

**SOUTH BUCKS DISTRICT COUNCIL**  
**SUSTAINABLE DEVELOPMENT - DEVELOPMENT MANAGEMENT**  
**PLANNING ENFORCEMENT AND CONDITION MONITORING POLICY AND PRACTICE NOTE 2012**

**1 Introduction**

- 1.1 The Council's planning enforcement policy was first adopted in its current form in 2006. It was last reviewed in 2008 and the resulting policy, ie the current policy, was formally adopted by the Council's Planning Committee on 17 December 2008.
- 1.2 The adopted policy provides for regular reviews to be carried out to ensure that it remains appropriate. This updated policy has been prepared following a number of interim informal reviews.
- 1.3 The integrity of the development management function depends on the Council's willingness to take enforcement action. Without this facility, the Council would be unable to pursue and seek to resolve unauthorised or non-complying development in the District.
- 1.4 There are two strands to planning enforcement:
  - Reactive enforcement - Investigating complaints about unauthorised building operations and uses.
  - Pro-active enforcement - Monitoring developments to ensure compliance with planning permissions, consents, associated conditions and agreements - and continued compliance with extant Enforcement Notices.
- 1.5 One of the aims of this policy is to enable an appropriate balance to be achieved between reactive and pro-active enforcement and to further raise the external profile of development monitoring.
- 1.6 The planning enforcement team comprises the Enforcement and Conservation Manager and 3 Enforcement and Monitoring Officer posts. In addition specialist enforcement work is undertaken by the Conservation and Design Officer and the Arboriculturist. Compliance monitoring is undertaken by this team with assistance from Development Management Officers and Building Control Surveyors.
- 1.7 The number of enquiries and complaints received each year is generally on the increase; many of the resulting investigations are very complex and because of 'due process' some can take years to resolve. Even at its full complement the enforcement team is not resourced to investigate every complaint. Therefore this policy sets out priorities for investigation, explains what will be investigated and what will not and outlines the Council's general discretionary powers with regard to planning enforcement.
- 1.8 This policy is in furtherance of the Council's Corporate Enforcement Policy adopted in 2004 in so far as it specifically relates to planning matters and was adopted by the Council's Cabinet on 5 February 2013.

**2 Enforcement policy**

- 2.1 The Council operates within the requirements of the relevant legislation and Government policy and guidance. In the case of planning enforcement this principally comprises the following documents:
  - Town and Country Planning Act 1990
  - Planning (Listed Buildings and Conservation Areas) Act 1990
  - Planning and Compensation Act 1991

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- Planning and Compulsory Purchase Act 2004
- National Planning Policy Framework
- Circular 10/97 *Enforcing Planning Control: Legislative Provisions and Procedural Requirements*

all as amended from time to time.

- 2.2 The Council has signed up to the Government's 1998 Enforcement Concordat, now known as the Regulatory Compliance Code, which establishes principles of good enforcement. The aim is that all enforcement actions comply with the principles of:
- Consistency
  - Proportionality
  - Openness
  - Helpfulness
- 2.3 Under the terms of the planning legislation a Local Planning Authority (LPA) may issue an enforcement notice where it appears to them that there is a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the Development Plan and to any other material planning considerations. **This means that the Council as LPA has a general discretion to take enforcement action only where it considers it expedient to do so.** The authority to consider the exercise of this discretion is delegated to the Head of Sustainable Development. He has in turn delegated this function to the Enforcement and Conservation Manager to exercise in conjunction with the Development Management Area Team Managers. This consideration is undertaken in consultation with the Council's Legal Services staff where necessary. Cases will be referred to Planning Committee where formal enforcement action is recommended to be taken.
- 2.4 Complaints of alleged breaches of planning control can be made by anyone and should be made in writing to the enforcement team, giving details of the complaint with an address or specific location and all other relevant information including an indication of the nature of the alleged breach. **Anonymous complaints will not normally be investigated.** Telephone complaints must be followed up by the complainant in writing or by e-mail within 5 working days to ensure that there is no misunderstanding in the detail or validity of the complaint. An on-line complaint form is provided on the Council's website and all complainants are encouraged to make use of this facility whenever possible.
- 2.5 Whichever means of notification is used any complainant must be prepared to give their name and address and ideally a contact telephone number. A telephone or mobile phone number or e-mail address alone is not sufficient unless the complaint is made by a Council Member or a Clerk to a Parish or Town Council acting formally on behalf of their Council. Written or email confirmation will also be necessary in these instances. The Council's Enforcement and Monitoring Officers will not undertake to locate vague allegations of unauthorised activity or pursue anonymous, vexatious, frivolous or malicious complaints. Therefore sufficient detail (as judged by the Enforcement and Conservation Manager in each case) is required before a complaint will be logged. If insufficient information is given the Enforcement and Conservation Manager may exercise his/her discretion by not investigating the matter further.
- 2.6 All complaints will be treated in confidence and with equality. The identity of the complainant will not be revealed unless the Council is ordered to do so, for example by a Court or on Appeal, although in some cases the person about whom a complaint has been received may be able to deduce who has made the complaint. Where a complainant is

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reluctant to give their personal details they will be encouraged to speak to the appropriate Parish or Town Council or their Ward District Councillor who can then lodge a complaint on their behalf. Complaints from Parish or Town Councils must be made through the Parish or Town Clerk. This will avoid duplication and waste of resources by having a single point of contact.

### **3 What will be investigated**

3.1 The Council will only investigate those matters that might constitute a breach of planning control. These consist mainly of:

- Unauthorised building, engineering or other operations, changes of use, works to listed buildings, advertisements.
- Non-compliance with planning permissions, conditions or an extant Enforcement Notice.
- Unauthorised works to protected trees.

However, where the breach appears to be of a minor or technical nature, the Enforcement and Conservation Manager may, in consultation with the appropriate Development Management Area Team Manager, decide to exercise the Council's general discretion by not investigating the complaint further. The complainant will be notified of this decision.

3.2 The Council's Enforcement and Monitoring Officers cannot investigate other, non-planning, matters such as statutory nuisances, boundary or neighbour disputes, on-street parking issues, trespass or damage to property, business competition or other private or civil matters such as breaches of covenants. Complaints of this nature may be referred elsewhere, for example to be dealt with by another Council department, Buckinghamshire County Council, or Government Agency, such as the Environment Agency. In these cases details will be passed on to the relevant party and the complainant will be notified. Where it appears that the complaint is not related to planning matters the complainant may be advised of the Mediation Buckinghamshire service.

3.3 There are a limited number of legislative enforcement tools available to the Council. These consist primarily of:

- Enforcement notices
- Breach of Condition notices
- Planning Contravention notices
- Section 215 notice - 'tidy site notice'
- Stop notices & temporary stop notices
- Injunctions
- Prosecutions
- Works in default
- Article 4 Directions
- Rights of entry

The emphasis will always be on ensuring compliance or regularising breaches by negotiation and persuasion in line with Government advice and to meet the Council's relevant performance indicator. This indicator currently requires 92% of all cases to be resolved without resorting to formal enforcement action. Although formal action will be

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applied as a last resort, the Council will not hesitate to use such power where it is considered necessary and proportionate to do so.

- 3.4 Work carried out without the necessary planning permission, or in breach of a planning condition, is not normally automatically unlawful and no criminal offence has been committed at this stage. However a breach of a statutory notice once issued is unlawful and liable to prosecution. In cases where consent is needed for works to a Listed Building, demolition works in a Conservation Area, works to trees protected by a Tree Preservation Order or in a Conservation Area, or to display an advertisement, any work carried out without the necessary consent is a criminal offence for which the person responsible, the owner of the property and possibly others, may be prosecuted.
- 3.5 It is the responsibility of the developer/applicant to ensure that a development is undertaken in accordance with the approved details and in compliance with any conditions on the planning permission. Where conditions precedent (i.e. 'pre-conditions' which require compliance before any development starts) have not been complied with any development purporting to benefit from the planning permission will be unauthorised. The Development Management teams will not normally approve details required by a condition precedent retrospectively and a new application will be required.
- 3.6 Each case however will be considered on its own merits. Breaches which involve operational development which has already been undertaken will be given no special consideration. Any 'retrospective' planning application submitted as part of the rectification process will be considered by the Development Management team and treated no differently from an application made in advance of the works being carried out.

#### **4 Priorities**

4.1 With limited resources it will not be possible to undertake an immediate investigation in all cases. Therefore each case will be assigned a priority by the Enforcement and Conservation Manager and allocated to an Enforcement and Monitoring Officer to investigate. The level of priority will be based on planning grounds such as possible harm to the environment or public and/or planning significance.

4.2 The priority will be based on 3 levels:

<b>PRIORITY</b>	<b>EXAMPLE</b>
<b>High -</b>	Development causing immediate and significant environmental harm or nuisance in relation to planning matters, Irreversible works (including works to listed buildings or protected trees), Development or advertisements with serious road or public safety implications, Developments conflicting with the main priorities of the Council and/or primary policy (e.g. Green Belt, Conservation Areas, SSSI, Ancient Monuments), Development where the time limit for taking enforcement action expires within the next 6 months, Breaches of statutory planning notices, Sales of Green Belt land as leisure or investment plots.

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**Medium -** Non-compliance with planning permissions where there is significant harm to amenity,  
Unauthorised development which causes significant harm or nuisance.

**Low -** All other complaints, e.g.  
Fencing, sheds and outbuildings etc,  
Small domestic extensions, resurfacing,  
Changes of use where there is no significant harm or nuisance,  
Illegal adverts likely to be unacceptable on amenity grounds,  
Fly posting,  
Technical breaches where there is no harm or nuisance,  
Untidy sites,  
Developments of a temporary nature.

4.3 All cases will be kept under review, which could result in moving the investigation from one category to another at any time.

## 5 Types of action

5.1 Because the Council's enforcement powers are discretionary, and it has to be able to demonstrate that any enforcement action is expedient and proportionate, the emphasis will be on endeavouring to negotiate a resolution with those responsible for breaches of planning control in the first instance.

5.2 In deciding the most appropriate type of action and expediency in planning matters the Council must consider the effects of the breach and what harm is caused to the amenity of the area. This consideration will also include forming a view as to whether planning permission would be likely to be forthcoming if applied for, the available evidence and any claims of immunity. The main issue should be whether, if left un-addressed, the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. This will involve Human Rights considerations of both the landowner and those affected by the unauthorised development. **Complainants should therefore be aware that, for a variety of reasons, it may not be expedient to take enforcement action in every case, even if a breach of planning control is proven.**

5.3 Where it proves necessary to resolve a significant breach of planning control the Planning Committee may be asked to consider giving its authority to issue a statutory notice, prosecute and/or carry out works in default. In an emergency authority may be sought from the Consultative Body of the Planning Committee, in line with the Council's scheme of delegation. In this instance the matter will be reported to the next scheduled Planning Committee.

5.4 The progress on all outstanding enforcement matters which remain unresolved where action or monitoring has been authorised by the Planning Committee will be reported to each Planning Committee by the Council's Head of Legal Services.

5.5 The choice of action in each case will be:

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- No further action - No breach has occurred,  
No harm to amenity or environment,  
Not expedient to take action.
- Regularisation - Cessation of use/works,  
Retrospective application,  
Discharge of conditions.
- Formal action - Enforcement or other formal notice,  
Prosecution,  
Injunction,  
Works in default

5.6 Where action is considered appropriate Officers will adopt the following approach:

- Stage 1 - Give advice eg informal letter,  
Seek compliance allowing an opportunity for  
cessation of works/use or reinstatement of land,  
Seek discharge of conditions.
- Stage 2 - Formal letters, written warnings,  
Issue a planning contravention notice in conjunction  
with Legal Services staff to obtain more information.  
If there is a possibility that the development could be  
acceptable, invite submission of a planning  
application to formally consider the proposal, n.b.  
unless immunity is imminent, further enforcement  
action will normally be suspended pending the  
consideration of the application. It should be noted  
that there can be no presumption that any  
retrospective application will be granted planning  
permission.
- Stage 3 - Formal caution, enforcement notice or other formal  
action (where a formal notice is issued, details of the  
rights of appeal will also be given),  
Prosecution in accordance with the Corporate  
Enforcement Policy, adopted 2004, in conjunction  
with Legal Services and subject to consideration of  
the public interest and other tests and authority from  
the Planning Committee.

5.7 Where formal action is taken every effort will be made to explain to the recipients what is required of them, the consequences of non-compliance and the available rights of appeal. In this respect it will often be recommended that they seek independent advice.

5.8 It is not Council policy to automatically withdraw an enforcement notice once it has been complied with. However a note will be made on the local land charges register that compliance was achieved on the date of inspection. Authority would need to be obtained from the Planning Committee for the withdrawal of an Enforcement Notice. Delegated authority has been given however to withdraw an Enforcement Notice where requested to do so where the development no longer constitutes a breach of planning control due to

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changes made to the regulations governing '*permitted development*'.

## 6 Service Standards

- 6.1 Allegations of a breach of planning control will be acknowledged within 10 working days of receipt of the written details. The enforcement team will undertake, where possible, to make an initial site visit within the following timescales:
- |                 |  |
|-----------------|--|
| High priority   | 3 working days (immediately where necessary) |
| Medium priority | 10 working days                              |
| Low priority    | 20 working days                              |
- 6.2 Occasionally it will not be possible to meet these timescales. For example a sudden high priority case may require all of the enforcement team to be involved for a period and this will temporarily divert resources away from other enforcement work.
- 6.3 The Council will process each case, carrying out an investigation, determining any relevant planning application and undertaking any subsequent enforcement action, according to the flow-chart set out in Appendix A. These processes tend to militate against resolving cases quickly, as a thorough investigation of the full facts and a comprehensive assessment of any breach and all relevant circumstances is required to justify formal action. Certain notices also carry rights of appeal i.e. to the Planning Inspectorate or to the Magistrates Court. Therefore it is not possible to advise complainants how long it will take to resolve their complaint.
- 6.4 Please note that the complainant will not be specifically notified if a planning application or enforcement appeal is received in relation to an enforcement case, except where the complainant is notified under the Council's adopted neighbour notification rules. Details of all planning applications received by the Council are published weekly on our website. The Planning Inspectorate publishes details of all planning and enforcement appeals; these are also listed within the papers for each meeting of the Council's Planning Committee.
- 6.5 Regardless of whether formal action has been taken or not, once a matter has been concluded to the satisfaction of Officers the complainant will be informed of the outcome within 10 working days.

## 7 Condition Monitoring

- 7.1 An informative will be added to all permissions, consents and approvals advising of the need to comply with approved plans, details, conditions and obligations as set out therein.
- 7.2 The Council's Building Control section will provide regular 'start of works' lists to the Development Management Area Team Managers and to the Enforcement and Conservation Manager. These will comprise a detailed list of sites where notification has been received of the start of works on all those projects where the Building Regulations apply.
- 7.3 The Development Management Area Team Managers will scrutinise this data and identify any major projects or proposals for new dwellings. These details will be passed to an appropriate Development Management Officer who will check to ensure that any

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conditions precedent (i.e. conditions that should have been complied with prior to commencement) on the associated planning permission have been complied with.

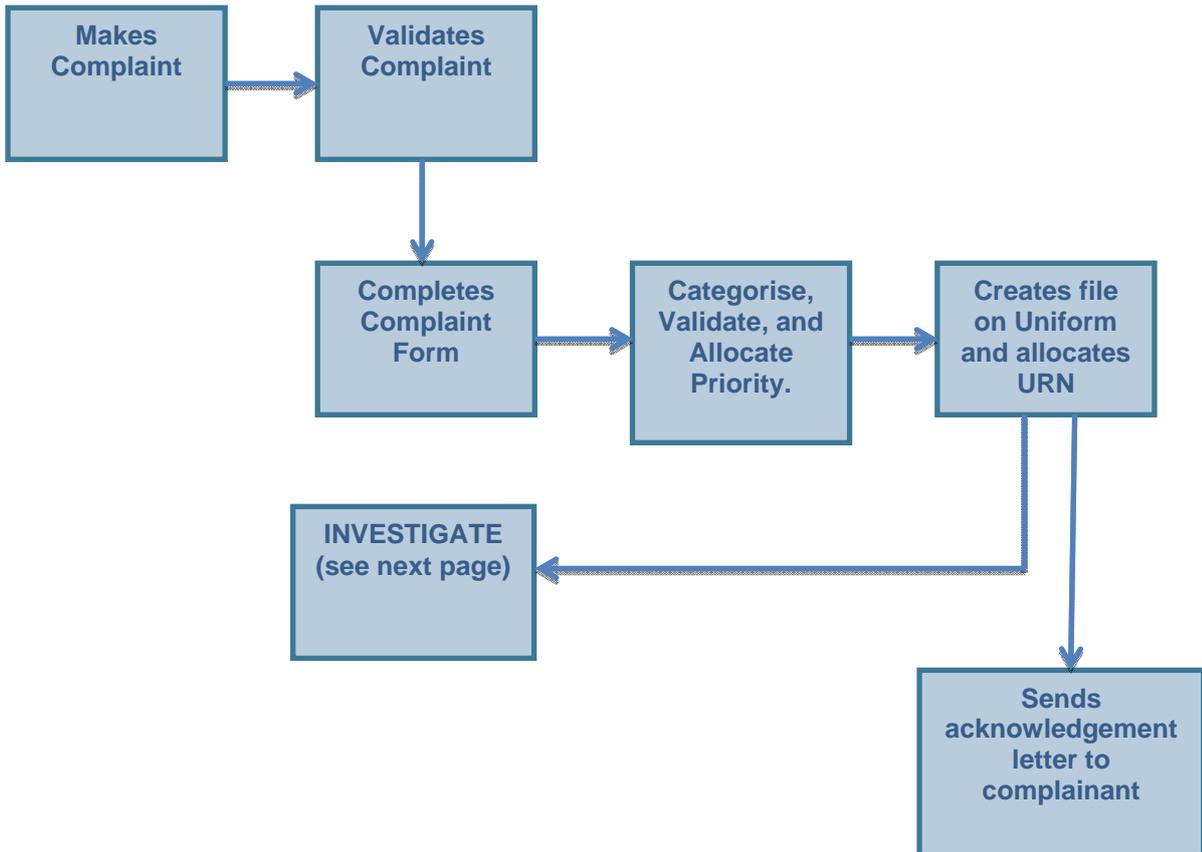
- 7.4 In the event that such conditions have not been complied with or any other matter is revealed that warrants investigation, the relevant information will be passed to the enforcement team to initiate contact with the developer to ensure that any outstanding details are provided or other matters are addressed.
- 7.5 The Enforcement and Conservation Manager will analyse the 'start of works' lists and identify sites for Enforcement and Monitoring Officers to carry out monitoring visits to ensure compliance with any associated planning permission.
- 7.6 The list of sites for monitoring visits will include the following types of development:-  
All Major Development sites.  
All Minor Development sites involving replacement dwellings.  
All sites where an enforcement case has generated the planning application.  
All sites identified by a Development Management Area Team Manager as warranting particular attention based on the site's history.
- 7.7 In addition the Enforcement and Conservation Manager will identify for monitoring a selection of householder applications and other works on a sampling basis. Sampling parameters will be varied from time to time based on feedback and statistics gathered from previous visits.
- 7.8 Any breaches of planning control that are identified through the foregoing processes will be dealt with as set out in the preceding sections.

## **8 Review of Policy**

- 8.1 This policy will be reviewed every two years to consider whether improvements are required in the light of findings of the Ombudsman, local complaints, changes in legislation and changes in resources or Members' requirements. Any proposed revisions will be considered by the Council's Sustainable Development Portfolio Holder and his/her Policy Advisory Group (in light of any comments from the Planning Committee). The Portfolio Holder's recommendations will be put to the Council's Cabinet for its consideration.

The Enforcement Process

**1. Case Registration**



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**2. Case Investigation and Completion**

