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Planning Enforcement Statement for South Oxfordshire District Council & Vale of the White Horse District Councils

Introduction

- 1.0 This statement on South Oxfordshire District Council and Vale of the White Horse District Council's (the council) Planning Enforcement Service, describes what the service does and how we will proactively deliver the service to the community.
- 1.1 The main background legislation is the Town & Country Planning Act 1990 (as amended). This is supported by Government policy in the form of the National Planning Policy Framework (NPPF) and Planning Policy Guidance (PPG)
- 1.2 Specifically this statement covers:
 - the role of planning enforcement
 - examples of what are and aren't breaches of planning control;
 - how decisions will be made and our service standards
 - how to make an enquiry
 - how we prioritise investigations;
 - how we will carry out investigations;
 - a list of contacts for further information.

The principles of good enforcement

- 1.3 Both councils signed up to the government's concordat, which sets out national principles of good enforcement practice as outlined below.

Standards: to publish clear standards of service and performance.

Openness: to provide information and advice in plain language on the rules, and discuss problems with anyone experiencing difficulties either because of a breach of planning or as the result of an investigation

Helpfulness: to work with all parties to resolve investigations without formal action if possible.

Consistency: to carry out duties in a fair, just and consistent manner.

Proportionality: to take action, when it is necessary, in relation to the risks posed and how serious the breach is.

Complaints about the Service: to provide well-publicised, effective and timely procedures, and explain our complaints procedure.

What is planning enforcement?

2.0 Planning enforcement is an essential part of the much wider planning process of development management. However, it is not responsible for controlling all activity taking place on land.

2.1 The regime is limited to managing development under the terms set out in the Town & Country Planning Act 1990 as amended by the Planning & Compensation Act 1991, the Planning & Compulsory Purchase Act 2004 and the Localism Act 2011. Councils must also take into account the policies set out in the National Planning Policy Framework (NPPF) and Government guidance (PPG) and where appropriate the Human Rights Act 1998.

2.2 Section 55 of the Town & Country Planning Act 1990 (as amended) defines development as;

“the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land”.

2.3 Section 171A of the Town & Country Planning Act 1990 (as amended) defines a breach of planning control as;

“the carrying out of a development without the required planning permission, or failing to comply with a condition or limitation subject to which planning permission has been granted”.

2.4 Para 207 of the NPPF states;

“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”.

2.5 National Planning Policy Guidance (NPPG) at paragraph 3 states;

“The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.”

The main functions of the enforcement service are;

2.6

- Making sure unauthorised development is brought within the regulations, or its impact is reduced or if it is totally unacceptable it is removed or stopped.
- Making sure that conditions and limitations attached to planning permissions are met or if appropriate any changes are managed in accordance with the regulations
- Making sure that development that is given planning permission is built in accordance with approved plans and any conditions that have been imposed to allow it to go ahead.

2.7 Some development is also subject to additional controls including listed buildings, trees and adverts. Breaches of these regulations are criminal matters however, the principles of investigation and decision making remain the same.

2.8 Below are some issues that we are frequently asked to deal with that are **not** breaches of planning control

- Obstruction of a highway or public right of way
- Parking of commercial or other vehicles on the highway in residential areas or on grass verges

These matters are either subject to Oxfordshire County Council controls or if there is a highway safety issue should be reported to the police

- Trespass on land
- Deeds and covenant restrictions

These are private matters not dealt with under planning legislation. Details of the Party Wall Act 1996 can be found on line at; <https://www.gov.uk/party-wall-etc-act-1996-guidance>. Any advice on civil

<ul style="list-style-type: none"> • Boundary disputes 	<p>matter should be sought from a solicitor, or the Citizens Advice Bureau.</p>
<ul style="list-style-type: none"> • Clearing land of hedges, bushes or undergrowth 	<p>Unless subject to Ancient Hedgerows Regulations 1997. Details can be found at https://www.gov.uk/countryside-hedgerows-regulation-and-management</p>
<ul style="list-style-type: none"> • Internal works to a non-listed building 	<p>Structural works may be subject to building control regulations. The councils' building control team can be contacted at: http://www.southoxon.gov.uk/services-and-advice/planning-and-building/building-control</p>
<ul style="list-style-type: none"> • Parking a caravan within the curtilage of a residential building provided its use is incidental or ancillary to the main dwelling. 	<p>In most cases caravans are not classed as buildings and therefore it is their use that is subject to planning controls. However, if you are in any doubt contact the planning enforcement team for advice</p>
<ul style="list-style-type: none"> • Insertion of additional windows in residential dwellings. 	<p>Once a building has been occupied windows may be inserted into existing walls provided there is not a planning condition to prevent the insertion of additional windows or a restriction set by permitted development rights</p>
<ul style="list-style-type: none"> • Health and safety issues including noise and activity on building sites 	<p>These matters are the responsibility of the Health and Safety Executive. They can be contacted at: http://www.hse.gov.uk/contact/contact.htm</p>

2.8 The Government has given express planning permission for a wide variety of structures and uses under Town & Country Planning (General Permitted Development) Order 2015(as amended). A useful interactive guide for householders can be found at <http://www.planningportal.gov.uk/permission/>

How we will use our discretion and be proportional in our decision making

3.0 It is important to understand that the planning enforcement regime is discretionary. **Enforcement officers do not 'police' the district.**

3.1 The focus of our service is to remedy planning harm not to punish people who have not obeyed the rules. It is therefore right that people who breach planning law are given the opportunity to remedy any breach identified. This may be through a retrospective planning application or negotiating a

solution acceptable to the council in line with national guidance, best practice and planning policies in the development plan.

- 3.2 Just because something is a breach of planning control is not, in itself, a reason to take enforcement action. Even when it is technically possible to take action we are required to first decide if such action would be **expedient**. This is a test of **proportionality** as to whether the unauthorised activity is causing planning harm having regard to the development plan policies and any other material planning considerations.
- 3.3 Central government policy and advice is that **ordinarily formal action should be the last resort** and we are expected to give those responsible the chance to put matters right before serving a formal notice. However, if a breach of planning control is deemed to be causing unacceptable serious planning harm or nuisance formal action will not be delayed by prevarication or lengthy negotiation.

How we will balance interests and maintain confidentiality

- 4.0 The council values input from members of the public. All enquiries made to us will be handled with discretion. Under the Data Protection Act the name and address of the person making the complaint, or any other contact details, will not be disclosed. The only exception to this is if formal action is being taken and you have information to support the councils' case. In these circumstances you may be required to give that evidence but before then your permission will be sought.
- 4.1 We will not usually investigate anonymous enquiries unless they relate to a matter of public safety or there is potential for immediate and irreversible planning harm.
- 4.2 If you do not want to give your personal details please either, contact your Local Ward Councillor or your Parish Council Clerk who will be able to make the enquiry on your behalf.
- 4.3 All our investigations and decisions are carried out in the public interest. We do not carry out private investigations on behalf of individuals, groups or organisations.
- 4.4 We will not investigate vexatious and/or malicious enquires which have no planning grounds or evidence to substantiate them.
- 4.5 In all cases we will determine whether the enquiry made merits investigation and the priority it is given.

Our service standards

5.0 We will;

- Investigate allegations of breaches of planning control reported to the council either in writing, by telephone or in person.
- Keep your personal details confidential unless required to disclose them as part of formal proceedings. Even then they will not be released without your permission.
- Register your enquiry within 2 working days providing you with an acknowledgement, reference number as a point of contact.
- Keep you informed of progress of the case and any decisions made including timescales.
- Negotiate with those responsible for any breach of planning control, allowing them opportunity to resolve matters before a decision is made on whether to take formal action.
- Actively pursue when considered proportional to do so those breaches of planning control which cause demonstrable planning harm.
- Promptly close, without further action, cases where there may be a technical breach of planning control but where there is no public harm or the harm is judged to be insufficient to justify further action.
- Inform you of the final outcome of your enquiry.

How you can make an enquiry or raise a concern

6.0 Enquiries can be made by telephone, in writing, online via the councils' website or in person at the council offices. So that they can be dealt with efficiently it is important that as much of following information as possible is provided;

- Exact location of the land
- A full description of what has happened or is taking place
- What your concerns are i.e. what harm you think has been/ is being caused and/or how the activity is affecting you
- Names and contact details of any landowners, occupiers or builders involved
- Photographs of the development or activities if appropriate
- Dates and timeframes of when the development took place or the activity started

- 6.1 All enquiries received go through an initial vetting process. This allows for the redirection of matters that do not fall within our enforcement service remit and for more information to be requested if required before prioritisation & allocation.

What are our timescales and how do we prioritise our work?

7.0 Enforcement investigations can take months or even years to resolve because of the need for careful investigation and the legal processes involved. The time taken to determine each case will vary depending on the site, the people involved and the nature of the alleged breach itself. However, we will work to targets set out below:

1. Complaints will be registered, acknowledged, priority attached and allocated to a case officer within 2 working days
2. Site visits will be undertaken in accordance with the case priority (see the examples set out below)
3. A decision will be made as to what action we will take on all cases within 42 days (6 weeks) of receipt.

Priority 1 Site visit within 1 working day

- Permanent damage to the environment e.g. demolition or significant alteration to a listed building, or loss of protected tree
- Development that results in a danger to highway safety

Priority 2 Site visit within 5 working days

- Less immediate but harmful with potential to escalate
- Building works just commenced
- Non-compliance with pre-commencement conditions attached to planning applications

Priority 3 Site visit within 20 working days

- Other breaches likely to remain stable
- Untidy land
- Development that is completed
- Non-compliance with planning conditions

Priority 4 Visited considered if necessary after desktop study

Other issues including breaches of the terms of the General Permitted Development Order, satellite dishes and display of adverts, unless details given give rise to concerns about highways safety

What are the possible outcomes of our investigations?

8.0 Outlined below are examples of possible outcomes of enforcement investigations. There are others and in some circumstances a combination of those outlined are possible.

No breach established

8.1 Following a site visit it is found that there is no breach of planning control because for example the unauthorised activity has ceased or the development identified is permitted development.

A technical breach but it isn't expedient to pursue

8.2 A technical breach has taken place for example a house extension that is marginally over that permitted by planning permission or permitted development limits it isn't normally considered proportional to take lengthy and expensive enforcement action over something that causes minimal public harm.

The development is lawful due to the passage of time

8.3 This is where a breach of planning control is established but the activity has been going on for so long or the structure has been substantially complete for such a long time that the breach has become immune from enforcement action and the development has become lawful.

timeframes are illustrated below

Activity	Immunity
Operational development e.g. building works, fences and new accesses	Substantially complete for more than 4 years
Change of use of a building to a single dwelling house	Continuous occupation for 4 years or more
Change of use	Continuous occupation at the same intensity for 10 years or more
Breach of a condition on a planning permission / consent. Any other breach not outlined above	Continual non compliance for 10 years or more

Planning Enforcement Order is served

- 8.3 Under powers added by the Localism Act 2011 if a development has been **deliberately concealed** and it is judged by the council to have sufficient planning harm, we have the ability to apply for a Planning Enforcement Order to the Magistrates Court. The Order last for 12 months and gives the council additional time to act if necessary.

A breach is established and retrospective application is invited

- 8.4 In some cases the most appropriate way to rectify a breach of planning control is to invite a retrospective planning application for the development or change of use that has occurred. This approach is taken when we consider there is a reasonable likelihood that an application will be successful, in line with local and national planning policies or where a development may be acceptable by way of the imposition of conditions.
- 8.5 We will not pursue minor or technical breaches of planning control when a retrospective application is invited but not submitted, where it is not considered expedient to do so.

Negotiated resolution

- 8.6 In accordance with government guidance (NPPF) our first priority is to try to resolve breaches of planning control through negotiation. This could be the relevant party agreeing to cease an unauthorised use, remove an authorised development or submit a retrospective application.

Formal action

- 8.7 If negotiation does not secure compliance with what we consider acceptable then we have the power to take formal action to remedy the breach. The nature of the breach will dictate what route we choose to take.
- 8.8 The council has a range of formal powers under the Town & Country Planning Act that it can use. Some of these are listed below;

- **Breach of Condition Notice** – used to secure compliance with conditions imposed on a planning permission
- **Enforcement Notice** – used to detail specific steps to be taken to remedy breaches of planning control
- **Stop Notice or Temporary Stop Notice** – used to stop unauthorised activity on land. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above. A Temporary Stop Notice only lasts for 28 days.
- **Section 215 Notice** – used to require the proper maintenance of land and buildings

- 8.9 Additional powers exist to serve injunctions, to take direct action and to prosecute when it is deemed necessary to do so.
- 8.10 We will comply with the provisions of the Police & Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence and within the Criminal Procedures & investigations Act 1996 and Section 222 of the Local Government Act 1972 when carrying out prosecutions.

What if someone enquires about you?

- 9.0 If it is possible to investigate the concerns raised without disturbing you and establish that there is no breach of planning control, we will not contact you.
- 9.1 In many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. Therefore, if you receive a letter from us or a visit from an enforcement officer, we encourage you to respond positively and provide the information which we need to resolve the matter. It is beneficial to all parties if any breach is addressed at an early stage.
- 9.2 The purpose of any site visit is to establish the facts of the case and whether there is a basis to the enquiry made. The enforcement officer will make themselves known to the landowner/developer when they enter a site, but it is not always appropriate or possible to give advance warning of a site visit. The officer will, where necessary, take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification.

Powers of entry onto land

- 9.3 We have the power to enter land and/or premises at all reasonable hours in order to undertake our official duties. However, twenty four hours notice must be given before we can access a building used as a dwelling house. Wilful obstruction of an officer exercising a right of entry is a criminal offence.

We will use the information we collect from a site visit to help assess the planning harm being caused and what further action we may need to take. Allowing the enforcement officer to make a site visit and take photographs will help to reduce time delays and any potential inconvenience.

Proactive working

- 10.0 The enforcement team plays a key role in helping the council to deliver an effective Development Management service. To further enhance this, we will undertake a more proactive approach in monitoring new development and the overall amenity of the district.

10.1 It remains the responsibility of individual developers to comply with the terms and conditions set out in their permissions. However, failure to comply can affect not only the quality of the environment of the district or the amenity of the neighbourhood but also undermine the reasons and justification for granting planning permission in the first place.

10.2 An effective proactive approach will encourage and where needed, enforce, compliance to ensure that development remains acceptable in planning terms, maintaining an attractive, high quality environment in line with adopted development plan policies.

How we will operate

10.3 Given the number of planning applications that are received each year and our resources it is not possible to monitor all developments. Priority will be given to major development schemes as defined in the Town & Country Planning (Development Management Procedure) (England) Order 2010

10.4 Where appropriate we will also take a project based approach rather than case by case approach to overcome issues. E.g. the proliferation of adverts causing unacceptable harm to amenity and highway safety in a town centre or amenity issues that need addressing across a conservation area.

10.5 As part of our role we will;

- Educate and inform developers of their responsibilities and seek voluntary compliance.
- Monitor compliance with planning agreements and conditions
- Where proportional, actively stop sites that are proceeding without the necessary agreements and permissions in place.
- Identify opportunities to remove illegal advertising by direct action
- Coordinate with other departments and/or agencies to ensure a holistic approach is taken in tackling untidy land and other amenity issues.

Contacts and further information

You can contact our enforcement team at the following address:

■ Development Management Team Leader (enforcement)

South Oxfordshire and Vale of the White Horse District Councils,
135 Eastern Avenue
Milton Park
Milton
OX14 4SB

Phone: 01235 422600

Email: planning.enforcement@southandvale.gov.uk

The following are useful contact details that will offer further advice and information on planning enforcement.

■ Department for Communities and Local Government

The Government Department with overall responsibility for planning.

Planning Practice Guidance
Department for Communities and Local Government
SE Quadrant Third Floor Fry Building
2 Marsham Street
London
SW1P 4DF

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

■ Planning Aid

Provides free, independent, and professional town planning advice to communities and individuals.

The Royal Town Planning institute
41 Botolph Lane
London
EC3R 8DL

Tel: 0207 929 9494

Email: contact@rtpi.org.uk
<http://www.rtpi.org.uk/planning-aid/>

■ Planning Inspectorate

The organisation responsible for the processing of planning and enforcement appeals.

Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Tel: 0303 444 5000.

Email: enquiries@pins.gsi.gov.uk

<http://www.planning-inspectorate.gov.uk/pins/index.htm>

■ **Planning Portal**

The Government's online planning resource where you can learn about the planning system and research the latest government policy.

<http://www.planningportal.gov.uk/wps/portal/portalhome>