

# Winchester City Council

## Enforcement Policy

### 1.0 Introduction

- 1.1 Winchester City Council places great importance on protecting our communities, our heritage and the natural environment from unauthorised development that causes harm or which shows a disregard for the planning system. To ensure that we can take action when it is right to do so, the City Council provides a planning enforcement service which investigates complaints and provides expert advice on enforcement matters.
- 1.2 The Government has made it clear through legislation and guidance that the response to breaches of planning control is a matter for the discretion of the local authority. To justify enforcement action there must be 'harm' arising from the development. We have to decide if that is the case and, if so, what we are going to do about it.
- 1.3 The purpose of the policy is to:
- Explain the aims of the Enforcement Service at Winchester City Council;
  - Explain how breaches of planning control will be investigated;
  - Set out priorities we have for investigating breaches of planning control.

### 2.0 Guiding Statement

- 2.1 The Council's approach to Planning Enforcement is set out in the following policy statement:

*“Winchester City Council attaches great importance to the protection and enhancement of the natural and built environments of the District through the planning process. Compliance with and respect for that process are both essential and expected, and the Council will not condone wilful breaches of planning control.*

*While enforcement action will always need to be commensurate with the breach to which it relates, the Council will not hesitate to be firm and robust in its response in appropriate circumstances, including recourse to the courts.*

*Every effort will be made to resolve inadvertent or minor breaches through discussion and retrospective applications. More serious breaches (including those considered to be wilful) are likely to result in positive enforcement action”.*

### **3.0 What is a Breach of Planning Control?**

3.1 A breach of planning control occurs when building works or a material change of use of land or a building takes place without planning consent. In most cases, it is not an offence to undertake development without consent, but the Council has powers to require these breaches to be put right. We can do this by requiring changes to be made to the development, by getting the development removed, or by giving the development permission if we think it is acceptable.

3.2 Examples of planning breaches include:

- Not building in accordance with approved plans (following the grant of planning permission);
- Failing to comply with conditions attached to a planning permission;
- Unauthorised works to a listed building;
- Removing or lopping trees protected by a Tree Preservation Order or in a Conservation area;
- Display of an advertisement without the benefit of advertisement consent;
- Failure to properly maintain land so that it effects the amenity of the area;
- Failure to comply with a S106 legal agreement.

3.3 Things that are not a breach of planning control include:

- Internal works to a non-listed building;
- Clearing land of overgrowth, bushes or trees (provided they are not subject of planning protection);
- Operating a business from home, where the residential use remains the primary use and there is no adverse impact;
- Where development is 'permitted development', i.e. where it does not need the permission of the Council;
- Parking commercial vehicles on the highway;
- Boundary disputes – these are a civil matter and cannot be controlled by planning legislation.

### **4.0 What happens if we are told about a breach of planning control?**

4.1 If someone believes that a breach of planning control has occurred, they should:

- Notify the Council's Planning Enforcement Team (either in writing, by telephone, email or in person);
- Give the address of the site or directions (we may need a plan so that we know exactly where the site is);
- Detail exactly what has happened and when it first occurred;

- Provide the name and address of the landowner(s) and / or the person responsible for carrying out the works, if known.

4.2 They will be asked to give their name and contact details. We will not investigate anonymous complaints. These details will remain confidential unless we need to use their evidence to support our case, for example if the matter went to court. However, we would obtain consent to do so.

## **5.0 How will we respond to the information we are given?**

5.1 We will handle the case in the following way:

- Acknowledge the complaint in writing (or by email) and provide a case reference, the name of the investigating officer and level of priority within 5 working days of receipt;
- Check the site planning history;
- Visit the site within the requisite time period (see priorities below);
- Establish whether or not we believe there is a breach of planning control;
- Find out the details of the landowner;
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner);
- Issue a Planning Contravention Notice (a formal request for information) if necessary;
- Update the complainant at key stages in the investigation;

5.2 After investigation we may decide that there has not been a breach of planning control. If that is what we decide then we will close the case at that point. We will not re-open the case unless there is a significant new piece of information or change on site. We may also decide that although there has been a breach, it is not causing enough harm to justify taking further action. We will take into account why the breach may have happened, how many people are affected, how they are affected and whether there is a cumulative effect that adds up to an unacceptable situation.

5.3 Not every complaint about a breach of planning control justifies further action.

5.4 We must use our judgement based on experience, case law and the likelihood of success.

## **6.0 Where there is a breach of planning control that needs resolving**

6.1 If we decide that there has been a breach of planning control that we are going to pursue further then in the first instance we will:

- Ask for things to be put back the way they should be; or
  - Without prejudice, invite an application for the unauthorised development if it is considered possible that planning permission might be granted, normally giving 28 days for its submission; or
  - Try to resolve the situation through negotiation without allowing the matter to become protracted. This may mean agreeing a compromise or partial change that we are happy with. It is at our discretion to decide whether this would be sufficient.
- 6.2 Where a retrospective planning application has been asked for, we will normally wait a reasonable period for it to be submitted and for its determination before taking further enforcement action. However, where it appears that the progress of the application is being deliberately held up by the applicant or there is no prospect of planning permission being granted, enforcement action may be initiated without delay.
- 6.3 Under the planning legislation, breaches of planning control that have been in existence for many years can be immune from enforcement action, i.e. are lawful. If, through discussions with the landowner and other interested parties, it appears that the alleged breach might be lawful, then we will normally invite the submission of an application for a Certificate of Lawfulness. Such applications are based on fact and the relevant test is 'the balance of probabilities'. Applications can be delayed due to difficulties in obtaining evidence, although the Council will not allow the matter to become protracted.
- 6.4 Until the Council is satisfied, usually by the granting of a Certificate of Lawfulness, that the development is lawful, the alleged breach of planning control remains open to the possibility of enforcement action being taken.
- 7.0 **If a breach of planning control is not resolved through negotiation, is refused permission or the invitation to submit an application is declined, our steps will be:**
- To consider the expediency of taking further enforcement action (this may involve seeking the views of other organisations to see if they have any concerns about the development);
  - Take into account the advice given by the Government in Planning Policy Guidance Note 18.
- 7.1 Sometimes we will decide at this point not to try to remove or change everything about an unauthorised development. There may be certain elements of the development that can be brought under control, such as hours of use or the position of a window, without further delay. If these are the things that are really important we may agree to this and not pursue other less important matters.
- 7.2 If further enforcement action is necessary:

- The Enforcement Team will draft instructions to the Council's solicitors;
- Aim to issue an Enforcement Notice or other relevant notice within 28 days of sending those instructions.

- 7.3 The recipient of an Enforcement Notice has the right to lodge an appeal within 28 days following receipt of the notice. The appeal is heard by an independent Planning Inspector and will take several months.
- 7.4 If no appeal is lodged, the Notice takes effect of 28 days following its date of issue.
- 7.5 The Enforcement Notice includes requirements for remedying the breach of planning control and a period for compliance.
- 7.6 Failure to comply with the requirements of an Enforcement Notice within the specified compliance period is a criminal offence, liable to prosecution in the Magistrates Court (subject to a maximum fine of £20,000).
- 7.7 The Council has the power to enter the land and undertake the works to comply with the requirements of the Enforcement Notice (known as 'Direct Action'). The Council will seek to recover the costs of undertaking the works from the landowner or a charge is placed on the land. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it does involve a cost implication to the Council and so in most cases the preferred method to secure compliance is to prosecute the landowner.
- 7.8 In cases of severe harm the Council can apply for an Injunction in the County or High Court.

## **8.0 Immediate Action**

- 8.1 When we consider there is a clear cut breach of planning control which is causing immediate harm then we may issue a Stop Notice or Temporary Stop Notice, which should bring about the immediate cessation of certain types of unauthorised works.
- 8.2 Before taking such action, the Council is required to carry out a cost / benefit analysis so that any costs incurred by the developer by having to stop works are fully taken into account and weighed against the harm being caused.

## **9.0 Prioritisation of Enforcement Investigations**

- 9.1 The Enforcement Service is well resourced but the number of enforcement complaints received and their often complex nature

means that it is not possible to deal with every case immediately upon receipt. To ensure that the Enforcement Team concentrates its resources on the most important cases, we assign them a priority ranking:

**Priority 1 – (Site visit within 2 working days)**

- Residential caravans in the countryside (including gypsy and travelling showpeople caravan sites) which are either in the process of being brought onto the land or have recently been established (e.g. over the preceding weekend)
- Works that are causing physical damage to a Listed Building or serious harm to its setting
- Works to trees subject of a Tree Preservation Order or in a Conservation Area
- Commencement of development (following the grant of planning permission) without discharging 'pre-commencement' conditions – except for issues such as landscaping or means of enclosure, which are unlikely to require immediate action
- Building / engineering works that cause severe harm to the East Hampshire Area of Outstanding Natural Beauty, South Downs proposed National Park, Conservation Areas or Site of Special Scientific Interest
- Works which result in serious harm to public health or highway danger (including Breach of Conditions)

**Priority 2 – (Site visit within 10 working days)**

- All other residential dwellings and caravans in the countryside
- Works not in accordance with approved plans (which involve significant changes to approved plans)
- Householder works that cause significant harm to the residential amenities of neighbouring properties, e.g. significant loss of light / overlooking, etc

**Priority 3 – (Site visit within 15 working days)**

- All other works not in accordance with approved plans
- All other breaches of conditions
- Advertisements
- Equestrian related developments
- Gates, walls, fences and all other householder development
- Satellite dishes
- Untidy land

9.2 The level of priority will be decided on receipt of a case, by the Enforcement Manager, although there may be instances when the priority needs to be increased or decreased once the full facts of the case are known.

- 9.3 The speed at which a breach of planning control can be resolved will vary depending on the complexity of the individual case and general workloads. However, officers will, in general, aim to confirm whether there is a breach of planning control and set out the Council's position in writing to the land owner/developer and the complainant within eight weeks of a complaint being received.

## **10.0 Communication**

- 10.1 City Councillors and Parish Councils are sent lists of enforcement cases that have been closed and current live cases on a bi-monthly basis. We will provide updates on particular cases if we are asked but we will not provide a routine commentary on progress as this would require resources that are best used pursuing investigations.
- 10.2 Any queries on specific cases should be directed to the Planning Enforcement Team on 01962 848480.