

South Cambridgeshire District Council



Planning Enforcement Manual **Summary of Policy and Procedures**

July 2001

ENFORCEMENT POLICY - EXECUTIVE SUMMARY

1. This summary sets out our enforcement policy and the circumstances leading to enforcement action. It explains:
 - how and why action will be taken; and
 - how Members will be kept informed.
2. This is an outline of our policy and is based on the detailed Enforcement Manual which has been produced. The Manual provides definitive guidance on procedures and is the point of reference for decisions on enforcement matters. The Manual will be reviewed regularly and reflects the continual improvement to our enforcement service.
3. The process of enforcement action is complex and is outlined in appendix 1. We need an enforcement policy so that decisions to take, or not take, enforcement action are well-founded. This helps both members and the general public understand what we can and cannot achieve and the difficulties this may entail. Similarly, it helps officers provide an efficient and cost-effective service to the public and reflects the quality and customer care embodied in the Enforcement Manual.
4. The need for, and degree of, enforcement action will vary and should be guided by the following principles:
 - The Council has a general discretion which allows it to take enforcement action only when it considers it is "expedient" to do so. "Expedient" means only when it is appropriate given the nature and extent of the breach of control. This is explained more fully in the following points.

- We have to consider whether the breach of planning control would unacceptably affect public amenity or the use of land and buildings which merit protection in the public interest.
 - The degree of enforcement action should always be in proportion to the breach of control to which it relates. For instance, it is usually inappropriate to take action against an insignificant breach of control if it does not cause any harm. On the other hand, it may be necessary to take strong and immediate action where the breach is causing, or likely to cause significant harm.
 - Regard must be had to the Development Plan and any other material planning considerations. This will include consultations with interested parties. Only relevant *planning* considerations should be considered.
 - Enforcement action is subject to specified time limits. Any negotiations to cease an unacceptable breach of control which become protracted should not be allowed to hamper or delay formal action from being taken. There must be regard to government advice, including the framework set up to improve standards of all enforcement, and referred to as the Enforcement Concordat. We should not, however, be unduly hasty in taking action. We should ensure that a contravenor understands what he must do and by when and has the opportunity to resolve any differences.
 - There may be maladministration if the authority fails to take effective enforcement action when it is plainly necessary.
5. In light of these constraints, controls and principles, our policy on enforcement is

- 1. The Council takes breaches of planning control seriously and undertakes to investigate all complaints.**
- 2. The Council will aim to remedy the undesirable effects of all unauthorised development.**
- 3. The Council's approach to enforcement will be thorough, fair, consistent, courteous and efficient. Due regard will be taken of issues affecting human rights.**
- 4. The Council will keep all complainants and Parish Councils informed. They will be advised of intended action and the outcome of that action.**
- 5. The Council will ensure a complainant's details remain confidential unless agreed otherwise.**
- 6. The Council will negotiate with a contravenor where possible or appropriate.**
- 7. The Council will deal with cases on a priority basis.**
- 8. The Council will deal with breaches of planning control in a manner which reflects the degree of harm which is, or is likely to be, caused.**
- 9. The Council will set realistic targets for implementing the process to resolve breaches of control but may have to adopt a flexible approach.**
- 10. The Council will consider deferring enforcement action whilst an application which has been invited to remedy a breach of planning control is being considered and determined.**

11. **The Council will take action if the breach of planning control is considered to be causing serious harm to public amenity in the neighbourhood of the site.**
6. Complaints in respect of an alleged contravention will normally be referred to the enforcement team (see appendix 2). The exceptions to this rule are matters relating to listed buildings, demolition of unlisted buildings in a conservation area and trees/landscaping matters. These are dealt with by the Conservation and Trees Officers respectively. Letters are acknowledged in writing within two working days. Investigations are undertaken by the relevant investigating officer.
7. Action on all complaints will be dealt with as quickly as possible. Complaints will, nonetheless, be prioritised in line with the criteria set out below.

Priorities for dealing with complaints or breaches of planning control

1. An initial site visit is normally undertaken within three working days of the receipt or referral of a complaint. The urgency of a visit within this time will depend on the perceived harm.
2. Where a full investigation is necessary, cases will then be dealt with on a priority basis. This is to ensure more serious breaches of control are dealt with effectively.
3. Cases will be prioritised by the investigating officer (and following consultation with the area team where there is any doubt) in line with the table overleaf.
4. In the event that it is unclear what priority should be given to a case, the Deputy Planning Director or the Principal Development Control Officer shall decide.

5. In cases where there is any dispute, the matter should be referred to the Chair of the Planning Committee (or in his or her absence the Vice-Chair) for their decision.

Priorities for dealing with complaints or breaches of planning control

Priority	Type of Breach	Examples	Investigation and preliminary assessment following initial site visit	Decision on need for specific procedures following initial site visit	How action is taken
HIGH	Works which are irreversible or irreplaceable	<ul style="list-style-type: none"> • damage to, or loss of, listed buildings • demolition of non-listed buildings in conservation areas • damage to, or loss of, protected trees (i.e. TPO or conservation area trees) • where highway dangers could endanger life 	Immediate, i.e. normally the same day	Immediate, i.e. normally the same day	Full evaluation of the facts and information after which any action will be taken through delegated powers
MEDIUM (Delegated authority granted)	Works, uses or activities which cause serious harm	<ul style="list-style-type: none"> • use of land and/or buildings • use of land for deposit of waste • siting of residential caravans on land • building operations where the person responsible knows permission is required but will not submit an application 	Within 10 working days	Within 28 working days	Full evaluation of the facts and information after which any formal action will be taken through delegated powers
MEDIUM (Committee authority required)	Works, uses or activities which cause harm	<ul style="list-style-type: none"> • development (other than that above) which has an adverse effect on amenity • development (other than that above) affecting the character or appearance of a conservation area • time limited permissions 	Within 10 working days	Within 28 working days	Full evaluation of the facts and information after which the item will be referred to the next possible Planning Committee meeting
LOW	Works, uses or activities, the effects of which are reversible and could be made acceptable	<ul style="list-style-type: none"> • any development which could be made acceptable by way of conditions (e.g. restrictions on hours of use, parking provision, landscaping) 	Within 15 working days	Within 28 working days	Invite an application to regularise the use before any decision on enforcement action is taken

8. The investigating officer will keep the planning teams informed of alleged breaches and seek the necessary confirmation to proceed with a recommendation to take formal action.
9. In the absence of any special factors, the instructing officer will aim to instruct, and to provide all the necessary information to, the Legal Office within five working days following the resolution or delegated decision to instigate enforcement proceedings.
10. In the absence of any special factors, the Legal Office will normally issue enforcement notices within five working days following the date when instructions are received. All notices will be expedited based on the complexity and importance of the matter. The exceptions to the usual target time are:
 - Real danger of prejudice to amenity - where this is considered likely, or there is a risk of unacceptable escalation, notices will usually be issued the same day.
 - Compassionate Cases - where there is no professional reason for expeditious action (e.g. in cases where the compliance period is lengthy (say 12 months), or where there is a real health problem which demands a more extended period before the notice takes effect. In such cases, the notice is usually issued within ten working days.
 - Landscape Planting Breach of Condition Notices (BCN's) - where the planting season is some months away, all BCN's are "batched" for service two to three months prior to the normal planting season (usually November - March) unless otherwise instructed. This achieves economy of scale and is more effective in compliance.

11. An enforcement notice cannot legally take effect until four weeks after its date of service. This allows for any appeal to be made. Its effect is further suspended while an appeal is being determined. In practice, the Legal Office normally specifies six weeks to allow for any difficulties in serving the notice. The notice will also specify a compliance period. This must be a reasonable period of time which only begins when the notice takes effect. Even if the notice is upheld on appeal, the Inspector may decide to extend the compliance period, or alter the steps required to comply with the notice.
12. We may take action if the notice is not complied with. This is normally by way of a prosecution for breach of the notice. Further action could include an injunction where we would go to Court for an Order for compliance or direct action where the Council does the work itself (e.g. demolition). The cost of this action can be charged to the owner. These methods need separate authority from Committee when the merits of such action can be discussed.
13. Where prosecutions are necessary, the Code of Public Prosecutors applies to all public authority prosecutors. Not only must there be a real prospect of securing a conviction but there must also be a clear public interest in the process of prosecution and its outcome before proceedings are commenced and continued. These are matters entirely within the discretion of the Head of Legal Services. However, in general terms, the decision to prosecute will be treated in the same way as all other enforcement action. All material considerations will be taken into account by members in committee or, if delegated, by the Planning Director after Member and Chairman consultation. Committee will be advised of the outcome.
14. Members and Parish Councils will be kept informed throughout the enforcement process. This will be achieved by:
 - Consultation with local Members, at the earliest opportunity, of those cases likely to proceed to enforcement, with reasons for those that will not.

- Where it is proposed to remedy an alleged breach of planning control by the issue of an enforcement notice, authority will be requested from the relevant committee when necessary. In cases where delay is unacceptable, delegated powers will be used following consultation with the Chairman and local members.
- In either case, any representations made by Members or Parish Councils will be reported and considered. The time for compliance should be reasonable to allow either a use to cease or be relocated or for remedial works to be completed. Where appropriate, this will involve consultation with members and local residents.
- In order to keep members aware of the progress of all enforcement cases, a quarterly update will be provided to the Planning Committee by the enforcement officers.
- Local Members and Parish Councils will be consulted on all enforcement appeals in accordance with statutory timetables.

APPENDIX 1

THE COMPLEXITY OF ENFORCEMENT ACTION

Enforcement of planning control is very complex. There is a large amount of government legislation, advice and guidance. The courts have often been required to provide judicial authority on the validity of enforcement action. An enforcement notice is a legal document and, as such, its requirements can have far-reaching consequences. In some cases, its terms may lead to homelessness, unemployment and financial hardship.

It is proper for the Council to want to remedy all unauthorised development as quickly as possible. South Cambridgeshire is an attractive area and it should remain so. But the very essence of enforcement procedures is to strike a balance between the need to protect the environment and the need to allow individuals and businesses the freedom to develop as they wish.

The legislative framework often makes for slow and cautious enforcement. There are various rules and regulations covering a range of different breaches of control. The current General Development Order for instance, is but one piece of legislation, yet it automatically confirms over 80 classes of permitted development. The Council cannot proceed with enforcement action unless it has sufficient evidence. Obtaining information on land ownership or the history of a site, for example, may involve considerable time and investigation.

In every case where there is an alleged breach of planning control, the Council must carefully consider whether the breach has actually occurred, and if so, what action is most appropriate. The degree of enforcement action must reflect the seriousness of the breach of control and all the necessary legal steps must be adhered to before a successful remedy of the breach is possible.

In a few cases, this may be achieved quickly. But in the majority of cases, this will involve both time and manpower to ensure that action when it is taken, is both effective and conclusive.

The proposed Enforcement Manual recognises the many constraints imposed by

government legislation. It establishes the necessary framework to allow appropriate action to be taken as quickly as possible.

APPENDIX 2

ADDRESSES AND CONTACTS

If you wish to report a breach of planning control or would like further help or advice about planning enforcement, please contact:

The Enforcement Team
Planning Department
South Cambridgeshire District Council
9- 11 Hills Road
CB2 1PB

Telephone: 01223 443170 or 443257

Fax: 01223 443152

e-mail: david.bacon@scambs.gov.uk or
tony.marks@scambs.gov.uk

APPENDIX 3

GLOSSARY OF TERMS

Breach of Condition Notice (BCN)

A notice served by the Local Planning Authority (LPA) when there has been a failure to comply with any condition or limitation imposed on a grant of planning permission (e.g. failure to carry out landscaping, not keeping to agreed opening hours).

Breach of Planning Control

Where development which requires planning permission has taken place, yet this permission has not been obtained.

Development

Essentially the carrying out of building and other operational works or a material change in the use of land.

Development Plan

In South Cambridgeshire this is the Cambridgeshire Structure Plan 1995, the South Cambridgeshire Local Plan 1993 and the Cambridge Green Belt Local Plan 1992.

Enforcement Notice

A notice served by the LPA to remedy an alleged breach of planning control by requiring a use to stop or building works to be removed.

General Permitted Development Order (GPDO)

Sets out various categories of development which do not require planning permission (e.g. many alterations and extensions to dwellings, certain agricultural buildings).

Injunction

Sought in the County Court or High Court to restrain any actual, or expected breach of planning control.

Material (or Relevant) Planning Considerations

Considerations which can be taken into account when deciding whether enforcement action is justified. They will include central government policy and advice (e.g. Circulars, PPGs), the development Plan (e.g. Structure and Local Plans), supplementary planning guidance (e.g. conservation area

appraisals, car parking standards) and replies to consultations with neighbours and Parish Councils.

Most objections which relate to the use of land can be a planning consideration, though they must be relevant to the breach of control being considered (e.g. the identity of the person contravening or the knowledge that they have deliberately flouted the law is not relevant).

Other issues which cannot be taken into account include breach of covenants, loss of a private view, devaluation of property, matters controlled by other legislation (e.g. fire prevention) and religious or moral issues.

Permitted Development

Development which is expressly allowed by virtue of a Government Order, the most common of which are the General Permitted Development Order and Use Classes Order.

Planning Contravention Notice (PCN)

A notice served by the LPA when it suspects there has been a breach of planning control and information is required about activities on the land or the nature of the occupiers interests in the land.

Relevant Planning Considerations

See Material Planning Considerations.

Stop Notice

A notice served in conjunction with an enforcement notice to require unauthorised activities to cease with almost immediate effect.

Use Classes Order

Lists certain changes of use which do not usually require planning permission (e.g. change of use from a restaurant to a shop, or from light industrial to offices).