

Planning Enforcement Statement

This document aims to communicate the enforcement teams' role within the wider planning service and the public and parish councils' roles as informants in the process. The enforcement teams' role is to maintain the integrity of the planning system and planning decisions made by the councils. They therefore investigate allegations for the councils not for residents. In the first instance, the objective of planning enforcement is not to punish those who are in breach of planning but to remedy the planning harm caused by the planning breach. The councils do not 'police' development. More details on the legal and national policy basis of our work can be found using the links at the back of this document.

Mission Statement

The planning enforcement teams role is to investigate allegations of breaches of planning control in a timely manner and take effective action in the public interest where unacceptable planning harm is identified.

How: We will do this by

- Prioritising cases with the greatest planning harm (Appendix 1).
- Making decisions in each case in accordance with planning law, national policies, guidance and the adopted development plan.
- Intervening only where taking action is proportionate and necessary in the council's assessment.

Why: We do this

- To ensure the integrity of the planning system and decision-making process.
- To support the Corporate Plan objectives of the Councils.
- To support our local communities.

What we commit to do

- We will acknowledge all reports of alleged breaches of planning control within 2 working days.
- We will assess and prioritise cases on the basis of the planning harm that may be caused.

- We aim to complete our investigations and make a decision on what action to take within 6 weeks of a case being allocated to an officer in 80% of our cases.
- Formal enforcement action is taken at the discretion of the council.
- We are not investigating for you and we do not investigate on behalf of third parties. All investigations are undertaken on behalf of the council.
- We will not provide you with updates on cases in order to comply with the Data Protection Act 2018 and UK General Data Protection Regulations.
- We will provide you with a written confirmation of the outcome of the case once it has been completed.

What we cannot/will not do

- We will not accept anonymous information. If you wish to remain anonymous, you can submit your information via your ward councillor or parish council representatives.
- We will not become involved in neighbour disputes.
- We cannot take formal action against building work that had been completed for more than 4 years, unless it's a listed building.
- We cannot take formal action against a material change of use of land that has been continuous for more than 10 years.
- We cannot take formal action against a breach of a condition of a planning approval that has been breached for more than 10 years.
- We cannot take formal action against a new dwelling built without planning permission after 10 years.
- We cannot consider the following as they are not planning issues;

| | |
|---|---|
| <ul style="list-style-type: none"> • 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 | <p>These matters are either subject to Oxfordshire County Council controls or if there is a highway safety issue can be reported to the police</p> |
| <ul style="list-style-type: none"> • Trespass on land | <p>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</p> |

| | |
|--|--|
| <ul style="list-style-type: none"> • Deeds and covenant restrictions • Boundary disputes | <p>1996-guidance. Any advice on civil 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 department 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 ordinarily the responsibility of the Health and Safety Executive. They can be contacted at: http://www.hse.gov.uk/contact/contact.htm</p> |

Reporting an alleged breach of planning control

Privacy Statement

The information provided by you is collected for the purposes of investigating an alleged breach of planning control. We need to collect this information in order to maintain accurate records and so that we can liaise with you during the investigation and inform you of its outcome. Sharing your information with us constitutes explicit consent from you for us to process your data for this purpose.

We will keep your personal data secure within our organisation but we may also disclose information in certain circumstances outside the organisation. We will only do this if the law permits us to do so and in accordance with our contracts with these organisations. This includes requirements to keep your data secure.

Please see further details about the councils' privacy policies using the links below;

South Oxfordshire district Council

<https://www.southoxon.gov.uk/south-oxfordshire-district-council/about-the-council/privacy/privacy-policy/>

Vale of the White Horse District Council

<https://www.whitehorsedc.gov.uk/vale-of-white-horse-district-council/about-the-council/privacy/privacy-policy/>

Important considerations before you make your allegation

It is important that you read this section carefully prior to submitting the form;

- You can make a referral/report by using our online form.
- We ask that you use this form as it ensures that we have the minimum information required to decide on whether to pursue the case.
- Before reporting a suspected breach of planning, please check the Planning Permission Register (see links below) to see if planning permission has been granted for the development.

South Oxfordshire District Council

<https://www.southoxon.gov.uk/south-oxfordshire-district-council/planning-and-development/comment-on-planning-applications/find-and-comment-on-a-planning-application/>

Vale of the White Horse District Council

<https://www.whitehorsedc.gov.uk/vale-of-white-horse-district-council/planning-and-development/comment-on-planning-applications/find-an-application-and-comment/>

- Please provide as much information about the location and nature of the alleged breach.
- Please read our privacy statement above which explains how we will process and protect your personal data.
- Please be aware your role is as an informant we are not investigating the issue you have raised for you. As stated elsewhere in the statement our role is to investigate matters on behalf of the councils.

What happens once we have received your form

- We will acknowledge receipt of the form within 2 working days.
- We may need to contact you to discuss the case further, so it is important we have your contact details.
- We will investigate the information you provided. If we are satisfied that there is a breach of planning control, we will assess the allegation using our harm assessment form.
- If the score is above our threshold, we will allocate the case to an officer and the case will be processed in accordance with our site visit priorities.
- If the harm assessment is below our threshold, we will close the case as not expedient and inform you of this in writing.
- It can take many weeks to investigate and resolve a planning enforcement case. E.g, there is a statutory three week period if we serve a Planning Contravention Notice and there is an eight or thirteen week period for consideration should the developer decide to submit a planning application part way through the enforcement investigation.

Please see the flowchart (Appendix 2) at the end of this statement that shows the enforcement investigation process.

Site visit priorities following allocation to an officer

Priority 1

Site visit within 48 hours

- Permanent damage to the environment e.g. demolition or significant alteration to a listed building
- Unauthorised works to a protected tree (by Preservation Order or planning condition) or qualifying trees in a conservation area.

Priority 2

Site visit within 10 working days

- Less immediate but harmful development with potential to escalate e.g. buildings part constructed and works in progress
- Major development site building works just commenced This does not include land clearance of shrubbery etc
- Development within 12 months of immunity

Priority 3

Site visit within 20 working days

- Other breaches likely to remain stable e.g. development that has been completed
- Non-compliance with planning conditions
- Display of advertisements unless details given give rise to concerns about highways safety
- Breaches of the Town & Country Planning (General Permitted Development)(England) Order 2015 (as amended) known as PD rights.

We do not provide updates

Under the Data Protection Act 2018 and UK General Data Protection Regulations, the council has a duty to protect personal data, including that of both:

- the person who is the subject of the investigation and
- the person reporting the issue/s.

Enforcement information is also likely to be exempt from release under Freedom of Information Act 2000/Environmental Information Regulations 2004 whilst live investigations are ongoing. We need to maintain confidentiality whilst investigating cases and divulging information in relation to active investigations could prejudice the ongoing proceedings.

We therefore do not provide you with updates or information during the course of our investigation. You will receive details of the outcome of the investigation once it has been completed.

Enforcement Register

We are legally required to maintain an Enforcement Register. This register contains details of formal notices served including the address, the breach identified, the date for compliance and when the notice was complied with. Notices will only be removed from the register if they are formally quashed or withdrawn by the council. All notices remain part of the planning history. Please follow the links below to view the registers.

South Oxfordshire District Council

<https://data.southoxon.gov.uk/ccm/support/Main.jsp?MODULE=EnforcementNoticeCriteria&TYPE=EnforcementNotice>

Vale of the White Horse District Council

<https://data.whitehorsedc.gov.uk/java/support/Main.jsp?MODULE=EnforcementNoticeCriteria&TYPE=EnforcementNotice>

Possible outcomes of our investigations

Caselaw and Government quotes

‘The planning enforcement procedure is intended to be remedial rather than punitive’

Lord Justice Carnwarth
Tapecrown Ltd v Secretary of State for Communities and Local Government
[2006] EWCA Civ 1744

‘There are a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.’

‘Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy.’

Government National Practice Guidance. Enforcement and post-permission matters
paragraphs: 003 & 011 updated 22 July 2019

No breach

If we establish that no breach of planning control has occurred, we will take no further action.

Voluntary compliance

This could include the relevant party agreeing to cease an unauthorised use, remove an unauthorised development or submitting a retrospective application.

Not expedient

Where a technical breach of planning control has occurred, but it is not proportionate to take enforcement action due to the low level of planning harm, or where officers are satisfied that planning permission would be granted without the imposition of conditions.

Lawful due to the passage of time

Where a breach of planning control is established, but the activity has been going on, or the structure has been substantially complete for so long, the development is immune from enforcement action and has become lawful.

Service of an Enforcement Notice

An Enforcement Notice will clearly state:

- The matters that constitute a breach of planning control.
- The steps required to remedy the breach of Planning control.
- The date by which the steps to remedy the breach must be completed.
- There is a right of appeal to this type of notice for the person/s served.

Service of a Breach of Condition Notice

This will require compliance with a condition that has been imposed on a planning permission. There is no right of appeal to this type of notice.

Service of a Stop or Temporary Stop Notice

These are used to stop an unacceptable 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.

Service of a Section 215 Notice (Untidy land)

These notices are used to require the proper maintenance of land and buildings. They will set out what the issue is, what person responsible is required to do and the timeframe to achieve compliance. The appeal to this notice is heard in the Magistrates Court.

What to do if we contact you about your development

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.

If we do contact you about your development, please work with us to resolve the matter as quickly and effectively as possible.

Our initial contact may be in person by an unannounced site visit, or it may be via telephone or letter.

We do not conduct investigations for third parties.

Powers of Entry

We have legal powers to enter land and/or premises to undertake our official duties, and the wilful obstruction of an officer exercising a right of entry is a criminal offence. On entry we always identify ourselves and are able to show written authority if required. We must give you 24 hours' notice before we can access a building used as a dwelling house.

- We will work with you to understand the nature of the development you have undertaken.
- We may need to inspect, measure and photograph the site.
- We will consider the development on its merits against planning law and local and national planning policies and guidance.
- If the Council considers that your development involves a breach planning control that would not be granted planning permission and causes planning harm, it can take formal action against you.
- We will always give you information on what your options are to resolve any breaches identified.
- We will ordinarily give you the opportunity to remedy any breach before formal action is taken.

Planning Contravention Notice (PCN)

As part of our investigation, we may serve you and any other parties with an interest in the land with a PCN. This notice allows the planning authority to formally require the recipient to answer questions and provide information we need for enforcement purposes eg: about any operations being carried out, any use of, or any activities being carried out on the land. It also gives you the opportunity to formally respond constructively to the local planning authority by providing any additional information you think it relevant to your situation and how any suspected breach of planning control may be satisfactorily remedied.

Planning Enforcement Order (PEO)

Where there has been deliberate concealment of a breach of planning control, we may apply to the Magistrates Court for a PEO. Where a PEO is granted we have one year and 22 days to serve an enforcement notice irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity do not apply.

Harm Assessment – Triage Scheme

Procedure for initial processing reported breaches of planning control.

Purpose

This document sets out the council's harm assessment procedure in relation to the handling of identified breaches of planning control. It assesses the "planning harm" the breach is perceived to cause and provides a process for the efficient closure of cases.

Background

In the past when the council considered an alleged breach of planning control the case was not closed until the site had been visited and the breach of planning control remedied. This resulted in the enforcement team continuing to use resources to pursue minor breaches of planning control that were not causing harm to public amenity and/or interest.

The Scheme

The assessment is applied to all allegations made to the council identified by officers as being in breach of planning control. The scheme allows the team to assess the information and grade the "harm" of that breach against a series of scored planning criteria.

The agreed level of harm triggering a site visit and further investigation (the score) is 5 and above. Where the cumulative score is 4 and under, it is not considered to be expedient to pursue the breach as the impact on public amenity and/or interest will be/is considered negligible.

Cases that don't meet the threshold will be closed and advisory correspondence will be sent to the informant that no action will be taken.

Breaches of planning control that attract a score of 5 or more will be visited and further investigated by officers.

Operational Aspects

The harm assessment form will be completed as part of the triage process within 5 working days of a report being received. If no further action is to be taken, then the informant will be contacted in writing and informed of the outcome of our assessment. If the threshold is exceeded, then the case will be prioritised for a site visit in accordance with the priorities set out in the Enforcement Statement and allocated to an enforcement officer for further investigation.

Conclusion

The harm assessment approach provides:

- A quantitative and qualitative assessment of harm to public

amenity/interest.

- A procedure that is open and transparent.
- A quick and effective processing of incidents.
- A flexible system to make efficient use of resources.
- Equality of treatment of dealing with incidents.

The criteria and scoring are considered an effective way to identify minor/trivial breaches of planning control, as well as providing an opportunity for it to be used in prioritising of other breaches of planning control to be progressed by the enforcement team.

The details of the scheme will be reviewed on an annual basis.

Appendix 1

TRIAGE HARM ASSESSMENT FORM

Each new allegation identified as a breach of planning control will be allocated scores as set out below to assess its harm. The total will provide its harm score. Cases below the threshold score of 5 will not be visited and a decision made based in a desk assessment only.

| Points Allocation | | | Score |
|-------------------|--|--|-------|
| 1 | Is the breach: | a breach of condition (3) Worsening/ongoing (2) Stable (0) Score each issue | |
| 2 | Highway safety issue: | Yes (2) No (0) | |
| 3 | Other safety issues: | Yes (2) No (0) | |
| 4 | Causing/potential to cause a statutory or serious environmental nuisance | Yes (1) No (0) | |
| 5 | Age of breach: | Within 12 months of immunity (2) Over 12 months to immunity (0) | |
| 6 | Is there planning harm: | Widespread (2) Local (1) None (0) | |
| 7 | Irreversible harm: Biodiversity Protected species Trees Conservation area Listed Building | Yes (2) No (0) (2 points per issue) | |

| | | | |
|---------------------------|--|---|--|
| 8 | Flood Risk | Zone 3 (2) Zone 1-2 (1) NFR (0) | |
| 9 | Listed building (or affecting the character or setting of a listed building) | Yes (3) No (0) | |
| 10 | Particularly sensitive site e.g. Conservation area, SSSI, AONB, Greenbelt Scheduled monument Listed Garden, Archaeological importance | Yes (1) No (0) (1 point per designation) | |
| 11 | Cumulative Impact? | Yes (1) No (0) | |
| TOTAL POINTS (HARM SCORE) | | | |

Enforcement Investigation Process

Step 1

Report Received

The best way to report a matter to us is through our online form on our website. Please remember to include your telephone number.

Step 2

Triage

The information submitted will go through our triage/harm assessment process to see if the issue is a breach and meets our threshold for a site visit and further investigation.

Step 3

Case required

Further investigations are necessary. A case will be allocated and an acknowledgement letter will be sent to you providing the reference number of the case.

Step 4

Investigations underway such as:

☐ Check planning history ☐ Site visit ☐ Meeting with owner/occupier ☐ Consider legislation and guidance
Consider third party evidence ☐ Discuss with other council teams or other agencies ☐ Land registry searches ☐ Obtaining information via formal notices (Planning Contravention Notice, Requisition for Information or Interview Under Caution)

Step 5

Breach confirmed

If no further investigation is deemed necessary you will be informed in writing and the case will be closed.

Step 6

Working to find appropriate outcome such as:

☐ Regularise with application ☐ Negotiate remedial works ☐ Negotiate removal of unauthorised works

Step 7

Negotiations successful

No - Continue to Step 8
Yes - Case will be closed and you will be informed of the outcome.

Step 8

Consider expediency of formal action:

Assess against local and national policy ☐ Consider the harm caused and the material planning considerations ☐ Consultee comments ☐ Consider relevant appeal decisions/case law ☐ and Human Rights and equalities legislation.

Step 9

Commence formal action such as:

Draft notice and report ☐ Discuss implications with other teams including the councils legal team ☐ Gain authorisation in accordance with the councils constitution. Inform the local ward councillor. Preparation of documents for service.

16 weeks *

6 weeks *

16 weeks *

5 working days *

30 weeks *

