hamper or delay formal enforcement action that may be required to make the development more acceptable on planning grounds or to make it cease.

19. Formal enforcement action is likely to be taken against any unauthorised development which unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest.

ENFORCEMENT TOOLS

20. The planning legislation provides the local planning authority with the ability to serve different types of Notices to obtain compliance. The Council will use the full range of 'enforcement tools' to remedy breaches of planning control as appropriate, including Planning Contravention Notices (PCN's), Breach of Condition Notices (BCN's), Enforcement Notices, Stop Notices, Section 215 Notices and Injunctions.

IMPOSITION OF CONDITIONS TO MAKE DEVELOPMENT ACCEPTABLE

21. Where development has been carried out without planning permission and the development could be made acceptable by the imposition of conditions, the owner will be invited to submit a retrospective planning application.

22. Unresolved breaches of planning control can cause loss of amenity and frequently cause anxiety and stress to neighbours, therefore the Council would expect an application to be submitted within a specified time period which will vary depending on the complexity of the application. If after this period, the owner or occupier of the land refuses to submit a planning application, the Council will consider whether to pursue formal enforcement action.

MINOR OR TECHNICAL BREACHES OF PLANNING CONTROL

23. Enforcement action should always be commensurate with the breach of planning control to which it relates. Formal action will not normally be taken against trivial or minor breaches of planning control which do not cause harm and it must be remembered that breach of planning control is not currently a criminal offence. Breaches of planning control can result from a genuine lack of knowledge or understanding. Breaches that do not cause sufficient harm to amenity, to justify formal action in planning terms, will not normally be pursued. The owners will however be informed that it is in their own interest to regularise the matter by submitting a planning application and if they do not the Council's Land Charges section may notify potential purchasers of the property of the breach of planning control.

GRANT UNCONDITIONAL PLANNING PERMISSION FOR UNAUTHORISED DEVELOPMENT

24. Where development requiring the benefit of planning permission has been carried out or is in the process of being carried out, an assessment shall be made to establish if it is likely that unconditional planning permission would be granted for the development. If planning permission is likely to be granted, a retrospective planning application shall be requested. If the owner refuses to submit an application then the Council's

Land Charges section may be notified so that any potential purchaser of the property is made aware of the unauthorised development. However where there is no specific planning objection to the development enforcement action will not normally be considered appropriate. The owners will however be informed that it is in their own best interests to regularise the matter. If an enforcement notice is served in these circumstances, the Council could be at risk of an award of costs in any subsequent enforcement appeal.

SECURING COMPLIANCE THROUGH PROSECUTION OR INJUNCTION

25. Anyone who: -

- i) fails to comply with a notice served by the Council; and/or
- ii) commits an offence of strict liability

should note that it is this Council's policy to take robust action which may involve prosecution or injunctive action through the Courts. The Council will usually seek to ensure compliance with any offence through prosecution. If compliance is not secured via prosecution the Council may bring another prosecution before the Court. Prosecution action is likely to continue until the owner complies and the matter is resolved. However the Council will also have the option of taking direct action or seeking to prevent an ongoing breach by taking out an injunction, if non-compliance persists. In cases where it is expedient because of the nature of the matter in hand, where possible and appropriate, injunction will be sought in the first instance.

MONITORING DEVELOPMENT ON SITE

26. The Borough Council recognises the importance of pro-actively monitoring development on site. All major development applications are monitored against the Council's Building Control applications by the Planning Enforcement Team and checked to ensure the following:

- i) To establish whether planning permission or Listed Building Consent is required for the development or whether it is permitted by a Development Order;
- ii) If planning permission is required that a planning application has been submitted;
- iii) That the drawings submitted for Building Regulation approval are in accordance with the planning permission; and
- iv) Upon commencement on site that planning permission has been granted for the proposal.

27. The Council will pro-actively monitor major development sites within the Borough to ensure compliance as far as resources permit. However the investigation of actual breaches of planning control will usually take priority over potential breaches as indicated in the list of enforcement priorities above.

28. An explanatory note will be sent to all applicants when approval is given for major development applications reminding them of their responsibility to comply with the conditions on the planning consent. Failure to comply with any of the conditions where the explanatory note has already been sent may result in a Breach of Condition Notice being served on the applicant without any further written correspondence.

29. Parish and Town Councils receive a copy of all plans submitted with planning applications and have a good knowledge of development being carried out within their respective areas. The Borough Council recognises that Parish and Town Council Members have an important role to play and encourages them to bring breaches of planning control to the Council's attention.

TARGET TIMESCALES FOR PLANNING ENFORCEMENT INVESTIGATIONS

30. Enforcement investigations can take a long time to resolve because of the need for careful investigation and the legal processes involved. However enforcement officers work to targets which are set out below:

- i) Initial site visit within 5 working days.
- ii) Further action to be determined within 2 working days of the site visit.
- iii) Owner to be informed in writing of action required within 3 working days of the site visit.
- iv) Enquirer/complainant to be informed of situation within 10 working days of receipt of complaint.
- v) Enforcement notice issued within 10 working days of receipt of all necessary information by legal section.

31. Performance and targets are monitored and reviewed on a regular basis. The Policy will be updated as appropriate.

CONCLUSIONS

- The Council will investigate breaches of planning control and will seek to explore whether the unauthorised development or use can be allowed to continue on the site in discussions with the landowner or operator of a business, or with the resident of a property. This might be achieved by the submission of an application for planning consent and the use of planning conditions, or by the reduction in intensity of use, or by serving an Enforcement Notice which, in effect, imposes conditions.
- The Council's power to issue an enforcement notice against breaches of planning control is discretionary. It should only be used where serious harm is being caused to the amenity of the area (contrary to Planning Policy and Guidance) by a breach of control.
- Where a satisfactory compromise cannot be reached, or where the unauthorised development is wholly unacceptable, effective enforcement action will be taken to prevent serious harm to the amenity of the area.