



Sedgemoor District Council

Planning Service Local Enforcement Plan

(Draft for Consultation – October 2015)



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1. Introduction

Local planning authorities have discretionary powers for taking whatever enforcement action may be proportionate and necessary, in the public interest, in their local area against development that is unauthorised.

Effective enforcement is important to tackle breaches of planning control that would otherwise have an unacceptable impact on the amenity of the area and to maintain the integrity and public confidence in the planning system, and specifically the decision-making process.

Councils' have a number of powers to investigate and remedy breaches including those within the Town and Country Planning Act 1990 (as amended), The Planning (Listed Building and Conservation Areas) Act 1990, The Town and Country Planning (Control of Advertisements) (England) Regulations 2007, and the Town and Country Planning (Tree Preservation) (England) Regulations 2012 and the Ancient Monuments and Archaeological Areas Act 1979

In discharging its enforcement duties, the Council will need to carefully consider and focus the allocation of resources in order to use them in the most effective and efficient way.

This plan sets out what you can expect from the Council when you report a potential breach of planning control and gives advice on how we will go about investigating your concerns. It sets out how the service will prioritise complaints and tells you what we will and will not do.

2. Purpose of this Document

A local enforcement plan is important to enable engagement in the objectives and priorities to suit local circumstance; and confirm priorities for enforcement action that will inform decisions about when to take action. The Government's National Planning Policy Framework (paragraph 207) states that:

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

This document is Sedgemoor's local enforcement plan and sets out the Council's approach to Enforcement in line with this national policy and how it will:

- monitor the implementation of planning permissions;
- investigate alleged cases of unauthorised development; and
- take action where it is appropriate to do so.

This document provides guidance for officers and explains to customers who use the planning enforcement service how the Council makes decisions and the powers it may use to ensure compliance with planning control.

3. The Scope of Planning Enforcement

The Council's 'development plan' for the District is set out in the Sedgemoor Core Strategy. The Core Strategy is the Council's over-arching town planning policy document. It takes forward the Council's ambitions in a planning context and is based on objectives and policies for the District as a whole, its individual towns and the rural area. The Core Strategy is currently being refreshed and in due course a revised local plan to 2032 will be in place.

Decisions on planning applications must be taken in accordance with the Development Plan unless other factors (known as material considerations) indicate otherwise. Other planning decisions should have regard to the Development Plan.

An important part of the planning process is to make sure that development is carried out in accordance with the terms of any approval and that unacceptable breaches of planning control are remedied. This helps to make sure that Development Plan objectives are being met. The Council has a range of enforcement powers to ensure compliance. **However the use of these powers is discretionary and is constrained by the level of resources available.**

Planning enforcement can only enforce planning and related legislation and, therefore, cannot resolve private disputes such as breaches of restrictive deeds or covenants, or boundary disputes that are covered by civil law.

Planning enforcement covers the areas of planning permission, advertisement consent, listed building consent, conservation area consent and tree preservation orders. National legislation allows some minor and small-scale works to be undertaken without the need for any further consent or approval. These works are known as "permitted development". Any works carried out as permitted development cannot be subject to enforcement action.

The Council investigates alleged breaches of planning control through planning enforcement investigations. The Planning Enforcement Process is summarised in Appendix 1. Officers start an investigation by assessing whether a breach has taken place and then move on to determine whether enforcement action is necessary if a breach has occurred. It should be stressed, as stated above, that **the Council does not have a statutory duty to take formal planning enforcement action.**

This enforcement plan sets out the approach the Council will take in relation to breaches of planning control in the District. Ideally there should be no breaches of the planning rules in Sedgemoor. However where breaches occur planning law lays down strict requirements which have to be followed before the Council can enforce against them. These requirements seek to balance the concerns of local people and the rights of owners against the need to secure proper planning control in the District.

Despite the legal constraints placed upon the Council, we do understand that breaches of planning rules impact on peoples' lives in a very direct way. Consequently, the delivery of effective planning enforcement is a very important issue.

In some cases the planning team will also work with colleagues with other regulatory services, to consider if action is more appropriate through other legislation, for example in licencing or environmental health.

4. Key Objectives and General Principles

The Council's approach to Planning Enforcement is underpinned by the following objectives and general principles:

- To ensure the credibility of the planning system and to ensure fairness for those who adhere to planning control.;
- To monitor and report on development;
- To monitor conditions and obligations to ensure mitigation and measures to ensure the proper planning of the area are implemented;
- To remedy harm being caused by breaches of planning control;
- To be impartial and consistent when taking enforcement decisions;
- To encourage the use of pre-application negotiations;
- To take action which is expedient, proportional and reasonable in scale when compared to the breach;
- To create a prioritisation protocol based on the severity of the breach; and
- To help to ensure that the objectives of the Sedgemoor District Core Strategy (2006-27) and any subsequently adopted local plan, are achieved.

In doing so the Council will undertake to:

- Investigate all reasonable complaints;
- Prioritise complaints according to urgency and potential harm; and
- Take Enforcement action where it is expedient to remedy harmful consequences and when it is in the wider public interest.

5. Has there Been a Breach of Planning Control?

A breach of planning control can occur when: (1) building works or engineering operations or changes in use of land or buildings are carried out without the necessary planning permission; or (2) where permission has been granted by the approved plans and/or the conditions attached to the approval have not been followed properly.

Sometimes development is carried out without first obtaining planning permission or does not properly follow the detailed plans or comply with conditions which have been approved by the Council. Cases such as these can cause serious harm to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively.

Situations that can be considered for planning enforcement include:

- Unauthorised building works and any other physical works that fall within the statutory definition of development;
- Unauthorised material changes of use to a building or land;
- Unauthorised work to buildings listed as being of special architectural or historic interest;
- Unauthorised display of advertisements;
- Unauthorised demolition;
- Untidy land that is harmful to the amenity of a neighbourhood or a particular part of the countryside; or
- Breaches of planning conditions that have been applied to planning permissions.

Planning enforcement can only be considered where the building work or material change of use being undertaken requires planning permission. An initial investigation by the enforcement team will determine this.

It is a matter for the Council as Local Planning Authority to determine if planning permission is required having regard to all material planning considerations. It is not always the case that if development is occurring this requires planning permission and there are a range of exemptions known as 'permitted development' rights that cover a variety of works and change of uses of land and buildings. Such exemptions are detailed in the Town and Country Planning (General Permitted Development) (England) Order 2015 and the Town & Country Planning (Use Classes) Order 2010. Further information on 'permitted development' rights can be found at www.planningportal.gov.uk

Similarly some forms of advertisement benefits from 'deemed consent' under the Town and Country Planning (Control of Advertisements) Regulations 2007.

Unfortunately a breach of planning control must occur before enforcement action can be considered. Planning enforcement investigations cannot be initiated on the basis of hearsay or speculation regarding 'development' which may or may not occur in the future. There must be some evidence that a breach has occurred before the Council can consider any form of enforcement investigation.

Even in situations where a breach of planning control has occurred in some cases development can have immunity from enforcement action because of the time-limits for taking enforcement action imposed by the legislation.

Development becomes immune from enforcement if no action is taken:

- Within four years of substantial completion for a breach of planning control consisting of operational development;
- Within four years for an unauthorised change of use to a single dwellinghouse; and
- Within ten years for any other breach of planning control (essentially other changes of use).

Taking the above considerations into account a key part of any enforcement investigation is therefore to understand whether a breach of planning control has occurred in the first place and whether it is immune from any further action.

There are a number of other areas which people contact us in regards to but are matters that we would not investigate as they do not generally constitute breaches of planning control. These include:

- carrying out general maintenance and improvement works which only affect the interior of a building (unless it is a Listed Building);
- works which do not materially alter the appearance of a building (unless it is a Listed Building);
- boundary disputes between neighbours;
- property and land ownership issues which are not planning related;
- persistent complaints which have previously been investigated and resolved;
- vexatious or malicious complaints;
- breaches of covenants between landowners;
- loss of views;
- competition between businesses; or
- trespass.

It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved.

6. Reporting a Breach of Planning Control

Reports of suspected breaches of planning control should, whenever possible, be made in writing. This enables the Council to have a written record of the need for initiating investigation and possible action. When this is not possible reports should be made in person, for example, by telephone and Council officers will make a written record.

Please note anonymous reports will not be investigated unless they concern a statutory listed building or a protected tree.

Reports of suspected breaches can be made by:

- completing an online form on the Councils website in the 'Report a breach' page which can be found via this link:
<https://www.sedgemoor.gov.uk/index.aspx?articleid=6066>; or
- writing to: Compliance and Enforcement Team, Development Management, Sedgemoor District Council, Bridgwater House, King Square, Bridgwater, Somerset TA6 3AR; or
- by telephoning the Development Management service on 0845 4082545

It should be noted that all complainants' details will remain strictly confidential so there should be no apprehension or fear of reprisal when reporting a breach. The only scenario in which a complainant may be identified would be where records would need to be produced at appeal or in court as evidence of a breach in planning (i.e. noise complaints, evidence of a change of use) and this would only be with the permission of the complainant in any case.

The information required when reporting a suspected breach is as follows:

- The precise address/location of the site or property;
- The exact nature of concern i.e. details of the alleged breach;
- An indication of any harm caused or being caused;
- When the alleged breach of planning control commenced; and
- If possible, the identity of the persons/organisation responsible.

7. The Enforcement Investigation Process

The Planning Enforcement Process is summarised in Appendix 1 of this document. On receipt of an enforcement complaint, it will be at the discretion of the Senior Officer for Compliance and Enforcement, in consultation with the Service Manager for Development Management or Group Manager of Strategy & Development to determine the priority to which the Council assigns to the complaint. The planning enforcement priorities of the Council are set out in Section 9 below.

Reports of suspected breaches of planning control are logged into the Enforcement monitoring system (Acolaid) and given a unique reference. Desktop research is carried out to establish the planning history and whether other parts of the Council, such as Building Control and Environmental Health hold relevant information. Legal advice may also be sought at any stage.

A site inspection will be carried out by a member of the Compliance and Enforcement Team. This will normally be unannounced. Should the owner or occupier of the premises to be

visited be unwilling to allow the inspection the Council will seek to arrange a mutually convenient time or, failing that, arrange to use its powers of entry.

If, for any reason, it is not possible from the site inspection to collect all the information necessary to reach a conclusion, the Council can serve a Planning Contravention Notice requiring specified information to be provided.

Once sufficient evidence has been obtained the Council will determine whether a breach of planning control has occurred. If it has not, the case will be closed and the person reporting the suspected breach and the owner/occupier will be informed in writing.

If the Council considers that a breach has occurred it will then check to see if it is immune from action due to the passage of time. If it is considered that there is sufficient evidence to show that it is immune the case will, again, be closed. The owner will have the option of applying to the Council for a Lawful Development Certificate to formally establish the situation.

If, on the other hand, the Council considers that the evidence shows that a breach has occurred it will consider whether it is expedient to pursue enforcement action having regard to the factors set out in Section 8 below. If it is not considered expedient, the case will be closed and the person who reported the breach and the owner/occupier will be informed in writing.

In cases where the Council considers that it is expedient to take enforcement action the Council will select the type of action that is considered most appropriate from the range of powers set out in Section 10 and Appendix 1. This will be determined by the type of breach, severity of the impacts, urgency of the situation and the financial implications (for example, where compensation may be payable or direct action involved) and governed by the principle that enforcement action should be proportionate to the breach and its impacts.

8. How we will Respond to Breaches of Planning Control – The Principle of Expediency

The way in which enforcement cases are handled is substantially influenced by the way in which legislation is framed. There are four key considerations that govern enforcement processes:

1. A breach of planning control is **not a criminal offence** (other than in a few limited circumstances) and therefore immediate action is not usually an option;
2. Enforcement action can **only be taken where it is expedient to do so**, which means that we cannot take action against a development which we would have granted planning permission had it been applied for in the normal way;
3. Government advice urges **negotiation to try to resolve enforcement issues**, other than in the most serious cases before formal action is taken. This has implications for the length of time the process can take.
4. It is open for people to apply for planning permission retrospectively in an attempt to **regularise unauthorised development**.

The Council recognises that effective enforcement is important as a means of maintaining public confidence in the planning system. In deciding whether to take enforcement action we

will have regard to the development plan and to any other material considerations, including national policies and procedures.

Our response to planning breaches will be based on the principle of Expediency. In considering whether it is expedient to take enforcement action the decisive issue will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection or the natural environment. Enforcement action is discretionary and we will act proportionately in responding to suspected breach of planning control.

We will only take enforcement action when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise breaches of planning control. In taking formal enforcement action we will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach. The action we take will always be proportionate to the breach of planning control and the harm it causes.

Where the council considers that it is likely that planning permission would be granted for the development, the person responsible would normally be invited to submit a retrospective planning application. Enforcement action is not however simply taken because there has been a breach of planning control. It is not a punitive measure. We will not take formal action against trivial or technical breach of control.

Similarly where it is clear that a development has been carried out without planning permission, but that it could be made acceptable through the imposition of planning conditions, the Council will seek retrospective planning applications for developments to enable this. Such conditions may include, for example, hours of operation or the need for landscaping.

In such cases where an application is not forthcoming, the Council will use its enforcement powers to protect the public interest. In taking such action the Council will clearly explain why it is doing so.

The council will not actively invite a retrospective planning application where it is considered unlikely that planning permission would be granted. In such circumstances we would continue to provide advice on how to resolve the breach and would proceed with appropriate action.

The Council will not normally take enforcement action where there is a trivial or technical breach of control that does not cause material harm to amenity or the environment. The council will always discourage the carrying out of development without planning permission but where retrospective applications are submitted they will be treated on their individual merits.

In considering whether to take enforcement action, the Council can not give weight to non-planning considerations. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound

planning grounds. Local opposition or support for unauthorised development will not be given weight unless it is founded on valid planning reasons.

The Council will take formal enforcement action only where it considers it expedient to do so.

9. Planning Enforcement Priorities

The decision of when to take enforcement action is solely a matter for the Local Planning Authority having regard to all the material planning considerations. The Council will assess each complaint which is made but the level of assessment and possible investigation will be a matter of judgement for the authority taking into account its identified priorities, resources, the planning harm which may arise and being proportional.

Prioritisation is essential given the high number of allegations of breaches of planning control every year (in excess of 400). It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited and it is essential to use them to the best effect. Therefore each case is prioritised according to the seriousness of the alleged breach. Officers will give highest priority to allegations of activities that are likely to cause irreversible or substantial harm in planning terms.

The enforcement team does not have the capacity to proactively monitor all approved development for compliance or development of a temporary nature not causing harm.

In order to assist with the prioritisation of cases the Enforcement Team encourages complainants to provide as much information as possible when reporting a suspected breach of planning.

The Council will investigate suspected breaches of planning control in accordance with the following priorities:

Category	Priority	Suspected Breaches
A	High Priority Complaints – Requiring Immediate Investigation	<ul style="list-style-type: none"> • <i>Development resulting in concerns for public health and safety which are controllable through the planning legislation;</i> • <i>Works of demolition, significant alteration or extension causing substantial harm to, or total loss of, a heritage asset;</i> • <i>Works to protected trees (either those covered by a Tree Preservation Order or those within a conservation area) and important hedgerows;</i> • <i>Demolition of important unlisted buildings in conservation areas;</i> • <i>Development that may adversely affect or destroy a site of nature conservation value;</i> • <i>Development that has a significant impact on the natural environment;</i>

		<ul style="list-style-type: none"> • Significant unauthorised building works/structures; • Uses and activities that cause significant disruption by reason of noise, smell, fumes or other forms of nuisance; • Failure to comply with conditions or obligations; • Implementation not in accordance with Development Consent Orders.
B	Medium Priority Complaints – Investigation to commence and complainant to be informed of progress within 15 working days	<ul style="list-style-type: none"> • Operational and building works; • Changes of use resulting in significant harm to residential amenity or the immediate environment; • Non-compliance with conditions/planning obligations resulting in significant harm to residential amenity; • Building and other works within conservation areas; • Where immunity from enforcement action due to lapse of time will come into effect shortly; • Other works causing less than substantial harm to the significance of a heritage asset.
C	Low Priority Complaints – Investigation to commence and complainant to be informed of progress within 25 working days	<ul style="list-style-type: none"> • Other changes of use; • Other minor building works and structures e.g. garden sheds, walls, fences etc. • Untidy land; • Non-Compliance with other conditions; • Advertisements; • Satellite dishes; • Works to listed buildings not carried out recently.

Regardless of the priority of the case we make the following commitments to anyone who reports a possible breach of planning control (excluding anonymous complaints):

- **Commitment 1 - We will view breaches of planning control with impartiality and we will treat all parties with dignity and respect. We ask the same in return.**
- **Commitment 2 - Your information will be held securely and will only be accessible to our enforcement section to enable them to carry out their investigations. Case detail may be shared with planning officers to determine the best course of action to deal with an alleged breach of planning control. Your information will not be supplied to anyone outside of the organisation without first obtaining your consent, unless we are obliged or permitted by law to disclose it.**

- **Commitment 3 - We will advise all complainants and those responsible for an alleged breach of planning control as to the outcome of any investigation and what action, if any, we propose to take.**
- **Commitment 4 - In circumstances where we conclude that it is not in the public interest to take action we will give an explanation as to why this judgement has been reached.**

10. Possible Courses of action following an Enforcement Investigation

As outlined in Section 5, some developments do not require planning permission or may be immune from enforcement due to the passage of time. In those cases there will be no breach of planning control and no action can be taken.

However, where a breach of planning control is identified, the following sequence will normally be followed.

Informal Negotiation

In line with national planning policy it should be noted that this Council considers formal enforcement action as an option of last resort and will instead seek to negotiate and address the issues that arise through informal discussion and measures wherever possible.

This approach may lead to a retrospective application to regularise unauthorised development. However, in cases where an application has been invited but there is no harm being caused (i.e. the development does not unacceptably affects public amenity, existing land uses and buildings which merit protection or the natural environment) it would not be considered expedient to take any formal action whether or not an application is submitted.

However it may not be appropriate to negotiate if urgent action is needed to resolve a breach that would otherwise lead to a significant loss of amenity, highway safety or substantial damage to the environment. In addition if negotiation is not successful in resolving issues the Council will consider formal enforcement action.

The Council will not engage in protracted negotiations that hamper or delay enforcement action if informal measures appear unlikely to resolve the breach of planning control.

Formal Action

Where a breach of planning control has been identified and where informal negotiations have failed or are unlikely to be effective, the Council will consider statutory action. This can consist of one or more of the following:

- Issuing a Planning Contravention Notice to find out more about the breach and identify interests in the land;

- Issuing a notice under Section 330 Town and Country Planning Act 1990 or Section 16 of Local Government (Miscellaneous Provisions) Act 1976 to identify all interested parties in the land;
- Issuing a Breach of Condition Notice, when conditions imposed on a planning permission are not being complied with;
- Issuing an Enforcement Notice;
- Issuing a Discontinuance notice against an advertisement that has deemed consent;
- Issuing a notice under Section 215 of the Act in cases of untidy sites
- Issuing of a Temporary Stop Notice, followed by a permanent Stop Notice, when it is considered essential that the unauthorised use or development cease immediately, rather than waiting for compliance with an Enforcement Notice or the outcome of any appeal against an Enforcement Notice;
- Issuing a Listed Building Enforcement Notice – this is the equivalent enforcement notice available under the listed building legislation;
- Prosecution proceedings;
- An application to the courts for an Injunction to restrain a breach of planning control; and
- Consideration of a request to the Courts for a confiscation order under the Proceeds of Crime Act 2002 where a criminal offence occurs through the non-compliance with a formal notice.

The variety of enforcement options available to the Council are listed in greater detail in Appendix 2 of this Enforcement Plan.

11. What if Someone Complains about You?

If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it), and have the opportunity to explain your side of the case. If you are not involved, no action will be taken against you. If you are involved, the Compliance and Enforcement Section will advise you of the details of the breach and how it can be put right.

Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be allowed for you to do this.

As set out in Section 10, in some circumstances you may be invited to submit a retrospective planning application if it is considered that permission may be granted.

If you are running a business that is threatened by enforcement action, the Council may be able to help to identify alternative premises so as to minimise the possible impact on the business. This does not mean that the enforcement action will be delayed or stopped.

If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.

You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you.

There are several types of enforcement action, please see section 10 and Appendix 2 for further information as to the options for taking enforcement action that the Council has.

12. Proactive Enforcement

This Council believes a proactive approach to development management and enforcement, is important. Matters of priority are:

1. **Condition monitoring.** It's highly important that planning conditions are adhered to as these are often used to ensure that developments which would not normally be acceptable become approvable. In particular conditions which 'go to the heart of the development' will be monitored and if required enforced against via a 'breach of condition notice' which is one of the powers available to this authority.

A sample of approvals will be randomly monitored dating back a maximum of ten years (a development in breach of a condition for in excess of ten years is immune from enforcement action.)

2. **Section 106 and CIL monitoring.** This Council employs a Section 106/CIL Monitoring Officer to ensure that contributions are received and spent on the necessary infrastructure that is required in the area. The Senior Planning Officer – Compliance and Monitoring will continue to manage this post and ensure that both the S106 and CIL agreements are complied with fully.
3. **Unauthorised advertisement removal.** Over the past recent years there has been a purge by this Council on unauthorised advertisements in particularly along Sedgemoor's stretch of the M5 motorway. We will continue to actively monitor and prosecute (where necessary) repeat offenders.

13. Nationally Significant infrastructure Projects (NSIP's)

Sedgemoor District is affected by several NSIP's. The projects are subject to a separate consenting process, and result in a Development Consent Order (DCO). It is important to highlight that projects of this scale may deploy a multiple- consenting regime, and Town and Country Planning Act applications may also be sought for project elements.

The responsibility for the monitoring and enforcement of these projects falls to the Local Planning Authority. Limited resources are made available for monitoring however no specific resources are made available for enforcement, therefore the enforcement priorities to do need to take account of the significance of these developments and the potential harm to the area, if not implemented in accordance with the consents secured.

The Council appreciates there may be enquiries about such projects and has set up an enquiry process through Sedgemoor Direct to assist customers.

There may be project specific processes in place for formal complaint handling. For example, complaints in relation to Hinkley Point C, will be managed by EDF Energy directly.

Where customers are genuinely concerned about a potential breach of a DCO, the Council will consider enforcement. As with other enforcement matters, early dialogue and resolution would be preferable.

A process has been established and is included in Appendix 3 of this Enforcement Plan and could lead to criminal prosecution.

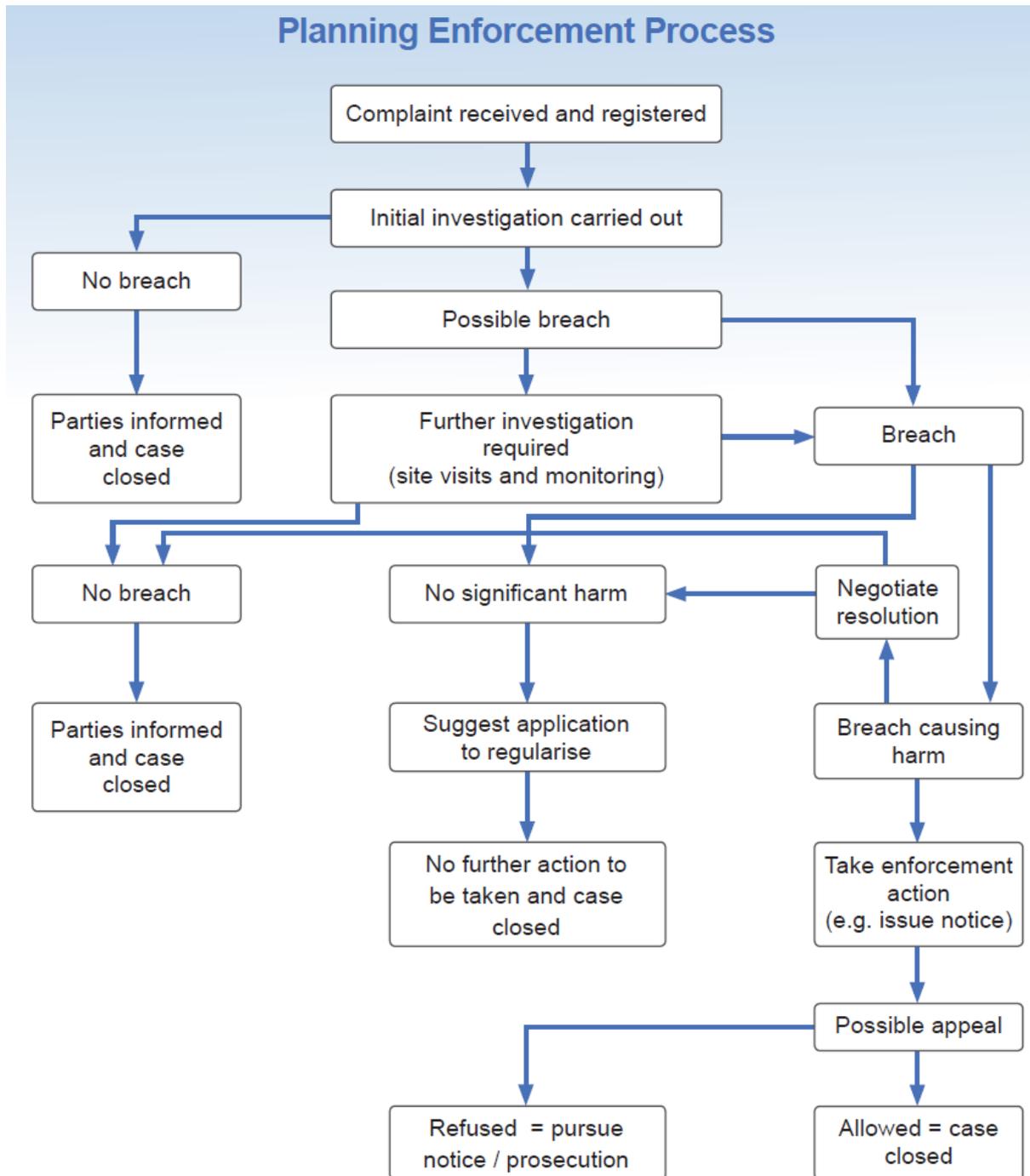
14. Review and Monitoring

Terms and legislation are constantly evolving and changing. It is envisaged that this enforcement policy is reviewed at least every two years in order to be relevant and consistent with the law. Clearly if there is a significant new issue or change in government policy, then an earlier review could be considered.

15. Matters Dealt with Under Other Legislation (including helpful contact details)

- Sedgemoor Direct 0845 408 2540
- Dangerous Structures are dealt with by our Building Control section 0845 4082540
- Fly-tipping, Litter and fly posting are dealt with by our Clean Surroundings section 0845 4082540
- Development on adopted highways, pavements or highway grass verges are dealt with the County Councils' Dunball Highways Office 01278 686622
- Boundary disputes/civil matters such as land ownership/covenants are not dealt with by the Council and should be referred to a legal expert.
- General Pollution (such as noise or smell issues) is dealt with by our Environmental Health team 0845 4082540
- Felling or works to un-protected trees (either protected by a Tree Preservation Order or within a Conservation Area) or landscaping or gardening works - to check if a tree is protected or in a Conservation Area please ring 0845 4082540 and ask for the landscape officer.

APPENDIX 1 – PLANNING ENFORCEMENT PROCESS



APPENDIX 2 – FORMAL ENFORCEMENT OPTIONS

Enforcement notice

When officers consider that there has been a breach in planning control that is causing significant harm or where negotiation has failed, officers will take planning enforcement action against the breach. In the case of physical works and changes in use of land, a planning enforcement notice will be served.

A planning enforcement notice needs to be served on the owner of the land that the breach relates to and any other person with an interest in the land. The enforcement notice will describe the breach, why officers think the notice should be served and what needs to be done to deal with the harm that the breach is causing and when this remedial work needs to be carried out.

Once a notice has been served, there is a right of appeal. The appeal needs to be made in writing to the Planning Inspectorate. There are a number of grounds for appeal against an enforcement notice. The Council sometimes relies on information or evidence from a third party. Where this evidence is critical to the Council's case these people will be asked to attend as witnesses at the appeal.

The Council cannot serve an enforcement notice against breaches that have taken place more than 4 years previously (for building and engineering works or change of use to a house) or 10 years previously (for all other breaches) unless the person responsible for the breach has deliberately concealed it.

Failure to comply with a valid enforcement notice is an offence, which would make the guilty person liable on summary conviction to a fine up to £20,000. There is a right of appeal against an enforcement notice.

Breach of condition notice

Councils can only serve breach of condition notices to deal with conditions applied to planning permissions. The Council has to use other powers to deal with breaches of conditions relating to a listed building or conservation area consent. Before the Council serves a breach of condition notice it has to have evidence that the requirements of a valid and enforceable condition have been breached.

The breach of condition enforcement notice must state what steps need to be taken to comply with the condition and give a deadline for complying with these steps (this cannot be less than 28 days). There is no right of appeal to the Planning Inspectorate against a breach of condition notice and failure to comply with the terms of a notice is an offence that could lead to prosecution.

The Council cannot serve a breach of condition notice against breaches that have taken place more than 10 years previously unless the person responsible for the breach has deliberately concealed it.

Listed building enforcement notice

A building is listed if it is included in a list compiled by the government. In order to qualify for listed status a building must have some special architectural or historic interest. Listed building consent is required for any works involving:

- The demolition of a listed building; or

- The alteration or extension of a listed building that would affect its special architectural or historic interest e.g. replacing timber windows with UPVC ones.

Listed building enforcement notices are similar to planning enforcement notices. The notice must clearly explain the breach, what needs to be done to address the breach and provide a timescale for complying with the notices requirements.

There is no time limit for the Council taking enforcement action against a breach of listed building consent.

Listed building and conservation area prosecution

Where works have been done to a listed building without the Council's consent or where a building has been demolished in a Conservation Area without consent, it also has the option of bringing a prosecution against the breach. The Council will decide whether to prosecute on a case by case basis. The Council can prosecute the building owner and / or the person who carried out the work (if they not the same). The Council is likely to bring a prosecution where:

- the breach has destroyed the historic fabric of a listed building which cannot be replaced;
- a particularly important listed building has been damaged through unauthorised building work; or
- the building makes a positive contribution to the character and appearance of a Conservation Area.

Temporary stop notices and stop notices

A temporary stop notice requires a particular activity, relating to all or part of an alleged breach, to cease immediately. The notice lasts for a maximum of 28 days. The Council can serve a stop notice after an enforcement notice which requires some or all of the activities in the enforcement notice to cease before the time limits for complying have expired.

The Council will only consider serving these kinds of notice in exceptional circumstances, where officers judge that an activity should cease immediately to safeguard the amenity of an area because of either:

- risk of harm to public safety;
- significant harm to amenity; or
- serious / irreversible harm to the environment.

The requirements of both notices must be proportionate and only restrict the activity, or part of the activity, that is necessary to safeguard against the harm. Before the Council serves either notice, officers must be able to demonstrate that the benefits from the notice outweigh the costs. Officers will normally try to negotiate informal alternatives with the person carrying out an activity before deciding to serve either a stop or a temporary stop notice.

Court injunction

The Council can apply to the Courts for an injunction to restrain an alleged breach where officers consider it necessary. Officers will only recommend that the Council applies for an injunction in exceptional circumstances where:

- there is clear evidence that a breach (this can be a breach of planning, listed building or tree control) has or is likely to occur;
- the breach is or will give rise to harm to public safety, significant harm to amenity or serious / irreversible harm to the environment; and
- the injunction is the most proportionate type of remedy in the particular circumstances.

The Department for Communities and Local Government (DCLG) has introduced a new time-limited Planning Enforcement Fund for local planning authorities in England. The scheme provides a grant of up to £10,000 or 50% of its legal costs (whichever is the lesser) to local planning authorities to secure a Court injunction to prevent actual or apprehended breaches of planning control.

Where the Council considers it appropriate consideration will be given to the relevance of making a bid to the Planning Enforcement Fund towards the cost of securing a Court injunction.

Direct action

Where the Council has served an enforcement notice and the requirements of the notice have not been carried out, the Council has the power to take direct action. If the Council takes direct action and is unable to recover the cost from the landowner, it may put a charge on the land to recover its costs. Before the Council decides to take direct action, officers will assess:

- whether the breach is continuing to cause significant harm or cause harm over a wide area;
- the overall costs of carrying out the action and the prospects of recovering these costs;
- any risks to the health and safety of Council employees, contractors, the owner or occupier(s) of the property; and
- whether the direct action is consistent with Council's corporate objectives and the overriding objectives of national planning policy.

Section 215 notice

Where officers consider that the condition of land is causing harm to the amenity of an area, the Council has the power to serve a notice requiring the land to be tidied. The notice must specify what needs to be done to tidy the land and give a deadline for complying. Where the requirements of the notice are not satisfied, the Council has the discretion to extend the deadline or to take direct action. Officers will take into account the criteria listed under 'Direct Action' above before carrying out the work to tidy the land.

Advertisements

Where officers consider that an advertisement has been erected without permission and the advertisement is causing harm to the area or public safety, the Council has the right to bring a prosecution. It also has the power to remove structures used to display adverts and adverts themselves in some circumstances.

Section 225A notice

The Council has the power to take direct action to remove placards and posters, provided it takes reasonable steps to notify the person who displayed the placard/poster before removing it. The Council will use this power against people who decide to persistently display posters and placards without advertisement consent in locations which cause harm to amenity or public safety.

Discontinuance notice and Article 4 direction

In very exceptional circumstances the Council will consider serving a discontinuance notice to stop an existing use or require the removal of buildings that have previously been given planning permission by the Council or consent through permitted development rights. The Council can also issue an article 4 direction to remove permitted development rights. Before exercising these powers officers will consider development plan policies and all other relevant material planning considerations.

Prosecution

The Council can initiate Court proceedings where a formal Notice has been breached. Additionally, legal proceedings may be commenced for unauthorised works without the necessity of serving any formal Notices. For example, unauthorised works to a listed building or a protected tree, or an unauthorised advertisement. Prosecution will only be considered if there is sufficient evidence and a prosecution will only be brought if it is considered to be in the public interest to do so.

Proceeds of Crime Act (POCA) 2002

Following a conviction of a criminal offence (such as a non-compliance with an enforcement notice) a Local Planning Authority has the ability to bring proceedings under the Proceeds of Crime Act 2002 for breaches of planning control.

Where a criminal offence occurs through non-compliance with a planning enforcement notice (or a breach of condition notice) the Council will consider in addition to prosecution of the offender(s) to request that the court makes a confiscation order against the offender(s) under POCA to enable the recovery of any proceeds of the crime. Caselaw has identified that such confiscation orders could lead to significant sums of monies and the risk of a prison sentence where offenders do not comply with such orders.

APPENDIX 3 – NNB GenCo HPC – Planning Enforcement Service Request

Defining a Planning Enforcement Complaint

Planning enforcement complaints relating to HPC are likely to fall into two categories of breach – either a Town and Country Planning Act (TCPA) breach or a Development Consent Order (DCO) breach.

A DCO breach is a criminal offence and relates specifically to a breach of the requirements and proposals within the DCO, which permits the construction of the power station and the various associated developments. It is anticipated that the Major Projects Office (MPO) will be kept fully informed of progress in respect of the DCO and as such that a breach of this nature is unlikely. However, if such a breach is expected or reported the MPO should be informed immediately as the first point of contact.

(There is a National Infrastructure Planning Association (NIPA) roundtable discussion on the imposition of Discharge and Enforcement of DCO Requirements on Wednesday 11th March 2015. Pinsents Masons will be attending as members and will forward the material to us as members, to avoid travel and associated costs.)

A TCPA breach is a more general breach of planning regulation and relates to any other form of development, change of use etc. taking place without planning permission, where it is formally required. Breaches relevant to the HPC project are likely to cover a variety of issues including unlawful accommodation (Houses in Multiple Occupation, beds in sheds, etc.), unlawful parking arrangements and compliance with conditions attached to any permission granted which relates to the HPC project. Any breach of this type which is, or is suspected of being, related to HPC should also be reported to the MPO in this first instance.

Whilst the Major Projects Office will be informed and aware of any TCPA related enforcement / licensing issues, and can provide some advice and technical input, action will be taken through the core enforcement team as no additional resources are made available through the Hinkley section 106 agreement. The procedure for dealing with a Planning Service Request is outlined on the next page.

Procedure for Dealing with a Planning Enforcement Service Request

