

### 1. Introduction

1.1 Under the provisions of The Town and Country Planning Act 1990, planning permission is required for the carrying out of any development on land. The definition of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land and also the material change of use of land and buildings.

1.2 A breach of planning control occurs when:

- Development takes place without the relevant planning permission.
- There has been a failure to comply with a condition on a planning permission.

Any breach of planning control is unlawful. However, it is not illegal, even in those cases where planning permission has been applied for and refused. It is not until the breach is in defiance of a confirmed Enforcement Notice that a criminal offence is committed. The situation is different in such cases as unauthorised works to a listed building, the felling of a protected tree or the display of unauthorised advertisements. In these circumstances, criminal liability can arise directly from the unauthorised action.

1.3 The processing of planning and other applications, subsequent monitoring of approved development and the investigation of breaches of planning control is carried out by officers within the Council's Planning and Regeneration Services.

## **2. Aims and purpose of the Enforcement Policy**

2.1 The main aims of the policy are:

- To set out realistic, achievable objectives on planning enforcement.
- To define the range of options available to achieve objectives, having regard to statutory and non-statutory advice from Government.
- To provide a clear and accountable audit trail of decision-making processes.
- To adhere to and implement best practice in terms of planning enforcement.

2.2 The policy has been published having regard to planning policy advice provided by the Government and The Royal Town Planning Institute.

2.3. The main objectives of the planning enforcement process are:

- To remedy undesirable effects of unauthorised development.
- To bring unauthorised activity under control to ensure the credibility of the planning system is not undermined.

### **3. Investigating alleged breaches of Planning Control**

- 3.1 Complaints received by the Council regarding alleged breaches of planning control can be split into two broad categories; complaints about unauthorised developments or changes of use of land and complaints about possible breaches of planning conditions where this Council has granted permission.
- 3.2 The Council investigates all alleged breaches of planning control whether they are reported by third parties or found as part of the Council's own monitoring procedures. The Planning Enforcement Officer, who is supported by other relevant officers when required, carries out these investigations. In addition, the Council's Building Control Officers monitor developments for which they are responsible under the Building Regulations. All Council Officers undertaking investigations of any kind are required to do so in a professional, accountable, fair and consistent manner.
- 3.3 All incidences of alleged breaches of planning control are thoroughly investigated with particular regard to the Town and Country Planning Act 1990 (as amended) and relevant Government guidance. Many factors have to be assessed before commencing formal enforcement action. These include:
- The case specific facts unique to each investigation.
  - The amount of actual or potential harm resulting from or caused by the development.
  - The policies in the Local Development Framework and any other material considerations.
  - Full consideration of the prospect of success of different enforcement procedures.
- 3.4 A small proportion of all investigations result in some formal enforcement action. The Council exercises discretion in relation to enforcement matters and seeks to ensure that any action is appropriate and in proportion to the seriousness of the breach. In some cases it may decide to take no formal action. For example, when there is insignificant or no harm caused by a 'technical' breach of a planning condition, time-consuming and costly legal procedures would not be justified if there would be no clear benefit to the environment or local amenity.
- 3.5 In cases where the Council's planning powers overlap with those of other regulatory agencies or other Council services, it may be more appropriate for those other agencies to take action, particularly if such action is likely to be quicker and more effective. In some cases a combination of powers may be used. Worcestershire County Council is likely to take the lead in respect of any enforcement action concerning mineral undertakings and the deposit/ tipping of waste materials.

#### **4. Enforcement Procedures (Informal)**

- 4.1 The Council will initially seek to ensure that breaches of planning control are resolved without having to resort to formal enforcement action. Relevant information will be made available to those involved in enforcement issues and appropriate guidance given to try and secure a satisfactory outcome for all concerned. The needs/difficulties of individuals, small firms and organisations will be taken into account with regard to compliance with Council requirements and to prevent any undue hardship or unnecessary expense.
- 4.2 Breaches often occur where a person is genuinely unaware that planning permission is required for works they are undertaking. Negotiation and persuasion are therefore the 'tools' most often used in dealing with many breaches. This not only saves time and resources but can also achieve immediate cessation of any unauthorised development and/or remedial works to rectify damage. Remedial works could involve alterations to the development to make it more acceptable or in some cases, the complete removal of an unauthorised development. Where a breach has been satisfactorily resolved in this way, then the Council will not usually initiate formal enforcement action, unless the breach recurs.
- 4.3 Where an activity or development has taken place without planning permission, the Town & Country Planning Act 1990 allows for the submission of an application for retrospective planning permission. However, the Council would only encourage this where it appears that the use or development is appropriate or can be adequately controlled by planning conditions<sup>1</sup>. In such cases, the application is treated on its merits. Property sales are often delayed or fall through because searches reveal householders have not obtained planning permission for extensions they believed did not require permission. It is therefore in everyone's interests that unauthorised development is properly regularised.

## **5. Enforcement Procedures Available (Formal)**

5.1 Should negotiation and persuasion fail then formal enforcement action may be necessary. There are a number of options available and the choice of procedures is carefully considered before commencing action.

### **5.2 Planning Contravention Notice**

This Notice can be used to obtain information from landowners/developers where it appears that a breach of planning control has taken place. The Notice will seek information regarding the development or activities being carried out and ask about anyone who has an interest in the land. A period of 21 days is given in which to respond. Failure to provide the information or to knowingly provide false information is an offence and on summary conviction at a magistrates court could result in a fine if the Council decides to pursue a prosecution.

### **5.3 Breach of Condition Notice**

Where planning permission has been granted subject to conditions and one or more of those conditions has not been complied with, a Breach of Condition Notice can be served on all interested parties. The Notice will specify the steps that need to be taken to ensure full compliance with the condition and why they are necessary. Although the recipient of such a Notice has to be given at least 28 days for compliance, service of the notice can secure an immediate effect e.g. cessation of work outside the permitted hours. There is no right of appeal against such a Notice and failure to comply with its requirements may result in prosecution in a Magistrates' Court.

### **5.4 Enforcement Notice**

Where it is expedient to do so and there is clear evidence of a breach of planning control, an Enforcement Notice may be used. This Notice is served on all interested parties where harm to the environment or the local amenity has been caused by a breach of planning control. Such a notice will specify the works to which it refers, what steps are required to be taken, or what activities are to cease, to remedy the breach and also the time period within which these steps need to be taken. An Enforcement Notice does not take effect for 28 days and within this period there is a right of appeal by the recipient of such a Notice. If there is an appeal, then the requirements of the Notice are suspended until the Secretary of State confirms the Notice. An appeal is made to the Planning Inspectorate and will be decided by an independent Inspector.

5.5 The Inspectorate set out that an appeal can be made on the following grounds:

1. Planning permission should be granted for the development or change of use.
2. The development does not require planning permission.
3. No breach of planning control has taken place.

4. Sufficient time has elapsed since the development took place (4 years for development, 10 years for change of use) so that enforcement action cannot now be taken.
5. The Enforcement Notice has not been properly served.
6. The requirements of the Enforcement Notice are excessive.
7. The period for compliance stated in the Notice is too short.

In the case of an appeal on ground 1), a fee would be payable equivalent to the normal planning application fee for the development involved. Fees are not applicable in the other cases.

Once the Notice takes effect, its requirements must be met and failure to comply constitutes a criminal offence. The Council may decide to prosecute in certain cases. If an appeal is allowed, the Notice is quashed and in appropriate cases, planning permission granted.

#### **5.6 Stop Notice**

Stop Notices may only be issued accompanying or following the issue of an Enforcement Notice. Stop Notices normally take effect after three days and are used where there is significant or irreversible harm taking place through an unauthorised activity that needs to be controlled within a short timescale.

#### **5.7 Temporary Stop Notices**

Temporary Stop Notices were introduced in 2005 to allow local planning authorities to bring a halt to unauthorised activities where it is in the interests of the amenity of the area to do so. A Temporary Stop Notice does not require the issue of an Enforcement Notice and its effect is immediate. The Council has due processes in place to address these instances if they happen out of hours, including over Statutory holiday periods.

#### **5.8 Court Injunction**

Where action is necessary to curb or prevent a serious breach of planning control, the Council may apply to the High Court or County Court for an Injunction. Such an application can be made even if the Council has not used other enforcement powers. The advantages of this are that failure to comply constitutes a penal offence.

## **6. Procedure Following Service of an Enforcement/ Stop Notice/ Injunction**

The length of time for compliance with notices is case specific and depends on a number of factors. An appeal lodged against an Enforcement Notice may delay the enforcement process unless a Stop Notice has also been issued.

### **6.1 Compliance with Notice(s)**

Following the Service of a Notice the Council visits the site on a frequent basis to monitor compliance. Landowners/operators are advised of the possible consequences should the rate of progress appear to be slow or inadequate to meet the requirements of the Notice. Once the Notice has been complied with then the Council will resume its normal monitoring procedures for that site.

### **6.2 Injunction**

Where an injunction has been granted, breach of it is a contempt of court and the Council may apply to the court for committal of the person in breach of the injunction. This may lead to fines or imprisonment.

### **6.3 Prosecution**

Where the requirements of a particular Notice are not met, then the Council may decide to prosecute for non-compliance. The Council's main aim in all its enforcement activities is not primarily to penalise or punish, but to prevent further harm to the environment and the local amenity, and also to act as a deterrent to other potential offenders. Prosecution is very serious, expensive and time-consuming and will only be initiated after full consideration of all relevant facts, including:

- The harm caused by the offence.
- The intent and personal circumstances of the offender.
- The history of the offender.
- The deterrent effect of a prosecution.
- The likely chance of securing a conviction – availability of reliable evidence/ 3<sup>rd</sup> party witnesses etc.
- The benefit to the local community/Public interest.

### **6.4 Direct Action**

Exceptionally, the Council may decide to enter land and carry out remedial measures or emergency works to ameliorate the effects of a significant breach of planning control. Prior to this a full cost/benefit analysis will be undertaken. The Council will seek to recover the costs involved in such direct works from the relevant persons in these cases.

## **7. Council's Commitment to Complainants**

The Council's response to those persons reporting alleged breaches of planning control is set out below:

- All alleged breaches of planning control within the Council's jurisdiction will be recorded on receipt and given a unique investigation number.
- Complaints about matters outside the Council's area of jurisdiction will be passed on to the relevant person/authority and the complainant informed.
- The confidentiality of those reporting incidents will be maintained.
- Investigations into alleged breaches will normally start within 24 hours of a complaint being received and where appropriate an initial site visit to assess the situation will be carried out within 3 – 5 working days.
- Within 7 working days of the complaint being received, the Council, will formally acknowledge receipt of the complaint.
- Within 10 – 15 working days of the complaint being received, the complainant will be advised of action taken and/or proposed.
- Within 10 working days of the investigation being formally closed, the Council will write, if requested to do so, to complainants detailing the outcome.
- Should an investigation be complex and/or lengthy then the Council will provide regular feedback to the complainant(s) if requested to do so.
- Where no formal action is taken the Council will provide an explanation of the reason, if so requested.

Where there is the possibility of Court proceedings resulting from any investigations, detailed feedback may not always be possible to ensure that any subsequent legal action is not compromised.

## **8.0 Conclusion**

- 8.1 Bromsgrove District Council is fully committed to protecting and enhancing the environment and the local amenity through the effective discharge of planning enforcement duties. All alleged breaches of planning control will be recorded and thoroughly investigated, if appropriate and the Council will be accountable for all decisions, actions and service delivery relating to planning enforcement.
- 8.2 In the majority of cases, negotiation and persuasion should be enough to remedy breaches but the Council will not hesitate to use formal enforcement powers should the need arise. These powers will be used in a manner proportional to the amount of harm caused by a breach.
- 8.3 This policy is intended to provide a general framework for the Council to control unauthorised development effectively, to target its resources efficiently and to ensure that the residents of the District are not subjected to unacceptable harm as a result of breaches in planning control. The policy will be reviewed on a regular basis.

**Should you require any further information on planning enforcement matters visit our Website at [Bromsgrove.gov.uk](http://Bromsgrove.gov.uk)**

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<sup>i</sup> Government policy on planning enforcement is provided by Planning Policy Guidance Note 18 (issued December 1991), Department of the Environment Circular10/97 (issued July 1997) and Good Practice Guide for Local Planning Authorities (DETR 1997).