



*Basingstoke
and Deane*

Planning Enforcement Statement



October 2009

Contents:	page
1. Introduction	3
2. The purpose of planning enforcement	3
3. What is a breach of planning control?	4
4. Enforcement action is discretionary	5
5. What the planning enforcement service will do	5
6. Reporting a breach of planning control	6
7. What are our priorities?	7
8. Target timescales for investigations	7
9. What can be the outcome of an investigation?	8
10. Formal action	9
11. Types of formal action	9
12. What happens if someone complains about you?	9
13. Proactive Compliance	10
a) What is proactive compliance?	
b) What are the priorities for proactive compliance?	
c) What the Compliance and Enforcement Team will do	
d) Benefits of Proactive Compliance	
Appendix A - The Law and Government Guidance	14

Introduction

This statement on Basingstoke and Deane Borough council's ("the council") Planning Enforcement Service describes what the service does and how we deliver the service to the community.

The main relevant background legislation is the Town and Country Planning Act 1990. This is supported by Government advice in the form of Planning Policy Guidance notes together with circulars.

In this context enforcement includes action taken in the exercise of or against the background of, statutory enforcement powers. This is not limited to the formal service of notices, including if necessary the use of the power of prosecution, but also includes investigation of alleged breaches of planning control as they relate to planning conditions and the monitoring of sites to ensure compliance with the approved details / conditions etc.

Enforcement decisions and actions are taken in accordance with Government guidelines and council Policy. Planning enforcement supports the Community Strategy and the council's priorities within the council plan and reinforces the policies in the Basingstoke and Deane Borough council Adopted Local Plan 1996-2011 and the emerging Local Development Framework.

The Planning Enforcement Statement was first adopted in December 2000 but has now been amended to include details of the Proactive Compliance role of the Compliance and Enforcement Team (see section 13) and various minor amendments made to the reactive enforcement service relating to the method for reporting complaints and how technical breaches of planning control are pursued. These amendments received Member approval at Development Control Committee on 3rd September 2009. This document therefore supersedes the Planning Enforcement Statement 2006

The purpose of planning enforcement

The integrity of the planning service depends on the council's readiness to take enforcement action when appropriate. The council is committed to providing an effective planning enforcement service.

Planning laws and policies are designed to control the development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another.

The council has powers of enforcement in relation to other services such as highways, environmental health, listed buildings and trees. These services are co-ordinated so that investigations are carried out under the appropriate legislation.

Co-operation with other external bodies (for example the Fire, Police Services and the Environment Agency) is an integral part of enforcement and these working relationships will continue to be developed in the future in order to make the most effective use of available resources throughout the council.

What is a breach of planning control?

This could involve such matters as the unauthorised erection of a building, a change in use of land, or the display of an unlawful advertisement. Other planning breaches that can be investigated include:

- Unauthorised works to a listed building;
- Unauthorised demolition in a conservation area;
- Unauthorised works to trees protected by a tree preservation order or in a conservation area;
- Unauthorised stationing of a caravan or mobile home;
- Breach of conditions attached to planning permissions;
- Not building in accordance with the approved plans of planning permissions;
- Failure to properly maintain land so that it affects the amenity of the area;
- Unauthorised engineering works – such as ground level changes;
- Failure to comply with a Town and Country Planning Act 1990 Section 106 agreement.

The following are not planning breaches:

- Internal works to a non-listed building;
- Obstruction of a highway or public right of way
- Parking of commercial vehicles on the highway in residential areas or on grass verges;
- Parking a caravan within the residential boundary of a property provided that it is ancillary to the dwelling;
- Clearing of land of overgrowth, bushes and trees provided they are not subject to planning protection;
- Operating a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Boundary disputes – disputes about ownership are a private matter and cannot be controlled under planning legislation;
- High hedge disputes - these are dealt with under Part 8 of the Anti-Social behaviour Act 2003;
- Deeds and covenants are a private matter and cannot be controlled under planning legislation;
- Insertion of windows in residential dwellings - once a building has been occupied windows may be inserted into existing walls provided that there is not a planning condition to prevent the insertion of additional windows;
- Where development is 'permitted development' under the Town and Country Planning Development 1990 - General Permitted Development Order 1995 (As amended).
- Trespass on land
- Health and Safety Issues

Enforcement action is discretionary

This is an important aspect of planning enforcement. **Because something is a breach of planning control this is not, in itself, a reason to take enforcement action.** Even when it is technically possible to take action the council is required by policies and legislation set by central Government, to first decide if such formal action would be **“expedient”**. Expediency is a test of whether the unauthorised activities are causing harm having regard to the Development Plan policies and other material planning considerations.

This means that formal enforcement action is discretionary and all the relevant planning circumstances of each case must first be considered.

Central Government advice is that ordinarily formal action should be a last resort and that councils are expected to give those responsible the chance to put matters right before serving a formal notice. However, when the breach of planning control is causing unacceptable serious harm or nuisance to public amenity formal action will not be delayed by protracted negotiation. Enforcement action will therefore always be commensurate with the seriousness of the breach of planning control.

The council will not therefore act to rectify all breaches of planning control. However enforcement action will be taken when there is an unacceptable effect on the built and natural environment and public amenity.

What the planning enforcement service will do:

The Planning Enforcement Service will:

- Investigate alleged breaches of planning control which are reported by writing, email or by telephone.
- Promptly register such cases and acknowledge their receipt. Let complainants know what action (if any) we decide to take.
- Actively pursue, when considered expedient to do so, those breaches of planning control which cause demonstrable harm to amenity.
- Promptly close – without further action – those cases where there may have been a technical breach of planning control but where any public harm is insufficient to justify further action.

This service will be carried out by:

- Prioritising cases in accordance with published priorities and investigating promptly those cases which are identified as serious.
- Allocating a named officer to each complaint.
- Retaining confidentiality regarding the identities of complainants where possible.
- Negotiating with transgressors, giving them the opportunity to resolve breaches before formal action is taken, unless the breach is so serious it warrants immediate formal action or negotiation becomes protracted and / or is deemed unlikely to yield an acceptable outcome.
- Producing written appraisals for all alleged breaches.

Reporting a breach of planning control

The council will investigate all complaints to the council where the complainant has included the exact location of the land and a description of what has happened on the land. It helps the council to respond effectively when the complainant is able to provide as much of the following information as possible;

1. Dimensions of any new buildings.
2. Dates when the development took place / use started.
3. Dated photographs of the activity.
4. What harm or loss of amenity is being caused.
5. Names, addresses and phone numbers of any owners, occupiers or builders involved.
6. In the case of an alleged unauthorised use the frequency of the activity and the hours of the operation.

Anonymous complaints will not usually be investigated unless relating to a matter of public safety or potentially immediate and irreversible public harm. The council determines whether the alleged breach merits investigation.

There is a form available on-line which complainants must complete and return to us. If complainants do not have access to the internet then a copy of the form can be sent to them or they can complete the form in the Reception of the Parklands Building at the Civic Offices, London Road, Basingstoke. If relating to a Priority 1 or Priority 2 case (please see Section 7 below) there is a telephone service provided whereby complainants will be asked the questions for us to complete the form on their behalf. Council staff do not comment on whether there is a breach at the time of reporting.

In completing the form complainants will be asked to set out the harm that the alleged breach of planning control causes to them. As set out below under Section 9 not all breaches of planning control will be pursued. Complainants should therefore take the opportunity to set out the harm the development causes to them. This will enable officers to consider all relevant information when assessing whether to pursue breaches of planning control.

The Council will treat complaints in confidence so far as we are able. With regard to the Freedom of Information Act 2000 the identity of the complainant is not always required to be released in response to any formal written request from a member of the public, however each case is considered on its own merits. If complainants are worried about giving their name and address they can contact their Local Ward or Parish Councillor or their parish council who may agree to make the complaint on their behalf.

If a case proceeds to formal action the council may need the evidence of a complainant to substantiate the case, as this evidence could be more thorough than anything the council may be able to obtain. If this is the case then the council would not be able to retain the anonymity of the complainant. The complainant will be made aware of this prior to that formal action taking place. A complainant cannot be compelled to give evidence.

What are our priorities?

The Service receives in the region of 700 allegations of breaches of planning control every year. It would be inappropriate to investigate and pursue all of these allegations with equal priority and intensity. Therefore each case is prioritised according to the seriousness of the alleged breach, this priority is decided by the council, and subsequently reviewed after an initial site visit. The scale of priorities is shown below.

Priority	Examples (not exhaustive)
1 Serious threat to health and / or safety. Permanent serious damage to the environment or amenity	Serious traffic hazard; contamination / pollution being created Loss of protected tree; works affecting the character of a listed building; demolition in a conservation area.
2 Less immediate but harmful with potential to escalate	Building works just commenced; severe nuisance being created (noise, smells, congestion etc). Non compliance with certain planning conditions (particularly pre commencement conditions)
3 Other breaches likely to remain stable	Development completed; untidy site; non compliance with other planning conditions.
4 Other issues	Satellite dishes; unauthorised display of adverts; new fences (adverts and fences may go up in priority if highway safety issue).

Target timescales for investigations

Enforcement investigations can take a long time to resolve because of the need for careful investigation and the legal processes involved. The time taken to determine each breach will vary depending upon the site, the people involved and the nature of the breach itself. However Enforcement Officers work to targets as set out below.

1. Complaint registered and a priority attached within 5 working days
2. **Priority 1** Case site visit on the same or next day of receipt
3. **Priority 2** Case site visit within 5 working days of receipt
4. **Priority 3** Case site visit within 20 working days of receipt
5. **Priority 4** Case will be visited if considered necessary following a desk top appraisal of the issues. Site visits will be in chronological order and will depend on what action is available to the council
6. A decision made as to what to do (see “outcome of investigation” below) within 56 days (8 weeks) of receipt

If the council consider that a complaint either at the start or after an initial investigation is vexatious or malicious with no real planning grounds to substantiate it we will either refuse to investigate or close the file with no further action.

What can be the outcome of investigation?

No breach established

After a site visit there is found to be no breach of planning control; for example the development is permitted development or is not within the control of planning legislation.

Breach but not expedient to pursue

As stated earlier in this document the council has discretionary powers and is not required to take enforcement action just because there has been a breach of planning control. If a technical breach has taken place, for example a house extension that is only marginally over permitted development limits then it is not normally worthwhile taking lengthy and expensive enforcement action over something that causes minimal public harm.

Development is lawful

This is where there has been a breach but the activity has been going on for so long or the structure has been substantially complete for such a long time that the breach is immune from any enforcement action and the development has become “lawful” (for planning purposes). The following table shows the time scales:

Activity	Immune after
Operational development (e.g. building works, new access points, fences)	Substantially completed for more than 4 years
Change of use of a building to a single dwelling house / flat	Continuous occupation for 4 years or more.
Change of use	Continuous occupation at the same intensity for 10 years or more
Breach of a condition on a planning permission / consent	Continual non compliance for 10 years or more

Attempt to negotiate a resolution

In accordance with government guidance, the first priority is to try to resolve a breach of planning control through negotiation. This could be by the relevant party agreeing to cease an unauthorised use, remove an unauthorised development or submit a retrospective planning application (see below). Any such negotiation will include a timescale for whatever action is agreed or required. However, the council will not allow negotiations to hamper or delay formal enforcement action that may be required to make the development more acceptable on planning grounds or to make it cease.

Invite a retrospective application

In some cases the most appropriate way to rectify a breach of planning control is to invite the relevant party to make a retrospective planning application for the development or change of use that has occurred. This approach is likely to be taken where planning officers consider there is a reasonable likelihood that a planning application will be successful in light of the relevant planning policies. The council invites the submission of retrospective planning applications when appropriate but will only pursue submission if there is a need to control the breach of planning control through conditions. Minor and technical breaches of planning control are unlikely to be pursued to the submission of a retrospective planning application.

Formal action

If negotiation does not secure compliance with what the council considers acceptable then it has the power to take formal action against any breach. The nature of the breach will dictate what route the council chooses to pursue. Depending upon what action is taken the person responsible may get a criminal record.

Ultimately the owner or persons responsible may be required to remove a building work and / or cease an activity and remove from the site, at their own expense, everything associated with the activity. In the event of non-compliance, the responsible persons are open to the risk of prosecution; alternatively the council may take direct action to undertake the appropriate works and recover the costs from the responsible person(s). Where there is a habitual breach of planning control the council can, as a last resort, compulsorily purchase the land so as to stop the activity.

Types of formal action

The council has a range of formal powers under the Town and Country Planning Act that it can use to remedy breaches of planning control. Some of these are listed below. Additional powers exist to serve injunctions, to take direct action and to prosecute when it is deemed expedient to do so.

- Planning Contravention Notice – Section 171(c) provides the power to serve a notice requiring persons to divulge information in respect of land and activities.
- Breach of Condition Notice – Section 187(a) provides the power to serve a notice to secure compliance with conditions specified within a planning permission.
- Enforcement Notice – Section 172 provides the power to serve a notice which details the steps required to remedy the situation. This notice can also be served in conjunction with a stop notice (below).
- Stop Notice / Temporary Stop Notice – Section 183 / 171(e) provides power to serve a notice requiring unauthorised activities to cease.
- Section 215 Notice – Provides the power to secure the proper maintenance of land and buildings.

What happens if someone complains about you?

If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case.

Initially a member within the Planning Compliance and Enforcement Team will visit the site. This may be without any prior warning to the owner or any tenants / employees at the site. Section 196a of the 1990 Act (as amended) gives officers the authority to enter any land. Wilful obstruction of a person exercising a right of entry is an offence. Please note that admission to any building used as a dwelling house shall not be demanded as of right by virtue of the above unless twenty-four hours' notice of the intended entry has been given to the occupier of the building.

If the allegation refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved the Planning Enforcement Service will advise you of the details of the breach and how it can be rectified. You may be served with a planning contravention notice which requires information concerning the alleged development. This notice is used to establish the facts of what has occurred and the details of those with an interest in the land, so that the council can determine whether a breach has taken place and who is responsible.

In the event of a breach being established, your co-operation will be sought to correct the breach either by removing or modifying the unauthorised development or by ceasing the unauthorised works. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this.

In some circumstances you may be invited to submit a retrospective planning application if it is considered that permission may be granted.

If compliance is not secured through negotiations or the retrospective planning application is refused formal action may be instigated (see types of formal action above).

Proactive Compliance

In addition to the service's reactionary role in dealing with planning enforcement matters, the council provides a proactive risk based approach to ensure compliance with planning permissions and other consents.

It is the responsibility of individual developers to comply with the terms and conditions related to the development - identified in any planning agreement and planning permission or consent. However, failure to comply can affect the quality of the environment in the borough and prejudice the justification and reasons why permission was originally granted.

Effective, proactive action will encourage and where needed, enforce, compliance to ensure that development remains acceptable in planning policy terms, maintaining an attractive, high quality environment. It is hoped that proactive compliance will reduce the number of reactive enforcement matters.

A) What is Proactive Compliance?

When planning permission or consent is granted it can be subject to a planning agreement or planning conditions.

Proactive compliance seeks to monitor the implementation of identified developments to ensure that the requirements of any planning agreement or condition are carried out in a complete and timely manner.

In some cases the requirements set out in agreements and conditions need to be agreed and complied with before works gets underway on the site. Failure to do this could mean that the development is exposed to enforcement action.

B) What are our priorities for Proactive Compliance?

A risk based approach means ensuring that the resources available are provided in a targeted and focused way. Priority will be with the monitoring of the following developments:

- All developments over 10 dwellings or residential development greater than 1 hectare in area
- All commercial developments over 1000sq metres floor area or 0.5 hectares in area.
- All decisions subject to a planning agreement
- All proposals which have trees which are protected by a Tree Preservation Orders .
- Where there has been a history of non compliance.
- Significant works to Listed Buildings.

In addition and on occasion:

- Problematic sites such as those involving significant level changes, or contamination.

The sensitivity of each site will be considered on a case by case basis and the decision to pursue breaches will be informed by the overarching framework for decision making as set out in this statement.

C) What the Compliance and Enforcement Team will do.

The role of proactive compliance will be:

- to educate and inform developers of their responsibilities in relation to compliance with planning agreements and conditions and seek voluntary compliance;
- to monitor compliance with planning agreements and conditions;
- where necessary and expedient, to actively stop sites that are proceeding without compliance with planning agreements or conditions by the use of Temporary Stop Notices (TSN) and where expedient Stop Notices and Enforcement Notices.

Monitoring information can be obtained from other areas of the council such as building control, environmental health, licensing and council tax.

D) Benefits of Proactive Compliance

The benefits of proactive compliance can be felt by the council, community and the development industry. By being proactive, the council can be aware of identified sites and can try and prevent major problems occurring. For the community this means that the council can be confident that requirements and conditions within agreements and permissions or consent will be complied with ensuring a high quality of built development, while being efficient with our resources.

For the development industry, there are benefits in raising the profile and need to comply with requirements and conditions to ensure future conveyance requests and solicitors queries can be dealt with. A clear process of compliance can only aid these future requests.

Appendix A:

The Law and Government Guidance

This statement has been formulated as a guide to the Planning Enforcement Service. It has been devised by taking into account:

Nationally

Planning Acts of Parliament
Planning Policy Guidance Note (PPG) 18 – Enforcing Planning Control
Circular 10/97 – Enforcing Planning Control
Regulation of Investigatory Powers Act 2000
Police and Criminal Evidence Act 1984

Regionally

The South East Plan (adopted May 2009)

Locally

Basingstoke and Deane Borough Adopted Local Plan 1996-2011 (July 2006)
Supplementary planning documents.
Any other relevant policies of BDBC that would be a material consideration to the planning merits of any breach.

The council's power to take enforcement action comes from laws passed by Parliament, mainly the Town and Country Planning Act 1990 (as modified), the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004. In addition to these laws the government has also issued formal advice in the form of circulars (e.g Circular 10/97) and Planning Policy Guidance Notes (eg PPG 18).

Most breaches of planning control are not criminal offences, unless they involve demolition of, or unauthorised works to listed buildings, demolition of some unlisted buildings in conservation areas, works to protected trees or the erection of adverts. A criminal offence only arises in the majority of cases when an enforcement notice has been issued, has taken effect and its requirements have not been complied with. Only when this stage has been reached can the council take prosecution action in the courts or direct action on a site.

Planning enforcement legislation is complex in terms of procedures and details. If the council decides to take enforcement action the process can be lengthy and protracted. In addition the alleged transgressor has a right of appeal to the Planning Inspectorate against any enforcement notices served, which again lengthens the process. If the council's actions are considered unreasonable or legally incorrect then it can be ordered to pay costs or have its decisions overturned by the Planning Inspectorate or the courts.

In accordance with the **Enforcement Concordat**, the service will carry out its duties according to the following principles:

Proportionality – Any action that is taken will relate to the seriousness of any breach.

Consistency - Officers act in a similar way when faced with similar circumstances. The council will also work with other councils and relevant agencies to ensure that consistency is maintained at a local and national level as far as possible.

Transparency – The council will try to help people understand what the law requires of them and make clear what needs to be done, and not done, to achieve compliance. The council will also make clear what people should do if they are not happy about any action taken or a decision not to take action.

Targeting – Our enforcement efforts will be directed against those whose activities pose the most serious risks or create the most damage to the public interest and those who have a history of non-compliance.



For further information please contact the Compliance Team on **01256 845274** or email **enforcement@basingstoke.gov.uk**