

**SEDGEMOOR DISTRICT COUNCIL**  
**DEVELOPMENT CONTROL ENFORCEMENT POLICY DOCUMENT**

**1. INTRODUCTION**

- 1.01 What is planning enforcement? Planning enforcement investigates possible breaches of planning control and aims to resolve them using the most appropriate means of action.
- 1.02 The District 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.
- 1.03 The Planning Acts give local planning authorities discretion to take enforcement action, when they regard it as expedient to do so. It is important that everyone involved in the planning process is clear as to the approach that the District Council will adopt in dealing with breaches of planning control.
- 1.04 What is a breach in planning control? A breach of planning control is defined in the Town and Country Planning Act 1990 “the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.
- 1.05 There are periods after which development becomes immune from enforcement action. These periods are 4 years for built development and change of use to a single self-contained dwelling and 10 years for all other change of use and breaches of conditions. If confirmation is required that a development is immune from planning enforcement action it is advised that an application for a Certificate of Lawfulness is applied for.
- 1.06 This policy document will provide a framework within which decisions can be made when dealing with such breaches. The enforcement policy has been formulated with regard to the Planning Acts, relevant Government Guidance (Planning Policy Guidance note 18 (PPG18)) and Circulars, in particular 10/97, the Council’s Development Plan Policies, Best Value Legislation, and the Council’s Enforcement Policy.

**2. RESOURCES DEVOTED TO ENFORCEMENT**

- 2.01 *‘Planning enforcement is the most technically complex component of the development control regime. In allocating the Council’s resources, it must be recognised that planning enforcement activity is almost always labour intensive. Thorough investigation of the relevant planning history and painstaking evaluation of the facts are the foundation for effective enforcement. Neither can be obtained cheaply.’* Department of the Environment Enforcing Planning Control: Good Practice Guide for Local Planning Authorities 1997.
- 2.02 The Planning Enforcement team consists of a Senior Enforcement Officer, two Planning Enforcement Officers and a full-time technical support officer. The team reports to the Development Control Manager, the appropriate Group Manager and quarterly to the Development Control Committee.

2.03 The number of investigations carried out by the enforcement officers has increased steadily year on year. During 2005 the enforcement team investigated over 400 alleged breaches of planning control and this resulted in formal enforcement action being taken in over 80 (including advertisements) cases. The level of work carried out by the enforcement team will be monitored and the resources required to undertake such work will be reviewed regularly.

### **3. ENFORCEMENT OBJECTIVES**

- To provide an efficient and effective enforcement service.
- To promote compliance with planning requirements.
- To remedy the undesirable effects of unauthorised developments.
- To bring unauthorised activity under control to maintain the credibility and achieve the purpose of the planning system.
- To strike an acceptable balance between protecting the amenity of the people of Sedgemoor and other interests of acknowledged importance and allowing development to take place.

### **4. THE TYPE OF ENFORCEMENT PROBLEMS**

4.01 The District covers both urban and rural areas each having different planning policies and development pressures. As a result of this, the types of enforcement cases experienced cover the whole spectrum. The more common investigations involve the following:

- Extensions constructed without the benefit of planning permission.
- Running a business from residential property, particularly carrying out car repairs.
- Breach of condition relating to landscaping.
- Change of use of dwelling to multiple occupation.
- Use of land as a caravan site (siting of mobile home for the purpose of human habitation).
- Gypsy or New Age Travellers encampments.
- Creation of new access onto the highway.
- Breach of condition relating to erection of fences, walls or other means of enclosure.
- Building not constructed in accordance with the approved plans.
- The illegal display of signs and advertisements.
- Change of use of buildings to use as a dwelling.
- Works to a listed building.

### **5. MAKING A COMPLAINT**

5.01 When making a complaint it is important to put the details in writing giving your contact name and address and the details of any other interested parties. This can be done by completing a Possible Breach of Planning Permission Form. This is available from the planning pages of the Sedgemoor District Council 's Web Site [www.sedgemoor.gov.uk](http://www.sedgemoor.gov.uk) for downloading, or completing on-line, or from Development Control, Sedgemoor District Council, Bridgwater House, King Square, Bridgwater, Somerset TA6 3AR to which the form should be returned. This can also be sent by e-mail to [development.control@sedgemoor.gov.uk](mailto:development.control@sedgemoor.gov.uk).

If the complaint is received in writing (i.e. not verbally) the Council will endeavour to keep the complainant informed of all stages of the investigation.

5.02 The information required when making a complaint 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
- If possible, the identity of the persons/organisation responsible

5.03 Anonymous complaints will not normally be investigated. However, a decision whether to investigate anonymous complaints will be made on a case by case basis by the enforcement team giving consideration to the damage to the environment and/or public safety caused by the alleged breach in planning control.

5.04 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.

## 6. PRIORITIES

6.01 It is important to progress enforcement cases quickly and efficiently at every stage. Existing workload however will preclude immediate action on all cases. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. To enable the planning enforcement officers to maximise their output and provide a quality service it has been essential to establish a set of priorities. The following order of priorities is followed when investigating alleged breaches of planning control.

- a) Any unauthorised development or non-compliance with a condition that is causing immediate and irreparable harm to the environment or public safety. For example irreparable works to a listed building or works to a tree protected by a Tree Preservation Order.
- b) Unauthorised demolition or partial demolition of a building that it is essential to retain.
- c) Unauthorised works to a listed building or unauthorised development in a Conservation Area.
- d) Any breach of planning control causing serious loss of residential amenity.
- e) Unauthorised development that has been undetected where the time limit for enforcement action will expire within the next six months because of the immunity time periods.
- f) Any breach of planning control causing a limited degree of disturbance to local residents or the environment.
- g) Unauthorised advertisements.
- h) Any other reported breach of planning control.

- i) Proactively pursuing unauthorised advertisements.
- j) Other proactive enforcement monitoring.

## **7. THE DECISION TO TAKE ENFORCEMENT ACTION**

- 7.01 In investigating all alleged breaches of planning control 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.
- 7.02 Where there is doubt and the owner or occupier is actively pursuing an application for a Certificate of Lawful Use or Development in an attempt to establish the position, enforcement action will normally be held in abeyance pending the determination of the application.
- 7.03 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 Plans together with Central Government advice contained in Planning Policy Guidance Notes and Departmental Circulars.
- 7.04 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, within an appropriate time limit. 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 secure its cessation.
- 7.05 Enforcement Policy 1 (EP1): Control will be exercised against any unauthorised development that unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest.**

## **8. ENFORCEMENT TOOLS**

- 8.01 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.
- 8.02 Planning Contravention Notice (PCN)**
- 8.03 Power to issue a PCN is contained in Section 171c of the Town and Country Planning Act 1990 (as amended). Such a notice may be served to obtain information on an alleged breach of planning control. The notice requires details and information of the suspected breach that has occurred. Failure to respond within 21 days or submitting false or misleading information renders the recipient liable to prosecution.
- 8.04 Breach of Condition Notice (BCN)**

8.05 Power to serve a BCN is contained within Section 187A of the Town and Country Planning Act 1990 (as amended). A notice may be issued where a condition imposed by a planning permission has not been complied with. The compliance period is a minimum of 28 days from the date of service and there is no specific right of appeal.

#### **8.06 Enforcement Notice**

8.07 Power to issue an enforcement notice is contained in Section 172 of the Town and Country Planning Act 1990. A Local Planning Authority may issue an enforcement notice where they consider there has been a breach of planning control and it is expedient to do so. The notice must state the alleged breach of planning control, the steps required to remedy the breach and the period of time to comply with the requirements. There is a right of appeal against this notice.

#### **8.08 Stop Notice**

8.09 Power to issue a stop notice is contained in Section 183 of the Town and Country Planning Act 1990. A stop notice may be issued to support an enforcement notice and has the effect of requiring a breach of planning control to cease, normally not less than three days after service. Compensation may be payable if the enforcement notice to which the stop notice relates is quashed on appeal. A stop notice will only be issued where the unauthorised development is particularly harmful or is causing widespread disturbance to local residents.

#### **8.10 Temporary Stop Notices**

8.11 Power to issue a Temporary Stop Notice is contained in new sections 171E to 171H of the Town and Country Planning Act 1990. The notice may be issued if the local planning authority think that there has been a breach of planning control in relation to any land and that it is expedient that the activity (or part of it) which amounts to the breach is stopped immediately. There are however some restrictions on the availability of this remedy.

#### **8.12 Injunction**

8.13 The power to seek an injunction in the High Court is conferred by Section 187B of the Town and Country Planning Act 1990 (as amended). The power is used to restrain an actual or expected breach of planning control. The granting of an injunction is at the Court's discretion and failure may result in the Council incurring considerable costs.

### **9. SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE**

9.01 An owner or occupier who fails to comply with the requirements of an effective enforcement notice commits an offence. If such an offence is committed the Council will take robust action, which may involve the following:

#### **9.02 Prosecution Action in the Magistrates or Crown Court**

9.03 The Council will usually seek to ensure compliance with the requirements of an enforcement notice through prosecution in the Courts. On summary conviction in the Magistrates Court the defendant is liable to a fine not exceeding £20,000 and, on conviction on indictment in the Crown Court, a fine of an unlimited amount. If the requirements of the notice are still not complied with the Council may bring another

prosecution before the Court. Prosecution action is likely to continue until the owner complies with the enforcement notice or default action is taken.

#### **9.04 Default Action**

9.05 The Council is likely to consider default action where the Courts have imposed successive fines but the breach of planning control still exists. In these unusual circumstances the Council may enter onto the land and undertake the works to comply with the requirements of the notice. The Council will seek to recover all reasonable costs incurred in taking such action.

#### **9.06 The Issuing of an Injunction**

9.07 The Council may seek an enforcement injunction to prevent an unauthorised activity from continuing. For example, if despite being prosecuted for contravening an effective enforcement notice, the owner continues to defy the notice, the Council may have no other option open to them to remedy the breach.

**9.08 Enforcement Policy 2 (EP2): The Council will use as appropriate the range of Enforcement Notices, Injunctions, Prosecution Action and Works in Default of compliance to remedy breaches of planning control.**

### **10. UNACCEPTABLE UNAUTHORISED DEVELOPMENT WHERE IMMEDIATE REMEDIAL ACTION IS REQUIRED**

10.01 The Council shall instigate enforcement action to remedy a breach of planning control where the unauthorised development has been carried out and the Council consider that the breach is causing serious harm to public amenity.

**10.02 Enforcement Policy 3 (EP3): Where unauthorised development has been carried out which causes serious harm to public amenity immediate enforcement action, including the service of a Stop Notice or Enforcement Injunction if considered appropriate will be initiated in order to remedy the breach or prevent further serious harm to public amenity.**

### **11. IMPOSITION OF CONDITIONS TO MAKE DEVELOPMENT ACCEPTABLE**

11.01 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.

11.02 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 56 days (6 weeks). If after this period, the owner or occupier of the land refuses to submit a planning application, the Council will consider taking enforcement action or report the breach of planning control to the Development Control Committee recommending the appropriate course of action.

11.03 Any appeal against such a notice would usually have the effect of a deemed planning application. As such the appeal could be dismissed or allowed subject to conditions to alleviate any injury caused by the development.

**11.04 Enforcement Policy 4 (EP4): Where development has been carried out without planning permission and there is a possibility that planning permission may be granted subject to conditions, but the owner or occupier refuses to submit a planning application an enforcement notice will be served.**

## **12. MINOR OR TECHNICAL BREACHES OF PLANNING CONTROL**

12.01 Enforcement action will always be commensurate with the breach of planning control to which it relates. Formal action will not normally be taken against trivial or technical breaches of planning control. Breaches that do not cause sufficient harm to amenity 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. This will avoid any unnecessary delays, which may be caused if the land or property is sold in the future and the prospective purchaser becomes aware of the unauthorised development.

**12.02 Enforcement Policy 5 (EP5): Enforcement action will not normally be initiated where a trivial or technical breach of planning control has occurred which causes no harm to public amenity and where it is not in the public interest to do so. The Council will not take action to solely regularise an acceptable development or obtain a fee.**

## **13. GRANT UNCONDITIONAL PLANNING PERMISSION FOR UNAUTHORISED DEVELOPMENT**

13.01 Where development requiring the benefit of planning permission has been carried out or is in the process of being carried out, an assessment will 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 will be requested. 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.

**13.02 Enforcement Policy 6 (EP6): Where unauthorised development has been carried out without planning permission and it is likely that unconditional permission could be granted, but the owner or occupier refuses to submit a planning application, formal enforcement action will not normally be initiated.**

## **14. MONITORING DEVELOPMENT ON SITE**

14.01 Unfortunately it is not currently possible to monitor all conditions on all development sites throughout the District. The Council will seek to monitor the larger development sites within the District to ensure compliance. However the investigation of actual breaches of planning control take priority over potential breaches as indicated in the list of enforcement priorities above.

14.02 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 District 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.

## 15. PERFORMANCE MEASURES AND WORKLOAD STATISTICS FOR ENFORCEMENT

15.01 Enforcement investigations can take a long time to resolve because of their complex nature. However, to monitor the performance of the enforcement service the following performance measures and targets have been set and workload statistics will be recorded: -

Measure	Target	
	'05	'06
% of incoming complaints to be recorded and prioritised within five working days.	95	95
% of investigations into alleged breaches of planning control to commence within 28 days.	100	100
% of planning assessments of breaches of planning control to be made within two weeks of submission to planning officer.	100	100
% of written complaints to be acknowledged within five working days of receipt.	95	95
% of enforcement cases resolved	78	80
Workload	Number	
Number of enforcement complaints received.	To be recorded	
Number of breaches of planning control identified.		
Cases which result in the issue of an enforcement notices.		
Investigation found case not to be a breach of planning control.		
Breaches of planning control which are resolved through negotiation ie. no notice issued.		

## 16. REVIEW AND MONITORING

16.01 Appropriate systems will be maintained to ensure that these targets are monitored. The Council aims to record and report to the Development Control Committee half yearly the level of work and performance of the enforcement section and also review the enforcement policy annually.

16.02 The progress of planning applications can be monitored from the Sedgemoor's Web Site.