

SLOUGH BOROUGH COUNCIL

PLANNING ENFORCEMENT POLICY

FEBRUARY 2008

FOREWORD

Slough is a vibrant and cosmopolitan town housing some 115,500 people (2005) and employing over 82,000. Demands on land and its uses increases continually' thereby creating the groundwork for friction between competing users of land, be they commercial or residential.

There is evidence of growing public concern over development that takes place without the appropriate Planning Permission or without proper reference to approved plans or attached conditions. The number of enforcement enquiries in Slough has grown steadily over the years and the Government also recognises that public expectations in this area have become more demanding.

This Planning Enforcement Policy sets a framework for how the Planning Service will handle complaints and any subsequent investigations into breaches of planning control. It will set out the aims of the Planning Enforcement Service, the background to Planning Enforcement and the scope of enforcement powers, In this respect the Policy updates 'Slough's Guide to Planning Enforcement' adopted in November 2002. However, the Planning Enforcement Policy will for the first time set out priorities for responses to complaints and clarify the timescales for response by officers from both the Planning and Legal Services.

THE AIMS OF THE PLANNING ENFORCEMENT SERVICE

CORPORATE BACKGROUND

The Councils Vision for Slough is set out in its Corporate Plan:

TAKING PRIDE IN SLOUGH AND MAKING A DIFFERENCE TO COMMUNITIES AND OUR ENVIRONMENT

This Vision is supported by five Priorities of which two are particularly relevant to Planning Enforcement, in '*creating safe, environmentally friendly and sustainable neighbourhoods*' (Priority 1) and in '*ensuring excellence in customer service*' (Priority 4). These priorities provide a framework for Service Objectives within the Green and Built Environment Directorate Plan and within the Planning Service Plan. This latter document contains a specific Service objective relating to Planning Enforcement

To re-activate the review of Planning Enforcement procedures and achieve a more proactive service.

This Planning Enforcement Policy stems from an on going process of review of the Enforcement Service.

SPECIFIC SERVICE AIMS

To contribute towards these overriding Council, Departmental and Service objectives the Planning Enforcement Service will aim specifically to:

- Explain to any interested persons the background to Planning Enforcement and the Council's approach to enforcement matters.
- Provide a framework for deciding priorities and the most appropriate course of action in the event of any complaint regarding an alleged breach of planning control
- Set clear standards for the level of service and performance the public can expect with the aim of providing an efficient, speedy and effective service.
- Be open and transparent about how enforcement work is carried out
- Treat all of our customers with respect by providing a fair, open & courteous service.
- Act fairly, in any action we take.
- Make available details of the Council's complaints procedures.

By adopting this revised Planning Enforcement Policy the Planning Service will aim to make its Enforcement work more accessible to members of the public. Members of the public are the main customers when it comes to enforcement, so it is very important for them to see how we operate and understand when we can or cannot take action.

This Enforcement Policy now sets out the background to Planning Enforcement,

PLANNING ENFORCEMENT

Most types of building works, changes of use, works to listed buildings, works to protected trees and advertisement signs require planning permission or other consents. Some of these permissions are granted by government. Most however require an application to and decision from the Local Planning Authority. Slough Borough Council is the Local Planning Authority for development activity in Slough.

Applying for permission before work is carried out allows the Council and interested parties to assess the impact of a scheme and to modify or reject a scheme on paper before money and time have been spent on carrying them out. The requirement for approval by the Council before works are carried out is enshrined within the planning regulations.

If the correct approvals have not been obtained in advance and works have been carried out or uses implemented, a 'breach' of planning control is said to have

occurred. A breach also occurs when conditions attached to a planning permission are not complied with or if the works do not conform with the approved plans.

The Council is committed to ensuring that the requirements of the planning process are followed by all. Effective and proportionate enforcement underpins the planning service in Slough and it is central to maintaining public confidence in the planning system and the quality of life for our residents and businesses.

THE SCOPE OF ENFORCEMENT POWERS

The planning laws outline a range of measures and actions which are available to the Council to resolve planning enforcement issues. More detailed guidance on some of these may be found at the end of this document as Appendix 1. Complaints may be made by anybody, including Councillors and officers of the Council or their agencies. **The Council will not investigate anonymous complaints. All complaints must have a contact name, address and telephone number.**

The planning enforcement team is not however the only public agency responsible for enforcement. Others such as the Environment Agency and Environmental Health Department also have enforcement powers. Some of the common misconceptions are that we investigate issues relating to illegal parking on the public highway, all these issues may be dealt with by other services within the council. Furthermore, issues are often raised, such as those relating to boundary positions and land ownership which do not fall within the realm of Town Planning. Where complaints are made to the planning enforcement team about matters that are not within its powers, the team will endeavour to re-direct the complaint or to advise accordingly.

Each case is dealt with on its own merits and in approaching any alleged breach, the Council will favour in most cases, resolution through negotiation. Where there is a genuine commitment from the alleged offending party that the breach will be remedied speedily and where timetables for action can be set and met, it should not normally be necessary for formal notices/action to be taken. Persistent offenders and those who seek to exploit the planning process at the expense of others will however be dealt with by all and any of the appropriate enforcement processes.

The approach to enforcement in each case will vary. The Council will, following a site visit, usually follow one or more of the following courses of action dependent upon its impact and severity;

- **Allow time to Remedy:** Time may be given to remedy the breach. Such cases may include situations where the harm is easily repairable, and does not warrant immediate action. In such cases the level of harm to local residents would not be significant.
- **Information gathering:** This may take place formally (via a Planning Contravention Notice) or informally with other parties or agencies and allows the Council to clarify whether a breach has taken place and what its impact on the public interest is in order to identify the most appropriate outcome. It may take

some time **(and in some cases at least 28 days)** to collect appropriate evidence. In addition a site visit will be conducted to ascertain exactly what is happening

- **Decision making:** following the information gathering and site visit, officers will need to make a decision on the next course of action. Appendix 1 provides more detail on this point. It may be considered that there is no breach of planning control. Dialogue may be entered into with the owner/occupier of the land to seek to resolve the matter. The owner/occupier may be asked to submit a formal application for planning permission or a Certificate of Lawfulness to regularise the situation. **However where applications are submitted without being requested by the Council the enforcement process will not be held up.** Given the particular circumstances of the breach it may be considered that it would not be expedient to pursue formal enforcement action. Or a decision may be taken that it would be expedient to pursue one or more forms of formal enforcement action as now described. **It should be noted that once a decision has been made to take enforcement action, there will be not be any further negotiations between the Council and the relevant parties to the Enforcement Notice.**

Section 215 Notices

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the Council may issue a Notice under section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the Notice is a criminal offence. The Council also has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

Breach of Condition Notice: These can be used as an alternative to an Enforcement Notice. There is no right of appeal against this notice.

Enforcement Notice: This is the normal method of remedying unauthorised development although there is a right of appeal against the notice. This is an effective tool and will be served fairly early, on the cases that cause significant harm. (Appendix 1 gives more detail on Enforcement Notices)

Stop Notice: This can be used in conjunction with an enforcement notice where the breach of planning control is causing serious harm this can only be used in extreme cases. In such cases where Stop Notices are issued the Council may be liable to compensation claimed by those if it is served on if it is later decided that the Stop Notice was not appropriate.

Temporary Stop Notice: These are similar to Stop Notices (above) but take effect immediately they are displayed on a site, and last for up to 28 days. A Temporary Stop Notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment, public safety etc. It may be issued even where planning permission has been granted for development, in a case where the developer is not complying with conditions attached to the permission.

Injunction; This involves seeking an order from the court preventing an activity or operation from taking place. Failure to comply with the requirements of an injunction amounts to a criminal offence.

Default Powers; The Council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in extreme cases.

Appeals: There is a right of appeal against most statutory Notices issued by the Council (exceptions are Breach of Condition Notices, Stop Notices). Appeals are in most cases to the Secretary of State (the Planning Inspectorate) or in some cases to the magistrates' court. When a Notice is issued the recipient will also be given the necessary information on how to exercise the right of appeal.

PRIORITIES FOR ENFORCEMENT ACTION

All enforcement action should be proportionate to the risks relating to the breach of planning control; resources should therefore be focussed on areas, which present the most serious risks.

In terms of planning enforcement the service has grouped breaches of planning control into three categories which reflect the significance of the breach, and the priority it is likely to be given.

Complaints regarding alleged breaches will be initially categorised on the basis of the information given by the complainant. However through the course of the investigation the 'priority categorisation' may change, dependant on the information gathered or changing site circumstances.

Officers have considered how best to prioritise workload, having regard to the volume of cases and staff resources.

The Enforcement Team will aim to complete all investigation within 40 days from the date of the original complaint is received by the Enforcement Team, either direct from the complainant or via another Council department. Completion represents the point at which a decision is made as to whether to proceed with formal enforcement action, though instruction to the Councils Legal Services team.

To ensure that the highest priority cases are dealt with first, Enforcement Officers will prioritise enquiries in the following manner.

Category A – Emergency

- The unauthorised demolition or significant alteration of a Listed Building or the demolition of a building in a Conservation Area.
- Unauthorised works to trees protected by a Tree Preservation Order or to trees in a Conservation Area

- Unauthorised development that may represent a danger to members of the public.
- Major unauthorised building or engineering operations likely to cause serious damage to the environment / amenity.

Category B – High Priority

- Works being undertaken in contravention of the requirements of an enforcement notice or similar.
- Any continuing breach of planning control where enforcement action has been authorised.
- Breaches in either Listed Building or Conservation Area control not included in Category A.
- Changes of use of land or buildings, or breaches of planning conditions, resulting in significant disturbance, visual harm or other harm to amenity.
- Breaches of planning control that are seriously detrimental to residential amenity.
- Breaches, which may acquire immunity from enforcement action due to the passage of time.

Category C – Medium Priority

- Unauthorised advertisements.
- Untidy land
- Breaches of occupancy restrictions.
- Breaches in planning conditions not included in Category B.
- Any other potential breach in planning control not included within Categories A or B.

REQUESTS FOR SERVICE

Members of the public make the majority of planning enforcement enquiries. Other sources of enquiries are from Ward Councillors, MPs, Residents' Groups and other council departments.

The person who reports a breach in planning control will be asked to identify a number of key points before the enquiry is registered.

- Location of the site
- The alleged breach of planning control
- An indication of the harm caused

Information such as

- The identity of the person/organisation responsible for the breach
- Date or time the alleged breach took place can also be helpful, when assessing harm to the amenity and assessing priority.

The Council will consider all planning enforcement enquiries it receives. Some enquiries can be dealt with by the Enforcement team offering advice over the phone based on the nature of the complaint and by a quick check of available planning records. In such cases an Enforcement Case file is not 'opened'

All planning enforcement enquiries are treated as confidential. However, complainants will be expected to provide evidence to the Council and, if necessary, may be asked to attend a Public Inquiry and/or Court at a later date.

Service Standards

Set out in Appendix 2 are the service standards for the Planning Enforcement team. These are set to help members of the public, councillors, and the enforcement team to understand the clear objectives that we work to, and what you can expect from the service.

Complaints about the service

In the first instance you can contact the Senior Enforcement Officer or the Head of Development Control (01753 477340) if you have a concern over the enforcement process being followed.

Slough Borough Council has a complaints procedure that is followed when a complaint is received. Complaint about the Planning Enforcement Service can be made by:

1. Telephone - 01753 875244
2. Letter to - Corporate Complaints Officer
Chief Executives Office
Town Hall
Bath Road
Slough
Berkshire SL1 3UQ

3. In person at the Town Hall, Bath Road

Slough Borough Council Planning Enforcement Policy

Dated: February 2008

APPENDIX 1

THE PROCESSES OF PLANNING ENFORCEMENT

INVESTIGATION

On receipt of a planning enforcement enquiry, the planning history of the site is investigated. This is a fundamental part of planning enforcement for establishing the current lawful use of the land.

Some types of enquiry may be resolved without reference to the owner/occupier of the land in question. In these circumstances the council will not normally notify owners/occupiers of the land of matters in hand unless a more detailed investigation is required.

Where access to land is required the co-operation of the owner of the land would be sought. Where access to land is denied, officers may need to use powers under Section 196 of the Town and Country Planning Act 1990, for example, by applying for a warrant at the magistrates' court. However, this is not normally required.

Further information is often required from the owner/occupier to assist in an investigation. If no response is received to a letter, or if the response is unsatisfactory, the Council may serve a Planning Contravention Notice (PCN). A PCN is a formal notice, which requires the recipient to provide information requested about a breach of planning control. Alternatively a Requisition for Information under the Town and Country Planning Act may be served. This ensures that, if further enforcement action is necessary, such as service of an Enforcement Notice, the Council is made aware of all persons who have an interest in the land (owners, tenants, occupiers, licensees, mortgagees and so on).

Where a PCN or Requisition for Information has been served, it is a criminal offence to fail to comply with the requirements of either or to provide false information.

At any stage of the investigation the Enforcement Officer may pass the matter on to another Department of the Council if it is believed that action may more appropriately be taken by that Department e.g. Environmental Health, Highways etc. The Council may also pass the matter on to, or liaise with, other bodies e.g. neighbouring local authorities, the police etc.

CONFIRMED BREACHES IN PLANNING CONTROL

Where it is established that a breach in planning control has occurred the Council may invite the owner/occupier of the land to remedy the situation e.g. by ceasing the unauthorised use or removing the structure or other development, or by inviting the owner/occupier to submit a retrospective application to regularise the situation (if it is thought this will provide a satisfactory planning outcome).

The Council may be willing to enter into negotiations with the owner/occupier to resolve matters. However, these must be weighed against harm to amenity and the Council's relevant Planning Policies contained within the Local Plan and Core Strategy. The Council will not let protracted negotiation prevent effective enforcement.

The Council will normally write to the owner before issuing a formal Notice giving him or her the opportunity to remedy the situation. This will not be possible however in certain circumstances, for example where there is a serious risk of harm to amenity or the environment, or where a development is likely to become immune from enforcement action if action is not taken immediately (see Time Limits for Enforcement, below).

Advice from an Enforcement Officer will be put clearly and simply and will be confirmed in writing, explaining what breach in planning control has occurred and what 'enforcement tool' is to be applied to remedy the breach and over what time scale. The complainant will also be provided with this information.

DECIDING WHETHER TO TAKE FORMAL ENFORCEMENT ACTION

Compliance should normally be achieved through informal action such as letters, or giving advice. Where this does not result in compliance, or in the more serious instances, formal enforcement action will be considered, e.g. issuing a statutory notice, a formal caution or instituting a prosecution.

In taking enforcement action the Council will have regard to:

- Its own Planning Policy contained within the Slough Borough Council's Core Strategy
- Government advice in the form of Planning Policy Guidance Notes (PPGs) or Departmental Circulars (In particular, PPG 18 and Circular 10/97).

The Council will keep a record of the investigation of each case and of the reasons for any actions taken.

Enforcement action is discretionary and the Council may decide that no enforcement action should be taken because the matter is, for example:

- a non-planning matter e.g. a boundary dispute, or an issue involving private interests
- permitted development (i.e. something for which planning permission is not normally required)
- de minimis (e.g. something which is only slightly over a limit, and if below that limit would have been classed as permitted development)

- not expedient. This is a difficult concept to explain, but generally means that the Council is not required to take enforcement action as it is discretionary, and has to take a number of different factors into account when deciding whether to do so or not - such as the amount of harm caused to local amenity by the development, and whether enforcement action has been taken in respect of similar cases.

Section 171B of the Town and Country Planning Act 1990 sets out certain periods for different types of breaches of planning control. If it can be shown that the breach has continued for that period, and no enforcement action has been taken within the period, the development will become immune from enforcement. The periods are as follows:

- Erection of buildings and other works - 4 Years
- Changes of use of buildings or land - 10 Years
- Change of use to single dwelling house - 4 Years
- Non-compliance with planning conditions - 10 Years

There are exceptions to these periods and questions of interpretation should be discussed directly with the Planning Enforcement Section.

Two forms of application may be relevant during the course of an enforcement investigation:

Certificates of Lawfulness

Section 191 of the Town and Country Planning Act 1990 allows for the issuing of a Certificate of Lawful Use or Development. This means that where unauthorised development has taken place, but may be outside the time scales within which enforcement actions can be taken, the owner of the land is given the possibility of obtaining a statutory document confirming that the use, activity or other development named in it is lawful for planning control purposes. The burden of proof that the use etc. is lawful is on the applicant. Once granted, the Certificate will remain valid for the use or development described in it, on the land identified in the Certificate. It is in the interests of an owner to obtain such a Certificate as otherwise problems may be encountered at a later date if he/she wishes to sell the land.

The test of the applicant's evidence is on the balance of probability, and the Council may make its own enquiries into the circumstances of the application e.g. by checking its own records such as Council Tax and Electoral Registration, as well as external sources of information.

Retrospective applications

Some forms of unauthorised development may not significantly breach planning policy or might be made acceptable by imposing planning conditions. In such cases the Local Planning Authority may invite the owner to submit a retrospective planning application. The planning process for retrospective applications is exactly the same as normal planning applications and is consulted upon in the same way. An invitation to submit a retrospective application must not be seen as an automatic precursor to permission.

ENFORCEMENT NOTICES

An Enforcement Notice may be issued when it appears to the Council:

- (a) That there has been a breach in planning control and
- (b) That it is expedient to issue the notice having regard to the development plan (core strategy) and other material considerations.

A copy of the notice is served on:

- (i) the owner and the occupier of the land to which it relates; and
- (ii) any other person with an interest in the land, being an interest, which in the opinion of the LPA, is materially affected by the notice (e.g. a tenant, a Bank, Building Society etc).

The notice must specify the steps necessary to secure compliance and the period for compliance must be at least 28 days.

There is a right of appeal (within 28 days of the date of service) to the Secretary of State with the possibility of subsequently taking points of law to the High Court. Because of the appeals procedure available it is a 'slower' route than other enforcement tools, however it carries severe penalties. The maximum fine on summary conviction (magistrates' court) is £20,000 per offence and on indictment (Crown Court) the fine is unlimited. In addition the Council has powers to carry out the requirements of the Notice itself (Direct Action) and recover the costs it has incurred, and will consider taking such action in appropriate cases.

The Notice is also registered as a local land charge and will therefore be made known to anyone interested in purchasing the land. The Notice also remains in force once it has been complied with, unless it is withdrawn by the Council.

There are also Enforcement Notices specific to Listed Buildings and Conservation Areas.

STOP NOTICES

These are issued only in conjunction with Enforcement Notices (see above) where the Council believes it is necessary that an activity should cease before the time for compliance given in the Enforcement Notice. There is no appeal and penalties are as for the breach of an enforcement notice. A Stop Notice may be served where an appeal has been made against an Enforcement Notice (which prevents that Notice from coming into effect).

TEMPORARY STOP NOTICE

These are similar to Stop Notices (above) but take effect immediately they are displayed on a site, and last for up to 28 days. A Temporary Stop Notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment, public safety etc. It may be issued even where planning permission has been granted for development, in a case where the developer is not complying with conditions attached to the permission.

INJUNCTIONS

This is the only action available if a breach is anticipated but has not yet occurred. It can also be used as an alternative to an Enforcement or Breach of Condition notice. However, it is generally used as a final resort if the other methods fail to deter. An injunction may be granted against a person or persons whose identity is unknown. Breach of an injunction may lead to imprisonment for contempt of court.

An injunction may be appropriate where there is a breach of listed building control, where there is no power to serve a Stop Notice, and it is necessary to bring about the immediate cessation of the breach.

An injunction may also be used to enforce an agreement made under section 106 of the Town and Country Planning Act 1990, where for instance a developer or householder has undertaken to carry out some action in connection with the grant of planning permission but has failed to do so.

PROSECUTIONS AND CAUTIONS

In general, breaches of planning control are not criminal offences (with some exceptions). However failure to comply with a Statutory Notice such as an Enforcement Notice is a criminal offence and the Council will always consider prosecuting for non-compliance with such Notices.

It is also an offence to give false or misleading information in response to a Notice and the Council will also consider a prosecution or caution in these cases.

As well as offences, which follow failure to comply with a statutory Notice, there are offences, which stand alone, such as:

- unauthorised display of an advertisement
- unauthorised works to a Listed Building
- damage to a tree protected by a Tree Preservation Order or in a conservation area
- damage to certain hedgerows.

The Council attaches particular importance to the protection of trees and listed buildings. Works to a protected tree or listed building require prior consent from the Local Planning Authority and failure to obtain the necessary consents is a criminal offence. The Council will seriously consider prosecuting anyone carrying out such works or causing or permitting the works.

The Council regularly removes unauthorised advertisements on the highway. The Borough Council will pursue action against advertisements, which are unauthorised and are contrary to the policies in the Slough Borough Council Core Strategy and Local Plan.

In some cases the Council may find that it is appropriate to offer a formal caution. Decisions on whether to prosecute or offer a caution will be taken in accordance with the Corporate Enforcement Policy and the Code for Crown Prosecutors. The Code requires two tests to be passed before initiating a prosecution: the evidence test and the public interest test. There must be sufficient evidence for a realistic prospect of conviction and certain factors for and against prosecution must be weighed.

Slough Borough Council Planning Enforcement Policy

Dated: February 2008

ENFORCEMENT SERVICE RESPONSES

PLANNING ENFORCEMENT STAGES	CATEGORY A	CATEGORY B	CATEGORY C
	Within:	Within:	Within:
OPEN CASE FILE	1 day from first enquiry	1 day from first enquiry	1 day from first enquiry
Complainants acknowledge letter			
Office investigation	1 working day	5 working days	10 working days
Site investigation	1 working day	5 working days	10 working days
Letter to offender	3 working days	10 working days	15 working days
Verbal reply to complainant	3 working days	10 working days	15 working days
Letter to complainant	10 working days	15 working days	20 working days
Review of enforcement case By enforcement team	10 working days	15 working days and at 30 working days	20 working days
Expediency decision by Planning	10 working days	30 working days	40 working days
Instructions to Legal	11 working days	35 working days	40 working days
Enforcement notice issued *	21 working days	45 working days	50 working days

* based on 10 working days from the receipt, by the Legal Team, of full instructions from the Planning Enforcement Team