

PLANNING ENFORCEMENT AT DORSET COUNCIL – GUIDANCE NOTE FOR TOWN AND PARISH COUNCILS

1. Background to the role and purpose of planning enforcement

1.1 Development is defined in planning law¹ as the carrying out of any building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. All development requires planning permission, although for some more minor or less consequential development, there are certain permitted development rights for which planning permission is in effect granted without requiring a planning application. Such rights are normally granted via the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or the Use Classes Order. Under these Orders, the Secretary of State grants planning permission for different types of development in specified circumstances. Development not covered by the provisions of permitted rights requires express planning permission via a formal application to the Local Planning Authority (LPA).

1.2 A breach of planning control² is defined as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, also constitutes a breach of planning control.

1.3 Enforcement has an important role to play in the planning system to prevent or remedy unauthorised development in cases where such development would cause demonstrable harm to interests of acknowledged importance. It also helps to create the necessary incentive for developers to secure the appropriate consents before carrying out development. However, it is important to recognise the following often misunderstood factors:

- i. Enforcement is discretionary and LPAs are not compelled to take action even if development has taken place that requires permission. However, the absence of enforcement action can increase the risk of future breaches, is politically sensitive, and can expose local planning authorities to complaints (which may end up with investigations by the Local Government and Social Care Ombudsman).

¹ Section 55 of the Town and Country Planning Act 1990 (as amended)

² Section 171A of the Town and Country Planning Act (as amended)

- ii. Carrying out development without the benefit of planning permission is not generally a criminal offence (although some enforcement situations can involve criminal offences – see para. 5.1), but is done so at the risk of potential enforcement action.
- iii. There are many activities that do not require planning permission. Such matters can often be sensitive, such as neighbour disputes over a boundary between properties, but these are not the responsibility of planning enforcement.
- iv. Enforcement is not generally a quick fix due to the complexities involved, and should not interfere with matters which are controlled by other legislation.
- v. Internal alterations to a property that is not a Listed Building do not generally require permission (unless associated with a change of use), but they may require building regulations approval which is entirely separate from planning legislation.

2. Expediency of Action

- 2.1 LPAs have a responsibility for taking whatever enforcement action may be necessary in the public interest. In exercising these powers, the LPA should act in a proportionate way when it is considered expedient to do so. This is an important principle, as it may not always be expedient to take formal action, for instance when what is taking place is highly likely to get planning approval or is of such minor consequence that it would not cause any significant harm. In such cases the developer would be encouraged to apply for permission but if they failed to do so formal enforcement action would not necessarily be expedient, because the enforcement process is designed to remedy a breach to achieve an acceptable outcome and no changes may be needed if what has happened is in accordance with the development plan and causes no significant material harm.
- 2.2 Unauthorised development risks enforcement action being taken which may require the breach to be remedied, potentially at significant cost to the owner. Even if no action is taken, the absence of a planning permission could have a bearing upon the owner's ability to sell their property, or possibly even their buildings insurance.
- 2.3 In considering whether or not it is expedient to take action, the LPA would take account of:
 - i. The adopted development plan (including minerals and waste plans and neighbourhood plans)
 - ii. National planning guidance including the NPPF
 - iii. Other material planning considerations. These have to be something that is relevant to planning and would not include matters that are outside of the scope of planning control.

2.4 The question would then follow as to what is proportionate or appropriate. This will vary from case to case and might range from direct and immediate intervention, such as a stop notice, to more informal approaches inviting the developer to regularise the development via a planning application (or other such as Listed Building Consent). The approach needs to be reasonable and procedurally sound in law. Otherwise the LPA can be liable for costs in the case of an appeal or may have to pay compensation in the event of a stop notice being served unreasonably. Taking the example of a stop notice, this would only be used sparingly where other options are not possible to remedy the situation. They should only be used to prohibit what is essential to safeguard amenity or public safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area. Far more common is to use tactics of communication and negotiation to secure an acceptable and regularised outcome without recourse to formal action. This is the intention of Government guidance in seeking a proportionate approach.

3. Summary of enforcement process

3.1 The following paragraphs are intended as guidance only, but hopefully it provides a useful indication of the process we follow in deciding on whether or not it is appropriate to take enforcement action.

a) A concern about possible unauthorised development should be reported on Dorset Council's [enforcement website portal](#). This could be about:

- building works
- how land or buildings are used
- works to listed buildings
- protected trees
- the erection of adverts
- the use of land for waste disposal
- buildings, plant or machinery for refuse or waste materials
- the site not meeting the conditions attached to a planning permission
- an issue relating to a quarry/mine

We cannot take action if:

- The development does not need express planning permission (e.g. it is permitted development)
- It is not development as defined in planning legislation. This would include anything that is:
 - Controlled by other legislation (such as building regulations or environmental health)
 - It is a traffic management issue such as illegal parking on double yellow lines
 - It is a private dispute for example over land ownership or the position of a boundary fence
 - The development is not causing any harm or unacceptable impacts

- b) An alleged breach will be investigated if it appears likely that it might cause significant harm either to the environment or community.
- c) We do not always take formal enforcement action. If the issue is not considered to be harmful to the environment or community, the investigation may be closed and no further action taken.
- d) If we find an issue, we may not be able to stop or reverse the situation straight away. We usually try and negotiate a solution. This lets the people responsible have a chance to sort the issue. This may mean we:
 - suggest they make a retrospective application if the development has a prospect of getting planning permission (retrospective applications will be treated in the same way as any other application and it is at the developer's risk). If refused, the developer may appeal against the refusal. If the appeal is dismissed, the site should be remedied or it is at risk of enforcement action.
 - take formal action and serve notices to remove / stop works or cease any use. The people responsible can appeal against the formal action. If there is an appeal, we will usually wait for a decision to be issued and then take further action as it is needed.

It is rare that planning enforcement can deliver an immediate resolution through direct action as there is a legal right for the developer to apply retrospectively for planning permission and to appeal either a refusal of permission or an enforcement notice. It usually takes time to find a resolution which must be proportionate and only seek to remedy unacceptable impacts.

Dorset Council's [Enforcement Plan](#) sets out how we deal with enforcement.