



BABERGH DISTRICT COUNCIL

PLANNING ENFORCEMENT POLICY

1.0 INTRODUCTION

1.1 Effective enforcement is essential to a credible planning service. Babergh District Council is firmly committed to the effective enforcement of planning control and has a specialist enforcement team within the Natural and Built Environment Division.

1.2 It should be noted that the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 give discretion to the Local Planning Authority in the exercise of its powers for the control of unauthorised development. This document sets out the policy for the planning enforcement service in Babergh and the approach that the District Council will take in investigating and remedying breaches of planning control. It also sets out clear guidance for the exercise of the discretion that the Council has available to it.

1.3 The Council has adopted the Government's Enforcement Concordat which states that good enforcement practice should set clear standards, be carried out in an open, helpful manner and have a proportionate and consistent approach, together with a clear complaints service. The Council has translated these principles into a corporate "Common Enforcement Policy" for all its enforcement functions. This planning enforcement policy has been drafted to ensure consistency with the overarching Enforcement Concordat and the Council's corporate policy.

1.4 The Planning Advisory Service (funded by the Department for Communities and Local Government) published advice on planning enforcement in November 2007. The guidance states that local planning authorities should establish a formal planning enforcement policy which provides a clear statement of the decision making framework in dealing with alleged breaches of planning control and which explains their enforcement procedures and practices. This policy has been prepared to outline the approach that will be adopted by the Council in resolving how to deal with unauthorised development and the procedures that will be followed.

2.0 PRINCIPLES AND OBJECTIVES OF THE POLICY

2.1 Principles

2.1.1 This policy is based on the following key principles for enforcement:

- all legitimate complaints regarding alleged breaches of planning control will be investigated;

- complaints will be prioritised, dependent on their gravity, impact upon local amenity and the material planning considerations involved;
- complainants' identities will be kept confidential unless agreements have been obtained allowing personal information to be disclosed, or subsequent court action warrants their evidence being made public. All complainants will be informed of the progress of investigations and of eventual outcomes;
- enforcement action is discretionary and will only be taken where it is expedient to remedy environmental harm and when it is in the public interest; and
- enforcement action will be proportionate to the breach and will generally be held in abeyance whilst valid planning applications or appeals are determined.

2.2 Objectives

2.2.1 The Council establishes the following objectives for the planning enforcement policy:

- to uphold planning law and local planning policy and to ensure that the credibility of the planning system is not undermined;
- to ensure that the undesirable effects of unauthorised development are remedied;
- to ensure the timely and thorough investigation of complaints;
- to seek a quick and effective resolution to harmful breaches of planning control;
- to strike a measured and appropriate balance between protecting amenity and other interests of acknowledged importance and enabling acceptable development to take place; and
- to carry out all enforcement duties in accordance with the principles of the Enforcement Concordat, particularly with respect to openness, helpfulness, proportionality and consistency.

3.0 REGISTRATION OF COMPLAINTS

3.1 Complaints about alleged breaches of control will be accepted by letter, e-mail and telephone or by personal caller provided that the complainant gives their name and address. The complaint is acknowledged either by letter or email.

3.2 POLICY ENF01

To avoid malicious complaints, anonymous allegations of breaches of planning control will not normally be accepted. Every effort, however, will be made to reassure anybody wishing to make a complaint that his or her details will be kept confidential, so far as legislation permits.

3.3 POLICY ENF02

All reports of alleged breaches of planning control will be recorded and acknowledged within three working days of receipt.

3.4 The Local Government Ombudsman has commented in a case that “Councils are corporate bodies, not federations of independent departments”. As a result, “when the public complains to a Council they have the right to expect it to ascertain which of its powers are relevant to deal with the matter in question”. The first step to be taken when dealing with an enforcement investigation must therefore be the consideration of the nature of the complaint and an assessment of whether any other of the Council’s functions or the functions of any other public authority are involved and to advise that division or authority accordingly.

3.5 POLICY ENF03

The initial consideration of the complaint will include an assessment as to whether any other of the Council’s functions or the functions of any other public authority are involved and that division or authority will be notified accordingly. In such cases, the most appropriate legislation will be used to resolve an alleged breach.

4.0 ENFORCEMENT PRIORITIES

4.1 The Council acknowledges that, to a complainant, their concern is of considerable importance. However, the Council receives approximately 500 complaints regarding alleged breaches of planning control each year, which presents a considerable workload. Although many of these do not result in formal enforcement action, many require detailed investigations, site surveillance or assessment over lengthy periods and therefore the Council must give priority to those cases where greatest harm is caused to the environment, to public safety or to amenity. The cumulative impact of otherwise less significant matters can also have a considerable impact. Managing expectations in respect of enforcement matters is extremely important, but this policy will assist in this regard by providing clarity and, as far as possible, certainty for those involved in enforcement issues.

4.2 It is possible that some cases will be able to be dealt with following a desk assessment of the Council's records. However, most cases will require an on site assessment in order that the impact of the alleged breach can be fully assessed. Each case will be assigned an initial prioritisation based on that impact and in accordance with the criteria specified in Policy ENF04 below. Where required, site inspections will be carried out within the following timescales:

- High Priority – no more than 3 working days;
- Medium Priority – no more than 7 working days;
- Low Priority – no more than 15 working days.

The prioritisation assigned to each case will be reassessed following the initial site inspection.

4.3 **POLICY ENF04**

Allegations relating to breaches of planning control will be investigated thoroughly and will be prioritised as follows:

4.3.1 High Priority

- Unauthorised demolition, partial demolition or significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area) or any other development that causes irreversible demonstrable harm.
- Unauthorised works to trees covered by a Tree Preservation Order or in a Conservation Area, or the removal of hedgerows to which the Hedgerow Regulations apply.
- Works that might impact upon archaeological deposits or known important wildlife habitats.
- Any unauthorised development/activity, which causes clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents.

4.3.2 Medium Priority

- Breach of a condition, which results in serious demonstrable harm to amenity in the neighbourhood.
- Unauthorised development in an AONB, SSSI (or other national or local designation of nature conservation), a Conservation Area or where an Article 4 direction has been issued.

- The display of unauthorised advertisements inside areas of special significance, or where they have a detrimental impact on highway safety.
- Building works that might materially deviate from approved plans.

4.3.3 Low Priority

- The display of unauthorised advertisements outside areas of special significance and where there are no highway safety implications.
- Where planning permission has not been obtained, but the submission of an application and the imposition of appropriate conditions or a Section 106 Agreement could make the development acceptable.
- Cases involving a trivial or technical breach of planning control, or where it is unlikely that there is a breach of control.

4.4 The complainant will be notified of the results of the investigation within the response times specified in the Council's published Service Standards. If it is established that no development requiring planning permission or listed building consent is involved, a planning condition is being respected or tree/hedgerow legislation is not being infringed, then the complainant will be notified that there has been no breach of planning control. Where a breach has occurred, the complainant will be notified of the intended course of action and a written dialogue will be opened with the alleged perpetrator, setting out the Council's requirements.

4.5 Once an investigation has been commenced, the Council will ensure that resources commensurate with the prioritisation of the case are made available, to ensure that the complaint is thoroughly investigated and the appropriate action taken.

5.0 PLANNING APPLICATIONS

5.1 Other than in very specific situations (e.g. works to listed buildings) it is not a criminal offence to carry out development without planning permission and it is therefore important that unauthorised developments are treated on their individual merits in the same way as proposed developments. The test to be applied is "would planning permission have been granted for this development had it been the subject of a planning application?" However, in practice this is often a difficult assessment to make with great accuracy.

5.2 When an investigation reveals an unauthorised development has occurred, planning applications, applications for listed building consent or applications for advertisement consent to regularise the developments may be sought:

- if there is reasonable expectation that permission or consent will be granted because there is no fundamental infringement of planning legislation or policy;
- if there are conflicting policies, for example environmental protection against economic development; and
- in situations where an unauthorised development will only be acceptable with the imposition of appropriate planning conditions/agreements.

5.3 If the planning decision is ultimately that permission or consent is refused, then the perpetrator will be advised of the Council's requirements when the Decision Notice is issued. Objectives and priorities for enforcement action will then be established.

5.4 POLICY ENF05

Each enforcement case will be assessed on its planning merits and decisions will be taken accordingly. When reaching a decision the Council will give very little if any weight to the fact that development may have commenced.

6.0 DEVELOPMENT NOT BEING COMPLETED IN ACCORDANCE WITH AN APPROVED PLAN

6.1 Allegations that development is not being completed in accordance with an approved plan will be investigated with an on-site assessment of the development in order that a decision may be reached as to whether there is a material variation from the approved plan. If there is a material variation, then the submission of 'as built' drawings or a revised planning application may be invited as appropriate. However, if from the outset the work carried out is deemed to be unacceptable in the public interest, then the developer will be notified and enforcement proceedings initiated. Policy ENF05 will also be applied to infringements of this nature.

7.0 PLANNING CONDITIONS

7.1 Where conditions have been imposed that are fundamental to the development of a site, they will be monitored and the following principles will be applied:

- if works have commenced an assessment will be carried out at the outset to establish whether the breach of condition warrants the service of a (Temporary) Stop Notice; for example if development is occurring without required highway improvements;
- if the condition in question remains un-discharged and it is expedient to do so, a Breach of Condition Notice or an Enforcement Notice will be initiated; and
- if a developer continues to fail to comply with a Section 106 obligation then where appropriate, a case for presentation in the Courts will be prepared.

8.0 **MINOR INFRINGEMENTS AND EXPEDIENCY**

- 8.1 Even when it is technically possible to take enforcement action, in law the Council is required first to decide whether such formal action would be 'expedient'. Formal enforcement action is discretionary and the relevant planning circumstances of each case must be considered in the first instance.
- 8.2 In deciding whether to take enforcement action, the Council will have regard to the Development Plan and to any other material considerations, including national policies as expressed through Government Circulars and Planning Policy Guidance Statements/Notes.
- 8.3 In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Any action taken will be proportionate to the breach of planning control to which it relates.
- 8.4 This approach reflects the approach to enforcement set out in Planning Policy Guidance 18 and Circular 10/97. Where it is assessed that it is likely that planning permission would be granted for the development, the person responsible would normally be invited to submit a retrospective planning application. It will generally be inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity or the environment.
- 8.5 Circumstances may occasionally arise where there are conflicting priorities between the amenity and environmental aspects of a minor breach of planning control. Due regard will be given to the conflicting priorities when making decisions on whether or not it is expedient to take enforcement action.

- 8.6 It is in the public interest that decisions not to take enforcement action are properly recorded.

8.7 POLICY ENF06

The Council will only take enforcement action when it is considered expedient to do so.

Enforcement action will not be taken if the breach of control does not unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.

Enforcement action will not be instigated solely to overcome a trivial or technical breach of control which causes no harm to amenity in the locality of the site.

Reasons for not taking action will be recorded in writing.

9.0 ENFORCEMENT DECISIONS

- 9.1 In considering enforcement action, the Council will have regard to the particular circumstances of each case and the degree of harm or potential harm resulting from the breach of planning control and will use enforcement powers commensurate with the seriousness of the breach.

9.2 POLICY ENF07

Decisions to initiate formal enforcement action will be consistent, balanced, fair and relate to standards that ensure the public or the environment is properly protected in accordance with adopted planning policy. The criteria to be considered will include:

- the seriousness of the breach (impact upon planning policy);
- the history of the activity;
- confidence in achieving compliance;
- the consequences of non-compliance; and
- the likely effectiveness of the various enforcement options.

- 9.3 Having decided to pursue enforcement action, the following options are available to the Council:

- to take informal action (e.g. by verbal notice, letter, fax, e-mail or other non-statutory means);
- to serve statutory notices (including: Planning Contravention Notices; Enforcement Notices; Listed Building Enforcement Notices; Conservation Area Notices; Stop Notices; Temporary Stop Notices;

Breach of Condition Notices; Untidy Sites Notices; Ruinous and Dilapidated Buildings and Neglected Sites Notices; Hedgerow Retention/Replacement Notices, High Hedges Remedial Notices);

- to issue Simple Cautions;
- to prosecute (including prosecution for: non-compliance with a statutory notice; unauthorised display of an advertisement; unauthorised works to a listed building; non-compliance with a requirement to replace a protected tree or for unauthorised work to a protected tree);
- to take direct action; and
- to apply for an Injunction.

9.4 **Informal Action**

9.4.1 Unless circumstances require immediate action, a staged approach to formal enforcement action will always be adopted. In most circumstances it will be appropriate to attempt to persuade the owner or occupier of a site voluntarily to remedy the harmful effects of unauthorised development.

9.4.2 Whilst the Council will endeavour to overcome any harm caused by unauthorised development, by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. A time limit for concluding negotiations will therefore normally be set in accordance with the priority accorded to the case.

9.4.3 Where an informal approach fails, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds or to compel it to stop (bearing in mind the statutory time limits for taking enforcement action).

9.4.4 **POLICY ENF08**

The Council will not allow prolonged negotiation to delay essential enforcement action. The Council will use the powers available to it if informal methods have not succeeded, or if there is a serious breach of planning control.

9.5 Statutory Notices

9.5.1 POLICY ENF09

Statutory notices will be served when one or more of the following criteria apply:

- where there is a legal duty to do so;
- there are significant contraventions of legislation;
- there is a lack of confidence in the person or business to respond to informal action;
- there is a history of non-compliance;
- standards are generally poor, with little awareness or concern of statutory duties;
- the consequences of non-compliance could have serious implications for the environment, public safety or amenity, or be irreversible;
- where the service of a notice is needed to support a prosecution.

9.5.2 Enforcement Notices are not always a prompt remedy for dealing with serious breaches of planning control because rights of appeal, if exercised, suspend the Enforcement Notice and necessarily involve considerable delays. Planning legislation provides a number of actions which might be considered in urgent circumstances:

- Temporary Stop Notices are designed to bring a breach of control to an end for a limited period of 28 days. There are compensation provisions for misuse. However, the service of such a notice may have the effect of bringing a perpetrator to the negotiating table or allow the Council time to consider other formal enforcement action.
- Stop Notices impose a ban on activities from being carried out in breach of planning control pending the outcome of proceedings following the service of an Enforcement Notice. They remain in force until the Enforcement Notice that gave rise to it is withdrawn, quashed or varied. In these circumstances, compensation is payable if the recipient of the notice has suffered loss or damage directly attributable to the prohibition contained in the notice.

9.5.3 It is the presumption that failure to comply with a statutory notice will lead to a Simple Caution or prosecution and/or works being carried out in default.

9.6 Simple Cautions

9.6.1 A Simple Caution may be offered as an alternative to prosecution.

9.6.2 POLICY ENF10

A Simple Caution may be offered if the offence is:

- a first offence;
- of a minor or technical nature; or
- not sufficiently serious to proceed to court;

but in every instance where the case could be proved in court.

9.6.3 The Simple Caution will be administered by the Head of Service or by the team manager.

9.7 Prosecution

9.7.1 The recommendation to pursue a prosecution will be made by an authorised officer after consultation with the team manager and the Head of Service.

9.7.2 The Council's Solicitor will be consulted on the quality and adequacy of evidence and other legal issues that might be raised. All relevant evidence will be considered and there will be a realistic prospect of obtaining a conviction.

9.7.3 POLICY ENF11

The Council will judge each case on its merits in deciding whether to institute prosecution proceedings. Criteria for the issue of proceedings include whether:

- the alleged offence involves a flagrant breach of planning control, or irreversible damage has resulted;
- there has been a reckless disregard for the environment;
- the integrity of the development control system is threatened;
- the alleged offence involves a failure to correct an identified breach of planning control, the perpetrator having been given a reasonable opportunity to do so;
- the alleged offence involves a failure to comply either in part or in full with the requirements of a statutory notice;
- there is a history of similar offences by the perpetrator;
- a Simple Caution has been offered and refused;
- the prosecution is in the public interest, and it is desirable to reassure the public or deter other offenders.

9.7.4 All prosecutions will be conducted in accordance with normal legal procedures including the Code for Crown Prosecutors and will take account of the Police and Criminal Evidence Act 1984, the Criminal Procedure and Investigations Act 1996 and the Human Rights Act 1998. As a general rule, prosecutions will not be instituted without due warning.

9.8 **Direct Action**

9.8.1 The second option for further action in the event of the requirements of a notice not being complied with is for the Council to take direct action to remedy the breach of planning control. Generally where any steps required by an enforcement notice or similar notice issued by the Council in relation to planning issues have not been taken, the Council is empowered to enter the land and to take the steps directly.

9.8.2 **POLICY ENF12**

The Council will judge each case on its merits in deciding whether to take direct action. Criteria to be considered include whether:

- it remains expedient to continue to pursue the case;
- environmental damage has been caused;
- the cost of taking direct action compares reasonably or otherwise with the costs of alternative actions and whether funding is available;
- alternative actions are likely to lead to the breach of control being overcome within a reasonable time;
- direct action would be proportionate to the breach of control and whether there would be any implications arising from the provisions of the Human Rights Act 1998; or
- whether staff resources are available to sustain the action involved.

9.9 **Injunctions**

9.9.1 Where the Council considers a breach of planning control to be a serious and immediate risk to the environment, public safety or amenity, or necessary in terms of expediency, it may apply to the County or High Court for an Injunction.

9.9.2 The factors to be taken into account when injunction proceedings are undertaken generally follow the list contained at Paragraph 9.8.2.

9.9.3 POLICY ENF13

Where the Council considers a breach of planning control to be a serious and immediate risk to the environment, public safety or amenity, or necessary in terms of expediency, it will apply to the County or High Court for an Injunction.

9.10 Non-Planning Issues

9.10.1 It is not the purpose of the planning system to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. It can be difficult to distinguish between public and private interests, but this may be necessary on occasion. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether it would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest. Action must be taken on sound planning grounds. Local opposition or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons.

10.0 APPEALS

10.1 Appeals may be lodged against enforcement actions to the designated Secretary of State. When appeals are lodged, each case will be reassessed having regard to the grounds of appeal and at that stage account will be taken of the cost implications. It will however be expected that on the planning merits that led to the enforcement action, cases will be defended by the Council at appeal.

10.2 In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account. The Planning Inspectorate's deadlines for action will be met in all cases.

10.3 POLICY ENF14

It is the presumption that the Council will defend appeals against the issue of statutory notices, either by public local inquiry, informal hearing or written representations.

11.0 PUBLIC REGISTER

11.1 Every local planning authority must keep an Enforcement Register. Details of all Enforcement Notices, Stop Notices and Breach of Condition Notices issued must be entered in the register. Every entry

must be made within 14 days of the occurrence to which it relates. The details required to be entered are stipulated by the Town and Country Planning (General Development Procedure) Order 1995. The register must be available for inspection by the public at all reasonable hours and indexed to allow a person to trace any entry by reference to the address of the land to which the notice relates.

12.0 **REVIEW**

12.1 All outstanding cases will be reviewed at three monthly intervals with the objective of determining whether it is expedient to continue with the investigation or action. The factors to be taken into account when such decisions are taken will include:

- the extent of harm caused to local amenity or acknowledged planning interests;
- the impact on Development Plan policy;
- the existence of other remedial powers;
- the threat to the integrity of the development control system.

These factors will be considered against the Council's Risk Management Strategy. Decisions not to proceed will be recorded. Complainants will be notified of the reasoning behind the decision.

Adopted by Strategy Committee, 12 February 2009