

**North Warwickshire
Borough Council**



Planning Enforcement Policy Statement

December 2010

1. INTRODUCTION

1.1 The Council first adopted an Enforcement Policy in September 2001. This explained:

- ❖ what planning enforcement is about,
- ❖ what the general standards of our service would be,
- ❖ what considerations the Council would take into account when operating this function, and
- ❖ what performance and monitoring criteria would be used.

1.2 This 2010 version brings the Policy up to date.

1.3 Government has given responsibility for dealing with unauthorised development and the Enforcement of the Planning Acts to Local Planning Authorities. In most cases, the decision whether or not to take action rests with the Council. It does not always have to take action, as enforcement is a discretionary power. The decision will rest on the particular circumstances of each case. The policy and practice contained in this document outlines how this discretion will usually operate, within the resources that are available.

1.4 The Council is a signatory of the Enforcement Concordat. This is a National Code of Practice which the Government recommends is adopted by Local Authorities. It sets out standards of good enforcement practice across all of the regulatory activity, that is the responsibility of Local Authorities. The Policy outlined in this document commits investigation and enforcement action on planning matters taken in North Warwickshire to these principles, which are:

- ❖ Openness of approach
- ❖ Fair and equal treatment of all parties
- ❖ Proportionate action
- ❖ Consistency of action
- ❖ Monitoring performance against agreed standards
- ❖ Having a complaints procedure in place.

1.5 A summary of the Policy can be found after the Introduction.

1.6 For the avoidance of doubt, reference to planning enforcement and the Planning Acts in this document relates to current legislation under: -

- ❖ The Town and Country Planning Act 1990 (as amended)
- ❖ The Planning and Compensation Act 1991
- ❖ The Planning and Compulsory Purchase Act 2004
- ❖ The Planning Act 2008

- ❖ The Town and Country Planning (Listed Building and Conservation Areas) Act 1990.
- ❖ The Town and Country Planning (Hazardous Substances) Act 1990.
- ❖ The Town and Country Planning (Control of Advertisements) Regulations 2007.

The discretion on whether or not to issue an enforcement notice is contained in Section 172 of the 1990 Planning Act (as amended), and Section 38 of the Listed Buildings Act.

Details of legislation can be accessed through various sources which include at a local library, by on-line using web-sites such as www.northwarks.gov.uk and using the links from this website or by using the web-sites: www.rtpi.org.uk, www.communities.gov.uk or www.opsi.gov.uk.

- 1.7 The European Convention of Human Rights confers rights which are embodied in the Human Rights Act 1998. It is unlawful for North Warwickshire Borough Council or a public authority to act in a way which is incompatible with a Convention right.
- 1.8 Rights under this Act may in certain circumstances require positive action to ensure protection. An infringement of human rights may also arise from an omission to act in appropriate cases rather than from the acts themselves. A failure to act may leave the authority open to a claim under the Act.
- 1.9 So far as it is possible to do so, interpretation of the powers contained in the Planning Acts must be given effect to be compatible with the Human Rights Act. There may be cases where human rights issues could become an overriding consideration in a decision to initiate enforcement action. The procedures outlined in this document will have regard to this factor at all appropriate stages.

2. THE COUNCIL'S POLICY

2.1 The Council recognises the importance of establishing effective controls over unauthorised development in order;

- ❖ not to undermine the Development Plan for North Warwickshire,
- ❖ to ensure that changes to our environment are appropriate, and
- ❖ to remedy the undesirable effects of such developments so achieving the outcomes set out in the Council's Corporate Priorities.

2.2 In operating this service the Council will:

- ❖ act in accordance with the principles of the Enforcement Concordat;
- ❖ consider the Development Plan, and other material considerations in accordance with Section 38 of The Planning and Compulsory Purchase Act 2004; and,
- ❖ consider the implications of the Human Rights Act 1998.

2.3 The investigation of breaches of planning control will:

- ❖ ensure that when an enquiry meets the criteria set out in this policy this enquiry will be registered, and that action will be taken to initiate an investigation;
- ❖ assess each case to determine whether or not there has been a breach of control;
- ❖ lead to a report being taken to either Local Members, the Chair and Vice Chair of the Planning and Development Board or to the Planning and Development Board if a breach has been identified;
- ❖ ensure that the Members are fully aware of all of the aspects and considerations in the case such that it can take a decision on whether or not it is expedient to take formal action in the public interest.
- ❖ Pursue matters in the Courts, if appropriate, when the case requires resolution.

2.4 Our performance will be measured by the following indicators:

a) Efficiency

- ❖ To investigate all registered complaints on the basis of the approach set out in the "Priorities for Action" list in which for high priority cases a site visit is made within one working day of receipt of the complaint; medium priority cases a site visit is made within seven working days of receipt of the complaint; and, low priority cases a site visit is made within fourteen working days of receipt of the complaint.

- ❖ To notify all complainants either in writing or by telephone of the outcome of their complaint and provide a full explanation of the case within seven days of the matter being resolved.

b) Effectiveness

- ❖ To determine whether there is a breach of planning control or not in 65% of cases within 21 days.
- ❖ To aim to have all conditions discharged at the appropriate time.
- ❖ To serve all Notices within eight weeks of the Assistant Chief Executive and Solicitor to the Council or the Board's decision to do so.

c) Monitoring

- ❖ To report performance against Indicators to the Board on an annual basis.
- ❖ This Policy will be reviewed in December 2012.

3. PROCEDURES FOR REGISTRATION AND INVESTIGATING AN ALLEGED BREACH OF PLANNING CONTROL

Registration of the Complaint

- 3.1 Complaints will generally only be investigated if provided, or subsequently confirmed, in writing by letter or e-mail. The complaint will need to detail:
- The precise location of the site or property which the complaint relates;
 - The nature of the breach of planning control occurring;
 - An indication of the harm that is arising; and,
 - If possible, the identity of the person/organisation responsible and the date and/or time the breach began or is occurring.
- 3.2 Such confirmation allows the harm to be more readily assessed and action is more likely to be effective if comprehensive and tangible evidence is available from the outset. Exceptions to this will be where detail genuinely cannot be provided or the harm is considered to be such as to warrant urgent investigation.
- 3.3 Complaints will only be acted upon if they are motivated by planning harm. A number of complaints can be malicious or motivated by neighbour or business disputes which have nothing to do with planning. The pursuit of such complaints not only diverts resources away from serious breaches of planning control but also can give rise to serious harm and may even infringe human rights. If there is evidence that such issues motivate a complaint it will not be registered or pursued. Anonymous complaints will also not normally be registered or investigated. The discretion to register and investigate a complaint will be based on the professional opinion of a Chartered Town Planner or equivalent.
- 3.4 Once a complaint has been registered, the Senior Enforcement Planner will allocate a Case Officer. The acknowledgement will identify the Case Officer's name and contact details. All complaints will be treated in confidence. Unless required by law, the Council will not reveal the source of complaints, although complainants will be advised that in the event of formal action in the Courts or at a public inquiry, the production of their evidence in person is more likely to secure a successful outcome.
- 3.5 The Registration of an enquiry will be recorded on the planning site history of that address, and other Divisions notified where appropriate.

4. THE INVESTIGATION

4.1 Despite measures to improve the way that the Service is provided, it will never be able to meet everyone's expectations. The investigation of breaches of planning control will therefore need to be prioritised in order to make the most efficient use of available resources to reflect both the nature of the alleged breach; the ongoing work commitment and the Service's commitment to securing results. In order to assist the prioritisation of the overall workload, the following list of "Priorities for Action" indicates how the various types of enforcement issues will be ranked and how the available resources will be subsequently be allocated. All registered complaints will be investigated on the basis of the approach set out. Where delays may be involved, complainants will normally be advised.

a) Priorities for Action

4.2 High Priority Cases

- 1) Ongoing Court or Appeal Proceedings against a breach of planning control;
- 2) New complaints of serious irreparable harm which includes:
 - Unauthorised works involving Listed Buildings or demolition of buildings within Conservation Areas;
 - Unauthorised works to protected trees (Tree Preservation Orders or the felling of trees within a Conservation Area)
 - A wholly incompatible large-scale use.
- 3) Cases where immediate action is likely to safeguard significant potential impact.

Medium Priority Cases

- 1) Ongoing breaches of an effective Enforcement Notice.
- 2) New complaints of serious harm (not classed as high priority cases) to the amenities of a neighbourhood, or where the openness of the countryside, or the rural character of the Borough is seriously threatened.

Low Priority Cases

- 1) Ongoing investigations where no harm has been identified or minor harm is reparable.
- 2) All other new complaints.

b) Timescales for Dealing with Complaints

4.3 All planning enforcement work will be carried out to the following timescales:

High Priority Cases – A site visit will be made within one working day of receipt of the complaint and contact with the site owner will be attempted within one working day of that site visit.

Medium Priority Cases – A site visit will be made within seven working days of receipt of the complaint and contact with the site owner will be attempted within two working days of that site visit.

Low Priority Cases – A site visit will be carried out within fourteen working days of receipt of the complaint at a pre-arranged time and date as arranged with the site owner or occupier.

4.4 All complainants will be notified of the outcome of the site visit within five working days of the site visit. Complainants will be kept fully updated of progress as the investigation develops.

4.5 All complainants will be notified either in writing or by telephone of the outcome of their complaint and a full explanation provided within seven days of the matter being resolved.

c) Site Visits

4.6 Right of Entry

Section 196A of the Town and Country Planning Act 1990, as amended, provides authorised officers of the Council with rights of entry, at any reasonable hour, to enter land to ascertain whether there has been a breach of planning control; to exercise powers available to them in relation to the breach, and to check for compliance with any requirements imposed. Rights of access to a dwelling house can not be demanded without giving twenty four hours notice of the intended entry. Further rights under Section 196B exist for the Council to seek permission from the Courts to gain entry with a warrant. There are penalties in law for obstructing the lawful entry of authorised officers.

4.7 General Approach

Notwithstanding the Regulations referred to above, the Council's general approach will be proportionate to the nature of the allegation, and the following general principles will apply:

- Notice will generally be given for initial site visits, either in writing or through other forms of communication. In the case of high priority cases that require immediate site visits, no prior notice will be given. Notice of subsequent visits will depend on the circumstances of each case.
- There is a presumption that officers will inspect sites. Officers will proceed with caution if no one is present on site – particularly at residential sites. Their judgement will depend amongst other things, on the nature and priority of the case; the risks to officers, and the site history.
- Officers will not place themselves at risk.
- Officers will carry up to date identity cards and authorised officer cards to show if requested.
- Officers will act in accordance with the Council's Child Protection Policy if any children are present on site at the time of the visit.

- Alternatives to site visits, whether in conjunction with an agreed visit or when an agreed visit has not been possible, are appropriate. These could include viewing the site from public land, or, with the agreement of the complainant, from their property. However, if in these circumstances, it can be shown that the allegation is verified, attempts will be made to contact the owner/occupier of the site, to inform him of the allegation and to establish his response. If contact is not to be made, that would only be after seeking legal advice from the Solicitor to the Council.

d) Establishing that a Breach has Occurred

- 4.8 It has to be decided whether or not a breach of planning control has actually occurred. If it has not, then the matter is resolved from a planning point of view. It may however, also be referred to another Division or Agency. A case can remain open, or “on hold”, and can be re-opened if fresh evidence becomes available.
- 4.9 In deciding if a breach has occurred or not, officers will look at:
- ❖ whether the breach is in fact, “development”, as defined by the Planning Act. If it is not, then there can be no remit to pursue action under planning legislation.
 - ❖ where “development” has occurred, then it will be necessary to determine whether or not permission already exists. This can be a permission granted by the Council following the submission of an application; a permission granted by a Development Order made by the Government – i.e. “permitted development”, or a Certificate indicating that the development is “lawful”.
 - ❖ whether the Council is time-barred from taking action.
- 4.10 To assist in the assessment, the officer will want to know:
- ❖ the planning history of the site;
 - ❖ the factual evidence available from the site itself, and the actual activity that occurs;
 - ❖ what evidence the complainant has available, and
 - ❖ what other evidence is available from the Council’s own records or other Agencies about the site and its use.
- 4.11 This assessment is a key factor in determining whether or not the Council is likely to pursue the matter to formal enforcement action. It can be factual – e.g. physical measurement, or witnessing a clear factual breach of a condition. However, often the assessment will be a matter of professional judgement e.g. is a use a “material” change of use involved? In these instances, the collation of evidence and the nature of that evidence will be particularly important.
- 4.12 The Case Officer will maintain a written record within the Enforcement file of all conversations, correspondence and contact with persons involved in the case. Accurate written records of the recordings of the site visits will be kept on the file. These records should include details of the nature of contact, date, time and content. It is important that when other officers deal with matters relating to ongoing investigation that they provide complete details for the file. These records are

essential should a prosecution ultimately be necessary so as to comply with the requirements for disclosure of evidence.

- 4.13 Once the initial visit has been undertaken, it should normally be possible for an initial assessment to be made as to whether or not “development” is involved, and if so, whether there is likely to have been a breach of planning control. If the investigation at this stage reveals that there is no development and other Divisions or parties are not involved, or that there is no breach of planning control, then the matter will be recorded on file, counter signed by the Senior Enforcement Planner or Principal Planning Control Officer and the complainant notified. The matter will then be treated as resolved and the case will be closed. The file will contain the assessment as to why the decision was reached that there was no breach.
- 4.14 If the case remains unresolved, before the expiration of the 21 days period, then the Case Officer will write to the enquirer explaining what the current position is, and will have indicated to either the Principal Planning Control Officer or the Senior Enforcement Planner what level of resources may be necessary to pursue the case.
- 4.15 Additional research, and the collection of additional information and evidence will continue commensurate with the nature of the case. Regular reviews will be set up to assess the situation. If there is still insufficient information on which to base an assessment as to whether or not there has been a breach of planning control, a decision will have to be taken by the Principal Planning Control Officer in consultation with legal officers, whether or not to put the case on “hold” or to close the case. In these circumstances the enquirer and other parties will be notified.
- 4.16 Following investigation of a complaint the persons responsible for such breaches will be informed of a possible course of action to correct such a breach and the time period over which this course of action should take place. They will also be informed of the implications of failing to comply with the Authority’s advice.

5. THE DECISION WHETHER OR NOT TO PURSUE ENFORCEMENT ACTION

5.1 Following on from the initial investigations, a series of different breaches may be identified and these include:

- i) If the breach of planning control appears to be in accordance with Policies in the Development Plan then the Council will usually invite a “retrospective” application for planning permission or advertisement consent to be submitted within six weeks of the date of the letter from the Site Investigation Officer following the initial site visit.
- ii) If the breach is immune from enforcement action due to the time period in which it has been occurring and so the Council appears to be time-barred from taking action then an application for a Lawful Development Certificate will be invited to be submitted within six weeks of the date of the letter from the Case Officer following the initial site visit.
- iii) If the breach is a minor breach of planning control with no significant effects then the scheme of delegation on the decision as to whether it is expedient to take enforcement action will be followed. As a consequence the Case Officer will contact the Members of the Ward in which the breach is occurring along with the Chair and Vice-Chair of the Planning and Development Board. This contact will be made via an e-mail containing details of the breach and the reasons why it is considered to be a minor breach with no significant effects. The Members will be given a time period of one week to either agree with the decision to remain a delegated decision by the Head of Development Control or to make a request in writing for the breach to be reported to the Planning and Development Board for a decision to be made. If the breach is to be reported to the Board then the report will be prepared by the Senior Enforcement Planner in conjunction with the Case Officer.
- iv) If the breach relates to a breach of a condition imposed on a valid planning consent then the scheme of delegation on the decision as to whether it is expedient to take enforcement action by the serving of a breach of conditions notice will be the same procedure as outlined above under the minor breach of planning control in that contact will first be made with Local Ward Members, and the Chair and Vice Chair of the Planning and Development Board for authorisation to commence enforcement action.
- v) If the breach conflicts with the Policies in the Development Plan then a retrospective planning application will not normally be encouraged. Instead the Council will seek for the use to cease or unauthorised development to be removed, voluntarily. A suitable period of time will be given and will be confirmed in writing with the site owner and/or occupier. The time period allowed will be assessed for each individual case and will take into account the complexities of removing the breach. The site will be monitored during this time period by the Case Officer.
- vi) As a last resort a formal enforcement notice will be issued. The decision to serve an Enforcement Notice is a discretionary decision made on a case-by-case basis. The Council must be able to justify taking formal action and be sure that the steps specified in the notice and the period for compliance with each step, are reasonable. Thus the decision to take further action must be proportional to the level of harm involved and that, taking relevant

circumstances into account, it must be expedient and necessary to do so. The decision as to whether it is expedient and proportional to serve an Enforcement Notice rests with Members of the Council's Planning and Development Board. The aim will be to report the breach of control to the Planning and Development Board within eight weeks of the date that it is established that a breach has occurred.

- vii) If a retrospective application is made then that application will be dealt with as a normal planning application. If the application is to be reported to Board then the Planning Officer's report will include, within the assessment, arguments related to the expediency or otherwise in the service of an Enforcement Notice if the recommendation is one of refusal. If the application is a delegated item under the scheme of delegation and so does not have to be reported to the Planning and Development Board but instead can be determined by the Head of Development Control then the following will apply. The Planning Case Officer will contact the Members of the Ward in which the application relates along with the Chair and Vice-Chair of the Planning and Development Board. This contact will be made via an e-mail containing details of the planning application and the reasons why it is considered to be necessary to refuse the application and take enforcement action. The assessment will refer to the Development Plan, to the impact of the unauthorised development, and to the consequences of taking enforcement action in line with Government advice and guidance. The Members will be given a time period of one week to either agree with the decision to remain a delegated decision or to make a request in writing for the breach to be reported to the Planning and Development Board for a decision to be made. If the application is to be reported to the Board then the report will be prepared by the Planning Case Officer. If the decision to refuse planning permission and take enforcement action remains a delegated item then the Planning Case Officer will arrange for a letter to be sent with the refusal notice. The letter will explain to the applicant that a decision has been made by Members to commence enforcement proceedings and so the file will be passed to the Senior Enforcement Planner to commence proceedings. The letter will encourage the applicant to make contact with the Senior Enforcement Planner on the possibility of remedying the breach voluntarily.
- viii) In the case where no application is submitted, then the Principal Planning Control Officer or the Senior Enforcement Planner will report to Board using the same approach to the report as that used if an application had been submitted. If necessary and appropriate, consultation will have been undertaken as part of the investigation, and the Parish Council will also be invited to comment. The assessment will refer to the Development Plan, to the impact of the unauthorised development, and to the consequences of taking enforcement action in line with Government advice and guidance.

5.2 In line with the Enforcement Concordat, so that the Board can fully assess the need for action, the report will not only fairly and openly outline the impact of that action on the person with an interest in the land but also other parties involved. For instance, action could result in the closure of a business, considerable expenditure, the loss of employment etc. These need to be identified. Hence in addition to the normal content of the report, where appropriate it will make reference to the following items:

- ❖ An explanation as to why enforcement action is recommended as opposed to action by another agency.

- ❖ The reasons why a negotiated conditional permission could not be granted retrospectively.
- ❖ The reason why enforcement action is seen as the last resort.
- ❖ The specific requirements that are needed to remedy the breach.
- ❖ The time period for compliance with these requirements.
- ❖ An assessment of the consequence of compliance with the requirements of the Notice, particularly in terms of the impact on a business, or employment and perhaps on personal circumstances.
- ❖ An assessment of how the Council could assist in the mitigation of these impacts through its other services.
- ❖ Financial; crime and disorder; legal and human rights and sustainability implications.

5.3 The complainant will be informed of the assessment, and will be invited to make representations. If none are received, then the content and nature of the original enquiry will be provided. All parties will be notified of the outcome, together with an explanation as to why the decision was taken. Appeal procedures will be outlined too. The Board report will normally be within Part II of the Board agenda, from which the public and press are excluded. If the Board resolves that it is expedient to commence enforcement action, then the Officer's report will become a background paper available to the public, provided that it does not contain matters that are "exceptions" under the Freedom of Information Act.

6. FURTHER ACTION

6.1 Further action will depend upon the response to the service of any Notice, and the legal remedies open to the Council should the requirements not be complied with. The initial report to the Planning and Development Board on the alleged breach of planning control will usually seek authorisation to commence legal proceedings should the subsequent Notices not be complied with. If the matter is to be pursued in the Courts, which would incur excessive costs, then a further report may be required to the Board. This report will be brought forward on the agenda where:

- ❖ there has been a clear and unambiguous breach of a Notice:
- ❖ the continuation of the breach can be shown to have a detrimental impact on the environment;
- ❖ the continuation of the breach presents a clear threat to the integrity of Development Plan policy;
- ❖ sound evidence is available, to the satisfaction of the Solicitor to the Council that shows that the offence has been committed, beyond reasonable doubt.

6.2 In this way it is anticipated that the Council will have a sound case to put to the Courts, with the maximum chance of success. If further research or evidence is required, the Board can be informed through progress reports if the item is particularly time consuming or complex. Such additional material will only be sought based on the advice of the Solicitor to the Council.

7. OTHER ENFORCEMENT POWERS

7.1 Planning Contravention Notice – The Head of Development Control has delegated powers to issue this type of Notice where there is a requirement for the Council to gather information to establish whether there has been a breach of planning control or information about ownerships.

7.2 Stop Notice – When an Enforcement Notice is served, the Local Planning Authority has the powers to serve a Stop Notice to cease any unauthorised activity stated within the Enforcement Notice. The Stop Notice can require the breach of planning control to cease almost immediately after it is served. This power can result in potential financial implications to the Council if compensation has to be paid out.

7.3 Temporary Stop Notices – Section 52 of the Planning and Compulsory Purchase Act 2004 gives local planning authorities power to issue a temporary stop notice to require the immediate cessation of a breach of planning control for a limited period of 28 days. Guidance on the temporary stop notice provisions is provided in the Temporary Stop Notice Circular 02/2005.

7.4 Injunction – An Injunction is an Order of the County Court or High Court that the Court can make as it thinks appropriate to restrain an actual or anticipated breach of planning control. An application will be made to the relevant Court by the Council if it is considered a proportionate action based on the actual or anticipated breach involving serious irreparable harm.

7.5 Section 215 Notice – A Section 215 notice can be used to remedy untidy land or buildings where it is considered to be detrimental to visual amenity.

7.6 Unauthorised Advertisements – Criminal proceedings may be taken where signage is displayed without consent and where the signage is considered to be detrimental to visual amenity. A fixed penalty notice can also be issued on unauthorised advertisements requiring the offender to pay a fine of £50 to the Local Planning Authority.

8. MONITORING OF CONDITIONS

8.1 The monitoring of conditions can be divided into three areas – pre-construction/implementation, during implementation, and following completion. In the first two areas it is the responsibility of the Planning Case Officer to deal with monitoring and compliance with conditions. Once the development is implemented, it is far more likely that conditions monitoring will arise as a result of a complaint that an on-going restrictive condition is not being complied with, e.g. hours of working. In these circumstances the procedure will follow that outlined in the previous sections, with the Site Investigation Officers taking responsibility for the monitoring of the condition. This section deals more particularly with procedures in the former two areas.

8.2 Monitoring of conditions prior to the commencement of development will normally be checked to ensure that all details or matters that have been reserved for approval prior to commencement have in fact been agreed. However, the commencement date and implementation is in the control of the developer and thus often it is only when work commences that conditions are checked. The Planning Case Officers for an application will be asked to promote a series of “prompt” letters at regular intervals post determination in order to gain information on a start date, and to act as a reminder to the developer. All details submitted and approved will be recorded on the planning file. A conditions monitoring sheet can be placed on the file in order to act as an aide memoir and as a quality control.

8.3 In cases where the Council is the regulatory Authority for the Building Regulations, the current practice can continue. Here, formal notice of commencement schedules are circulated throughout the Development Control Section arising from Building Control notices. Planning Case Officers will at this stage check the conditions for each commencement and take appropriate action to check outstanding and relevant conditions. Where the Regulatory Authority is an Approved Inspector, then the Case Officer will be more reliant on the ‘prompt’ letter referred to above. Building Control Officers however can still provide a valuable link as to what is happening on the ground.

8.4 On completion, it will be the responsibility of the Planning Case Officer to request that the Site Investigation Officers check the monitoring of those conditions which the Case Officer considers are at the heart of the planning consent. In certain cases, these inspections will be joint visits with the Case Officer and the Site Investigation Officer.

9. MEASUREMENTS OF QUALITY OF SERVICE DELIVERY THROUGH PERFORMANCE DELIVERY

a) Introduction

9.1 In order to monitor the performance of the service against the Policy and procedures outlined here it is necessary to identify a series of Local Performance Indicators. At this stage it is important to realise that the number of Notices served may not be the most effective measure of how good an enforcement policy or service is – particularly if it is an automatic response to an enquiry and results in appeals and Court action where cases are lost. The service of a Notice is not a result in itself. In line with Government advice, the true measure of the quality of the service will revolve around the number of cases actually resolved without the need for a Notice, and the effectiveness and openness of the procedures involved.

b) Performance

9.2 The background to the regime outlined in this document suggests that performance indicators akin to those in dealing with planning applications would be inappropriate. The indicators outlined below reflect the nature of the service described.

i) *Prior to the Service of any Notice*

- ❖ Establishing whether there is a breach of planning control in 65% of the enquiries within 21 days of registration.
- ❖ Board reports on breaches of control to contain all of the relevant material identified in this Document, and
- ❖ Ensure that the initial complainant is kept informed of progress at all relevant stages.

ii) *The Service of the Notice*

- ❖ Ensure that the Board's resolution in respect of the service of any Notice is actioned within 8 weeks of the date of that resolution.

iii) *Following the Service of the Notice*

- ❖ Provide regular progress reports on longstanding cases.
- ❖ Report all Notices served under Emergency powers to the next available Board meeting.

iv) *Additional Indicators*

9.3 It is the Council's intention to extend the Performance Indicators to look at the proactive role of the service. An additional set of Performance Indicators could include:

- the number of cases that are resolved through negotiation;
- the voluntary alteration or change to an activity or a development;
- income generated through retrospective planning applications.

c) Monitoring

9.4 An annual report will be taken to the Planning and Development Board.

d) Complaints Procedure

9.5 The Council has a Corporate Complaints Procedure if any individual is not satisfied with the service delivered by the Council. It is not proposed to introduce a separate set of procedures to apply only to the Development Control service and its delivery of the enforcement function. The Corporate Policy will provide this. Monitoring of this procedure is reported annually to the Scrutiny Board.

e) Data Protection Act

9.6 Register of Enforcement and Stop Notices -
Under the terms of the Planning Act 1990 a public register is kept in the Legal Services Department of the Council of all Enforcement Notices served by the Local Planning Authority. These Notices can be viewed at the Council Offices.

9.7 All other information kept on Enforcement files is exempt from public inspection under the Freedom of Information Act 2000 as it is a Data Protection issue and so it falls under the Data Protection Act 1998. Section 31 provides an exemption in relation to regulatory activity, where it can be demonstrated that the disclosure would prejudice the "proper discharge of those functions".

10. CONCLUSIONS

10.1 North Warwickshire Borough Council is committed to a planning enforcement service that is credible, efficient and responsive within the existing resources committed. The performance of the enforcement service is continuously monitored with a view to updating policies and procedures in line with changing legislation and guidance and with the Service Plan of the Development Control Service. The decision to take action is based on proportionality and expediency criteria.

10.2 The Development Control Service aims to provide a high level of customer service. However, members of the public have the opportunity to seek independent professional planning advice such as contacting Planning Aid (West Midlands) via www.rtpi.org.uk or by seeking independent legal or planning advice. In the event that a member of the public is unhappy about the way in which an enforcement matter has been dealt with, the Principal Planning Control Officer will be able to discuss the case in more detail and hopefully resolve any issues. Alternatively, the Borough Council's complaints procedure is available (Tel: 01827 715341).

APPENDIX A

BACKGROUND TO UNAUTHORISED DEVELOPMENT AND ENFORCEMENT

A.1 This section looks at enforcement in summary, particularly concentrating on what the legislation actually says, and how Government recommends that Councils should handle enforcement activity. It is important to understand this background, as it impacts on the Council's approach to the matter. It must be understood from the outset that generally it is not illegal to carry out development, which would require permission under the Planning Acts, but that there is a risk for anyone doing so.

a) What is Enforcement?

A.2 The two key aspects involve:

- ❖ Investigating alleged breaches of planning control – ie development, such as building work and material changes of use, that has occurred without the benefit of an appropriate permission; and the
- ❖ Monitoring of permissions that are granted, to ensure that the development proceeds as the Council intended, when it granted the permission. This monitoring can take place before, during and after the permission is taken up.

A.3 The Council provides this service in order to:

- ❖ remedy the undesirable effects of unauthorised development;
- ❖ bring unauthorised activity under control so that the credibility of the planning system, and particularly the Development Plan, is not undermined;
- ❖ ensure that changes to our environment are appropriate, and of high quality in accordance with the standards to be expected from the Development Plan.

b) What Does the Legislation Allow Us To Do?

A.4 The most important point to make from the outset is that enforcement action is not automatic if a breach occurs. The Council has discretion as to whether or not to pursue such action. In other words, it is not illegal, nor is it a criminal offence to carry out development without first obtaining the appropriate permission. It is only illegal in four cases:

- ❖ the display of an Advertisement without Consent;
- ❖ making alterations to a Listed Building without Consent, and
- ❖ undertaking works to a Tree protected by an Order without Consent;
- ❖ undertaking works to trees in a Conservation Area.

Even in these cases the Council can decide whether or not to bring a prosecution.

A.5 The 1990 Planning Act allows retrospective planning applications to be made to the Council, in order to retain works already carried out, or to continue without compliance with a condition attached to a permission.

A.6 Whilst the enforcement power is discretionary, there is some guidance within the legislation to help us exercise that discretion:

- ❖ Action should only be pursued when it is “expedient” to do so in the public interest;
- ❖ when there is material harm to public amenity; and
- ❖ bearing in mind the Development Plan and Government Guidance.

A.7 Much of the legislation is amplified in Government guidance and advice. This presently appears in Circular 10/97, and in Planning Policy Guidance Note Number 18. Some key aspects are:

- ❖ Action should not be taken against technical or trivial breaches;
- ❖ It has to be proportionate to the breach, or its impact, and
- ❖ It should be seen as a last resort.
- ❖ Importantly, it may well be that other agencies, or other legislation provides the most appropriate means of remedying a breach.

A.8 Very often, the public expect the Council to enforce immediately whenever there is a breach of planning control, particularly where permission has not been granted and work has commenced. It may not be appropriate in all cases to take action. The Council is unlikely to pursue enforcement action if the sole reason for doing so is that permission does not exist.

c) How Will the Council Use Its Discretion?

A.9 The Council has to consider whether or not it is “expedient” to proceed enforcement action. To do so requires a thorough assessment of the relevant facts of each and every case. The Council’s decision has to be well founded.

A.10 The Council will give particular weight towards taking enforcement action in cases where:

- ❖ there is a hazard or serious harm to public safety and health;
- ❖ there is material harm to public amenity, or where there could be immediate or irreversible harm to the locality – this could be visual harm, as well as environmental harm;
- ❖ if the breach is allowed to continue, it may undermine the Council’s ability to resist similar activities in the Borough;
- ❖ the development is such that it is a departure from the Development Plan to a degree that it undermines the Council’s Planning strategy and objectives as laid out in the policies of that Plan; and,
- ❖ the development might adversely impact on the Council’s priorities on the protection of the countryside and its cultural heritage.

A.11 If a breach has been confirmed, the Council has to consider first and foremost whether or not it would have granted a permission for that development as if an application had been submitted. This will enable the Council to assess the merits of the development; the relevant Development Plan background; local representations; and consultation responses. It will also be able to assess the impact of the development, as that development already exists. In this way, the Council's discretion should be soundly based.

d) What Else Should be Considered at This Stage?

A.12 Other considerations will be included in the Council's exercise of its discretion. In particular:

- ❖ whether or not action can be taken by other agencies, or under other legislation more readily and more effectively. The Council is a signatory to the Enforcement Concordat. This recommends action by the most appropriate means.

- ❖ The implications of enforcement action having regard to the Human Rights Act 1998. The fact that enforcement activity is discretionary and that it is seen as a last resort is important in this context.

A.13 All action, apart from some exceptions, attracts the right of appeal, which parallels the procedure for planning appeals. There can be delay, too, if planning applications are submitted either before or in parallel with appeals against enforcement action. Judicial reviews are common. The process can thus be very time-consuming.

A.14 In the light of the background outlined above, and particularly if action is subsequently to be pursued in the Courts, there has to be full involvement with legal advice from the outset. This involvement may extend from advice as to whether a breach has actually taken place or not and to the quality of evidence that is needed or available in order to pursue Court action. Case law is important. Often matters can revolve around interpretation of the legislation.

A.15 The Council is time-barred from taking enforcement action in certain circumstances. In other words if a breach has occurred and has continued for a certain length of time, then that development may be immune from enforcement action by virtue of the length of time – eg building works may become immune after four years. However, there are no time periods for immunity to unauthorised works to Listed Buildings.

A.16 Enforcement action by the Council does not, and should not, provide a means for individuals to further private disputes, neighbour disagreements or ownership difficulties. Neither will the Council become involved in enforcing private rights of access; Covenants attached to Title Deeds, or other legal documents. Other legislation is available to further these matters.