Planning Committee: 15 October 2013 **Item Number:** 17

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Planning Enforcement Policy

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1. SUMMARY

1.1 This report introduces the Enforcement Policy and follows on from the informal discussion at the committee meeting of 24 September 2013. Committee requested all members be emailed a copy of the Policy and given the opportunity to comment. The policy has been amended to reflect some of those comments.

2. RECOMMENDATION

2.1 That Planning Committee note the report and authorise the adoption of the enforcement policy with effect from 1st November 2013.

2.2 That Committee note that:-

(i) It is intended that an enforcement update report now be brought to Committee on a quarterly basis.

(ii) It is intended that the Enforcement Policy be reviewed on annual basis by Officers.

3. REASONS FOR THE RECOMMENDATION

3.1 The recent peer challenge review recommended that the Council publish an enforcement policy; in addition the National Planning Policy Framework (NPPF) paragraph 207 recommends that Local Planning Authorities should consider publishing a local enforcement plan to manage enforcement proactively.

3.2 The policy provides an overview of the enforcement investigation process, identifies priorities and service level targets to provide clarity and expected service levels for everyone coming into contact with the service.

3.3 In view of recent changes to provide officers with delegated powers to serve enforcement notices, the Committee will be provided with an overview of the Team's performance on a quarterly basis.

3.5 In order to ensure the policy is up to date, it is also proposed that Officers review the policy annually.

4. ALTERNATIVE OPTION CONSIDERED

4.1 Should an Enforcement Policy not be prepared and adopted, the Council would be at risk of not acting in accordance with the NPPF.

5. BUDGETARY FRAMEWORK

5.1 There are no specific budgetary implications arising from the content of this report.

6. POLICY FRAMEWORK

6.1 The policy is in accordance with the recommendations made in paragraph 207 of the NPPF.

WARWICK DISTRICT COUNCIL

DEVELOPMENT SERVICES

PLANNING ENFORCEMENT POLICY 2013

Adopted ……

1.0 Background

1.1 This policy has been prepared in accordance with paragraph 207 of the National Planning Policy Framework 2012 which advises Local Councils to consider publishing a local enforcement plan to manage enforcement activity proactively in an appropriate manner within their area and to set out how that activity will be undertaken.

1.2 The Framework advises that enforcement action is discretionary and that Council's should act proportionately in responding to suspected breaches of planning control.

2.0 Planning Enforcement at Warwick District Council

2.1 The District Councils Development Services area includes a dedicated planning enforcement team which investigates alleged breaches of planning control and works to remedy unacceptable unauthorised development.

2.2 In order to ensure the effective use of that resource directed at the most harmful unauthorised development first, a scheme of prioritisation is in use which is included at Appendix 1. That scheme is also intended to assist members of the public to understand the priority that will be given to issues with which they may be concerned.

3.0 What is a Breach of Planning Control?

3.1 The following list sets out the main scenarios in which a breach of planning legislation may be considered to have occurred:-

a. Building and engineering works undertaken without planning permission.

b. Material changes in the use of land or buildings undertaken without planning permission.

c. The undertaking of works that are materially different from the planning permission granted or which do not comply with either the conditions imposed on a planning permission or the requirements of a legal agreement relating to that permission.

d. Unauthorised works to Listed Buildings.

e. Unauthorised works to trees protected by Tree Perseveration Orders (TPO) trees; trees in Conservation Areas and rural agricultural hedgerows.

f. The unauthorised display of advertisements.

g. The poor condition of land impacting on the visual amenities of the wider area.

3.2 It should be noted that in addition, the unauthorised works listed at d, e and f also comprise a criminal offence.

4.0 What isn't a Breach of Planning Control?

a. Buildings or extensions which do not require planning permission: planning legislation makes provision for a wide range of building works which can be undertaken using what are known as *permitted development rights*.

b. Changes in the use of land and buildings which are not so significant that they comprise a *material change of use* or which fall within the same use class category.

c. The display of advertisements which do not require consent: the regulations relating to advertisements allow the advertiser to display certain types of advertisements without the need to make an application to the Council.

d. Issues relating to waste disposal and tipping which are handled by Warwickshire County Council who can be contacted by following this link: Warwickshire Direct - Residents and click Report It.

e. Issues within or relating to the adopted highway including for example advertisements displayed within the Highway or on street furniture which are handled by Warwickshire County Council who are the Highways Authority and can be contacted by following the above link.

f. Issues relating to noise and disturbance; smell nuisance and light pollution which are investigated by the District Council's Environmental Health Team (1). Further information can be found at: http://www.warwickdc.gov.uk/WDC/Recycling-waste-and-environment/Environmental+health/ or by telephoning 01926 410410

g. Issues relating to the manner in which buildings or extensions have been constructed or concerning potentially dangerous structures which are handled by the District Councils Building Control Team who can be contacted via this link Building regulations or in relation to dangerous structures by telephoning 07881 787528.

h. Issues relating to compliance with covenants or other legal restrictions which are private civil matters.

5.0 Key Considerations in the Investigation of Alleged Breaches of Planning Control

1 In certain circumstances such issues may be controlled by planning legislation, for example where they are the subject of a condition imposed on a planning permission.

5.1 In the circumstances where an enforcement investigation identifies that unauthorised development has taken place, the decisive issue for the Council in considering whether it is expedient to pursue the matter; is the development in question unacceptable in planning terms such that planning permission would not be granted?

The fact that a development does not benefit from the required planning permission is not in itself sufficient justification for pursuing the matter.

5.2 Where enforcement action is taken, it must be proportionate to and commensurate with the breach of planning control to which it relates. For example, whilst clearly harmful breaches of planning control should be addressed by appropriate means, it is not expedient to pursue minor or technical breaches which cause no planning harm or where unauthorised development is acceptable in planning terms.

6.0 The Investigation Process

6.1 The speed with which an investigation can be undertaken varies between straightforward cases which can often be concluded quickly and more complex investigations which can take considerably longer.

62 Upon receipt of an investigation request, we will check that the issue in question is a planning matter. If it isn't we will tell you as quickly as possible and where appropriate forward the concern onto another relevant Council team or external organisation. At this stage, we may also request further information from you to help with the investigation, for example keeping a record of activity in respect of the use of land or buildings over an appropriate period.

6.3 Before we begin an investigation, we will also ask you to provide your name and contact details in confidence so that we can update you on progress. **Your details will remain confidential at all times during the initial investigation (2).** This is because we need to ensure that we use our resources as effectively as possible and in order to prevent the investigation of spurious issues, anonymous complaints are not usually investigated.

6.4 All investigations are prioritised in accordance with the Council's scheme of prioritisation which is included at Appendix 1. If we are unable to investigate an issue that you have raised we will tell you the reason for this. Where an investigation is commenced, after an initial site inspection and assessment has been made, we will tell you what will happen next.

6.5 There are a number of potential outcomes of an enforcement investigation which are principally:-

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2 Where an investigation results in enforcement action being taken which is the subject of an appeal or prosecution, it is sometimes necessary for 3rd party details to be disclosed.

i. Where there is no breach of planning control or a minor breach: no further action will be taken.
ii. Where it is considered that planning permission would be likely to be granted for the unauthorised development, we will request that an application is made. However, if no such application is submitted, no further action will be taken.
iii. Where there is a breach of planning control which is unacceptable in planning terms, we will offer the responsible parties **one** opportunity to resolve the matter voluntarily. Where the matter is not satisfactorily resolved by that means, if it is expedient to do so, formal enforcement action will be taken.

7.0 Voluntary Resolution

In encouraging you to voluntarily resolve a breach of planning control for which you are responsible, we may:-

i. Offer you written or verbal advice.
ii. Give you a verbal or written warning.
iii. Provide you with **one** opportunity to remedy the issue within a proportionate time period prior to the consideration of the use of formal action.

The majority of breaches of planning control which require remedy are resolved in this manner without the need for formal action. However in the circumstances where a breach of planning control is so serious that it merits immediate action, where necessary the Council will take formal action without offering an opportunity for the matter to be resolved voluntarily.

8.0 Formal Action

8.1 Formal planning enforcement action may be taken where:-

i. The matter is so serious that it merits immediate action;
ii. There is a lack of confidence that the matter will be resolved voluntarily;
iii. There is a history of non-resolution of issues by a voluntary means;
iv. The matter has not been satisfactorily resolved on a voluntary basis.

8.2 Such action can take a number of forms including but not limited to issuing:-

i. Enforcement Notices and Listed Building Enforcement Notices requiring the actions specified in the Notice to be undertaken within the time period specified. There is a right of appeal against these Notices.

ii. Breach of Condition Notices to require compliance with conditions imposed on a grant of planning permission. There is no right of appeal against these notices.

iii. Untidy Land Notices to require the improvement of land or buildings in order to remedy their visual impact on the amenities of the surrounding area. There is a right of appeal to the Magistrates Court against such notices.

iv. Improvement or Repairs Notices in respect of Listed Buildings which are falling into disrepair.

v. Where it is considered expedient to do so a Temporary Stop Notice maybe issued.

vi. In appropriate circumstances involving potentially serious and/or irreversible unauthorised development the issue of an injunction.

8.3 Non-compliance with the Notices listed above within the required timescale is an offence which the District Council will normally seek to pursue by means of a prosecution.

9.0 Prosecution

9.1 In addition to non-compliance with formal Notices, the unauthorised display of advertisements; the alteration of Listed Buildings without consent and the unauthorised undertaking of works to trees protected by a Tree Preservation Order or within a Conservation Area is a criminal offence.

9.2 For that reason, except in exceptional circumstances, we will require that any such works cease immediately and that unlawful advertisements are removed within 5 days. Where that cessation or removal does not occur and/or where such unauthorised works result in material harm to protected buildings or trees, legal action will usually be taken.

9.3 Decisions to proceed with legal action will take account of the Crown Prosecutor's Guide and in particular will be made with reference to:-

i. The availability of sufficient evidence to provide a realistic prospect of conviction; and
ii. Whether it is in the public interest to proceed with such action.

10.0 Direct Action

10.1 There may be occasional circumstances, where by reason of the nature or extent of the unauthorised activity or development, non-compliance with a notice may result in the District Council arranging for appropriate remedial works to be undertaken in default of the responsible party doing so. With the exception of the circumstances described below, this approach will only be used in exceptional circumstances. In all cases, the Council will seek to recover the

cost of undertaking those works from the responsible parties including for example by means of the imposition of a charge on the land in question.

10.2 In the circumstances where an informal request to remove an unlawful advertisement has not been complied with, in appropriate circumstances the District Council will use the powers available to it to remove the advertisement.

11.0 High Hedges

Background

11.1 Under planning and related legislation, the planting of hedges does not require permission and there are no restrictions on the height to which they can be grown. However, the Anti Social Behavior Act 2003 and associated regulations introduced a power for Councils to investigate and where appropriate remedy complaints about high hedges where there is a significant impact on nearby properties.

11.2 Guidance on what you need to do if you are concerned about the impact of a hedge on your property or if you are the subject of a complaint about a high hedge can be obtained by following these links:-

i. The Office of the Deputy Prime Minister website:-

https://www.gov.uk/government/organisations/department-for-communities-and-local-government

ii. Over the garden hedge
https://www.gov.uk/government/publications/over-the-garden-hedge

iii. High Hedges: complaining to the Council

https://www.gov.uk/government/publications/high-hedges-complaining-to-the-council

iv. High Hedges complaints: prevention and cure

https://www.gov.uk/government/publications/high-hedges-complaints-prevention-and-cure

11.3 Prior to requesting that the Council investigate a potential high hedge issue, a process which carries a fee, you must provide evidence that you have exhausted all alternative forms of negotiation and mediation with the hedge owner.

12.0 Publicity

12.1 In order to seek to raise public awareness of the risks associated with undertaking unauthorised development and thereby reduce the incidence of such development, where appropriate the Council will publicise the outcome of cases in the local press and by other means.

13.0 How You can Help

13.1 If you have reported a breach which the Council is investigating, please be aware that we will do so as quickly as possible and that in order to ensure that the investigation is undertaken as comprehensively as is necessary this may take longer than you might expect. We will aim to keep you updated at regular intervals as the investigation progresses.

13.2 When you initially tell us about the issue of concern, please provide as much information as you can to help us to investigate the matter as quickly as possible. At this or a later stage, we may also request further information from you to help with the investigation, for example keeping a record of activity in respect of the use of land or buildings over an appropriate period.

13.3 If you are the subject of an investigation, your co-operation in assisting us to undertake that investigation will in many cases enable us to advise that there is either no breach of planning control or no remedial action to be undertaken. If a breach is identified and you are requested to undertake works to voluntarily resolve the matter, your co-operation in doing so within the timescale given will in most circumstances prevent the consideration of the use of formal action.

13.4 Whilst it is understood that you may wish to know where the complaint about your property has come from, all such complaints are treated confidentially and we will not be able to provide you with that information.

14.0 Contacts

14.1 If you would like to contact us to report a potential breach of planning control please do so by either:-

- Completing our online form: Report A Possible Breach Of Planning Control

- E mailing planningenforcement@warwickdc.gov.uk
- Or by writing to us: Planning Enforcement
  Warwick District Council
  Riverside House
  Milverton Hill
  Leamington Spa
  CV32 5QH

Appendix 1
Enforcement Case Priorities

Priority 1: Matters which will be investigated immediately.

- Alleged unauthorised demolition or alteration of Listed Buildings.
- Alleged unauthorised demolition or alteration of buildings in Conservation Areas.
- Alleged unauthorised works to trees protected by a Tree Preservation Order or within a Conservation Area.
- Alleged unauthorised removal of protected hedgerows.
- Other alleged breaches of planning control which by reason of their nature or extent require urgent investigation.

Priority 2: Matters which will be investigated as a priority.

- Other alleged harmful unauthorised works effecting Listed Buildings or in Conservation areas including the display of advertisements.
- Alleged unauthorised activities including:-

    - Building or other works;
    - Changes of use of land or buildings;
    - Variations of planning permissions;
    - Breaches of conditions:

  which do not accord with planning policies; cause significant planning harm or are seriously detrimental to visual or residential amenity or highway safety.

- The alleged poor condition of land or buildings which seriously impacts upon the visual amenities of the surrounding area.

Priority 3: Matters which will be investigated as resources permit.

- Other alleged building works, including works of a minor nature, for example small domestic structures such as sheds and greenhouses; boundary structures; satellite dishes.
- Other alleged changes of use of land and buildings.
- Other alleged variations of planning permissions and breaches of conditions.
- The alleged display of other advertisements.

Priority 4: Matters which will not usually be investigated.

- In certain circumstance anonymous complaints.
- Issues within the adopted highway including advertisements: notifiers will be directed to the Highways Team at Warwickshire County Council.
- Repeat complaints concerning matters which have previously been concluded.

Appendix 2
Target Timescales

SERVICE STANDARD	STANDARD TARGET
Acknowledge allegation within 3 days.	100%
Where a site visit is necessary, to conduct the visit within the priority timescale. (see footnote)3	85%
Following a site visit the notifier will be contacted within 5 working days	85%
Close file within 15 working days where there is no breach of planning control and inform the notifier.	85%
Close file within 20 working days where there is a breach of planning control but it is not expedient to take action and inform the notifier.	80%
Where a breach is established and it is necessary to take action, action will be taken within 25 working days . The notifier to be updated of the Councils decision to take action.	75%
Where legal action is proposed, the relevant papers will be provided to Legal Services within 20 working days and the notifier informed of the decision.	80%
High Hedge applications will be acknowledged within 3 working days.	100%
High Hedge application decisions will be made within 12 weeks following the date of the site survey.	100%

3 Site inspections

Priority 1- These matters will be investigated immediately or as soon as practicable.

Priority 2- Within 5 working days

Priority 3- Within 7 working days

Priority 4- Within 10 working days