

# Scrutiny Report

Report of Head of Planning

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Wards affected: All

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To: SCRUTINY

Date: 29 November 2021

## Updated Joint Planning Enforcement Statement

### Recommendation

(a) that Councillors consider the content of the report including the new approach to triaging and feedback their observations to the Cabinet Member for Planning.

(b) that Councillors provide feedback on the councillor engagement session held on 23 November.

### Purpose of report

1. To inform progress on the revised joint Planning Enforcement Statement (Appendix 1), which was last updated in 2016.
2. To seek Scrutiny Committee's comments on the new approach to triaging cases and to seek support for this new approach.

### Corporate Objectives

3. The investigation and actions to mitigate planning harm supports the Corporate Plan, 2020 - 2024, themes of "Providing the Homes People Need" and "Building Healthy Communities".

## Background

4. Central Government sets out national planning policy in the National Planning Policy Framework (NPPF). At paragraph 59 of the NPPF it states that local planning authorities '*should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area*'.
5. It is 5 years since we last updated our statement. There has been a lot of changes in planning during this period such as the publication of the updated and revised NPPF. The current statement and approach are resource intensive and along with the impact from the recent pandemic we are not able to manage the workload. Although during the first lockdown we limited site visits which reduced our ability to progress case investigations, the development industry and residents did not stop breaching planning or reporting alleged breaches. During this period, we had a significant increase in reported allegations. This has led to a backlog of cases. We currently have, for both councils, 700 live investigations of which 241 cases are unallocated (131 cases for South and 110 for Vale).

## Main subject of report

6. In spring 2021 the enforcement team went through a thorough review of the function and the team are now working through the resulting action plan. Updating the Enforcement Statement has been identified as an important step in helping the team to become more efficient and effective. The updated document aims to communicate more clearly the enforcement team's role within the wider planning service and the public and parish councils' roles as informants in the process. The enforcement team's role is to maintain the integrity of the planning system and planning decisions made by the councils. They therefore investigate allegations for the councils not for residents. It is also important to recognise that in the first instance, the objective of planning enforcement is not to punish those who are in breach of planning but to remedy the planning harm caused by the planning breach. The councils also do not 'police' new development.
7. As part of the function review, an assessment has been undertaken on the triage and prioritising of cases, and the amount of time spent on issues that have little impact and considered not to cause unacceptable planning harm.
8. Historically when the council considered an alleged breach of planning, the case was not closed until the site had been visited and the breach of planning remedied. This resulted in the enforcement team continuing to use resources to pursue minor breaches of planning that were not causing harm to public amenity and/or interest.
9. The proposed risk-based approach will use a set of scored planning criteria to rate the impact a planning breach is having and if it doesn't reach the threshold set it will be closed as not expedient to pursue and the informant advised of the outcome. Only cases that are considered to have the potential for planning harm will be allocated to an officer for a site visit and further investigation.
10. This new method will allow officers to filter out a number of cases and be able to spend more time on investigations where there is more potential for unacceptable planning

harm and need for formal action. It is also expected that this approach will help reduce the backlog of cases and once completed, the capacity to act more proactively such as dealing with major development sites.

**Member engagement**

- 11. As part of reviewing the Statement, it is important to engage with all councillors and seek their comments.
- 12. Officers have produced a narrated presentation about the Statement and its new approach, including the harm assessment and team’s priorities. The presentation also includes some context about planning enforcement. We sent the presentation to all district councillors and are holding a councillor Q&A session on Tuesday 23 November. Comments and feedback will be taken into account and amendments made to the statement as appropriate. We are not seeking public engagement as the planning enforcement function is limited by regulation, appeal and court outcomes and the agreed resources.

**Timescales**

- 13. The Statement is being taken through each council’s Scrutiny Committee. Any suggested amendments that come from the Q&A session and the Scrutiny Committees will be considered and appropriate changes made. Both Cabinets will then be asked to approve the Statement as the councils’ approach to managing planning enforcement.

Timescale for progressing planning enforcement statement		
Date	Action	Notes
23 Nov	District councillor joint Q&A session	Report any agreed changes following Q&A to Scrutiny
25 Nov	Vale Scrutiny	
29 Nov	South Scrutiny	
2 Dec	South Cabinet	
3 Dec	Vale Cabinet	
w/c 6 Dec	Press statement	

**Climate and ecological implications**

- 14. In maintaining public confidence in the planning system (NPPF), the revised Statement should help ensure new development and relevant planning conditions support climate and biodiversity mitigation.

**Financial Implications**

- 15. The work to review the statement and the proposed councillor engagement is all within the existing planning budget.

## **Legal implications**

16. There are no direct legal implications arising from this work. The NPPF says Local Planning Authorities ‘...should consider publishing a local enforcement plan to manage enforcement proactively...’.

## **Conclusion**

17. Effective enforcement is important to maintain public confidence in the planning system (NPPF). The updated Enforcement Statement sets out the preferred approach for the councils to manage the planning enforcement function and provides a framework for the team to be able to work in a more efficient and effective way.

## **Appendix 1**

Draft Planning Enforcement Statement September 2021



Listening Learning Leading



## Planning Enforcement Statement

This document aims to communicate the enforcement teams' role within the wider planning service and the public and parish councils' roles as informants in the process. The enforcement teams' role is to maintain the integrity of the planning system and planning decisions made by the councils. They therefore investigate allegations for the councils not for residents. In the first instance, the objective of planning enforcement is not to punish those who are in breach of planning but to remedy the planning harm caused by the planning breach. The councils do not 'police' development. More details on the legal and national policy basis of our work can be found using the links at the back of this document.

### Mission Statement

**The planning enforcement teams role is to investigate allegations of breaches of planning control in a timely manner and take effective action in the public interest where unacceptable planning harm is identified.**

**How:** We will do this by

- Prioritising cases with the greatest planning harm (Appendix 1).
- Making decisions in each case in accordance with planning law, national policies, guidance and the adopted development plan.
- Intervening only where taking action is proportionate and necessary in the council's assessment.

**Why:** We do this

- To ensure the integrity of the planning system and decision-making process.
- To support the Corporate Plan objectives of the Councils.
- To support our local communities.

**What we commit to do**

- We will acknowledge all reports of alleged breaches of planning control within 2 working days.
- We will assess and prioritise cases on the basis of the planning harm that may be caused.

- We aim to complete our investigations and make a decision on what action to take within 6 weeks of a case being allocated to an officer in 80% of our cases.
- Formal enforcement action is taken at the discretion of the council.
- We are not investigating for you and we do not investigate on behalf of third parties. All investigations are undertaken on behalf of the council.
- We will not provide you with updates on cases in order to comply with the Data Protection Act 2018 and UK General Data Protection Regulations.
- We will provide you with a written confirmation of the outcome of the case once it has been completed.

**What we cannot/will not do**

- We will not accept anonymous information. If you wish to remain anonymous, you can submit your information via your ward councillor or parish council representatives.
- We will not become involved in neighbour disputes.
- We cannot take formal action against building work that had been completed for more than 4 years, unless it's a listed building.
- We cannot take formal action against a material change of use of land that has been continuous for more than 10 years.
- We cannot take formal action against a breach of a condition of a planning approval that has been breached for more than 10 years.
- We cannot take formal action against a new dwelling built without planning permission after 10 years.
- We cannot consider the following as they are not planning issues;

<ul style="list-style-type: none"> <li>• Obstruction of a highway or public right of way</li> <li>• Parking of commercial or other vehicles on the highway in residential areas or on grass verges</li> </ul>	<p>These matters are either subject to Oxfordshire County Council controls or if there is a highway safety issue can be reported to the police</p>
<ul style="list-style-type: none"> <li>• Trespass on land</li> </ul>	<p>These are private matters not dealt with under planning legislation. Details of the Party Wall Act 1996 can be found on line at; <a href="https://www.gov.uk/party-wall-etc-act-1996">https://www.gov.uk/party-wall-etc-act-1996</a></p>

<ul style="list-style-type: none"> <li>• Deeds and covenant restrictions</li> <li>• Boundary disputes</li> </ul>	<p><a href="#">1996-guidance</a>. Any advice on civil matter should be sought from a solicitor, or the Citizens Advice Bureau.</p>
<ul style="list-style-type: none"> <li>• Clearing land of hedges, bushes or undergrowth</li> </ul>	<p>Unless subject to Ancient Hedgerows Regulations 1997. Details can be found at <a href="https://www.gov.uk/countryside-hedgerows-regulation-and-management">https://www.gov.uk/countryside-hedgerows-regulation-and-management</a></p>
<ul style="list-style-type: none"> <li>• Internal works to a <b>non</b>-listed building</li> </ul>	<p>Structural works may be subject to building control regulations. The councils' building control team can be contacted at: <a href="http://www.southoxon.gov.uk/services-and-advice/planning-and-building/building-control">http://www.southoxon.gov.uk/services-and-advice/planning-and-building/building-control</a></p>
<ul style="list-style-type: none"> <li>• Parking a caravan within the curtilage of a residential building provided its use is incidental or ancillary to the main dwelling.</li> </ul>	<p>In most cases caravans are not classed as buildings and therefore it is their use that is subject to planning controls. However, if you are in any doubt contact the planning department for advice</p>
<ul style="list-style-type: none"> <li>• Insertion of additional windows in residential dwellings.</li> </ul>	<p>Once a building has been occupied windows may be inserted into existing walls provided there is not a planning condition to prevent the insertion of additional windows or a restriction set by permitted development rights</p>
<ul style="list-style-type: none"> <li>• Health and safety issues including noise and activity on building sites</li> </ul>	<p>These matters are ordinarily the responsibility of the Health and Safety Executive. They can be contacted at: <a href="http://www.hse.gov.uk/contact/contact.htm">http://www.hse.gov.uk/contact/contact.htm</a></p>

## Reporting an alleged breach of planning control

### Privacy Statement

The information provided by you is collected for the purposes of investigating an alleged breach of planning control. We need to collect this information in order to maintain accurate records and so that we can liaise with you during the investigation and inform you of its outcome. Sharing your information with us constitutes explicit consent from you for us to process your data for this purpose.

We will keep your personal data secure within our organisation but we may also disclose information in certain circumstances outside the organisation. We will only do this if the law permits us to do so and in accordance with our contracts with these organisations. This includes requirements to keep your data secure.

Please see further details about the councils' privacy policies using the links below;

#### **South Oxfordshire district Council**

<https://www.southoxon.gov.uk/south-oxfordshire-district-council/about-the-council/privacy/privacy-policy/>

#### **Vale of the White Horse District Council**

<https://www.whitehorsedc.gov.uk/vale-of-white-horse-district-council/about-the-council/privacy/privacy-policy/>

### Important considerations before you make your allegation

It is important that you read this section carefully prior to submitting the form;

- You can make a referral/report by using our online form.
- We ask that you use this form as it ensures that we have the minimum information required to decide on whether to pursue the case.
- Before reporting a suspected breach of planning, please check the Planning Permission Register (see links below) to see if planning permission has been granted for the development.

South Oxfordshire District Council

<https://www.southoxon.gov.uk/south-oxfordshire-district-council/planning-and-development/comment-on-planning-applications/find-and-comment-on-a-planning-application/>

Vale of the White Horse District Council

<https://www.whitehorsedc.gov.uk/vale-of-white-horse-district-council/planning-and-development/comment-on-planning-applications/find-an-application-and-comment/>

- Please provide as much information about the location and nature of the alleged breach.
- Please read our privacy statement above which explains how we will process and protect your personal data.
- Please be aware your role is as an informant we are not investigating the issue you have raised for you. As stated elsewhere in the statement our role is to investigate matters on behalf of the councils.

### **What happens once we have received your form**

- We will acknowledge receipt of the form within 2 working days.
- We may need to contact you to discuss the case further, so it is important we have your contact details.
- We will investigate the information you provided. If we are satisfied that there is a breach of planning control, we will assess the allegation using our harm assessment form.
- If the score is above our threshold, we will allocate the case to an officer and the case will be processed in accordance with our site visit priorities.
- If the harm assessment is below our threshold, we will close the case as not expedient and inform you of this in writing.
- It can take many weeks to investigate and resolve a planning enforcement case. E.g, there is a statutory three week period if we serve a Planning Contravention Notice and there is an eight or thirteen week period for consideration should the developer decide to submit a planning application part way through the enforcement investigation.

Please see the flowchart (Appendix 2) at the end of this statement that shows the enforcement investigation process.

### **Site visit priorities following allocation to an officer**

#### **Priority 1**

#### **Site visit within 48 hours**

- Permanent damage to the environment e.g. demolition or significant alteration to a listed building
- Unauthorised works to a protected tree (by Preservation Order or planning condition) or qualifying trees in a conservation area.

Priority 2

Site visit within 10 working days

- Less immediate but harmful development with potential to escalate  
e.g. buildings part constructed and works in progress
- Major development site building works just commenced  
This does not include land clearance of shrubbery etc
- Development within 12 months of immunity

Priority 3

Site visit within 20 working days

- Other breaches likely to remain stable  
e.g. development that has been completed
- Non-compliance with planning conditions
- Display of advertisements unless details given give rise to concerns about  
highways safety
- Breaches of the Town & Country Planning (General Permitted  
Development)(England) Order 2015 (as amended) known as PD rights.

## We do not provide updates

Under the Data Protection Act 2018 and UK General Data Protection Regulations, the council has a duty to protect personal data, including that of both:

- the person who is the subject of the investigation and
- the person reporting the issue/s.

Enforcement information is also likely to be exempt from release under Freedom of Information Act 2000/Environmental Information Regulations 2004 whilst live investigations are ongoing. We need to maintain confidentiality whilst investigating cases and divulging information in relation to active investigations could prejudice the ongoing proceedings.

We therefore do not provide you with updates or information during the course of our investigation. You will receive details of the outcome of the investigation once it has been completed.

## Enforcement Register

We are legally required to maintain an Enforcement Register. This register contains details of formal notices served including the address, the breach identified, the date for compliance and when the notice was complied with. Notices will only be removed from the register if they are formally quashed or withdrawn by the council. All notices remain part of the planning history. Please follow the links below to view the registers.

### South Oxfordshire District Council

<https://data.southoxon.gov.uk/ccm/support/Main.jsp?MODULE=EnforcementNoticeCriteria&TYPE=EnforcementNotice>

### Vale of the White Horse District Council

<https://data.whitehorsedc.gov.uk/java/support/Main.jsp?MODULE=EnforcementNoticeCriteria&TYPE=EnforcementNotice>

## Possible outcomes of our investigations

### Caselaw and Government quotes

***‘The planning enforcement procedure is intended to be remedial rather than punitive’***

Lord Justice Carnwarth  
Tapecrown Ltd v Secretary of State for Communities and Local Government  
[2006] EWCA Civ 1744

***‘There are a range of ways of tackling alleged breaches of planning control, and local planning authorities should act in a proportionate way.’***

***‘Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy.’***

Government National Practice Guidance. Enforcement and post-permission matters  
paragraphs: 003 & 011 updated 22 July 2019

### No breach

If we establish that no breach of planning control has occurred, we will take no further action.

### **Voluntary compliance**

This could include the relevant party agreeing to cease an unauthorised use, remove an unauthorised development or submitting a retrospective application.

### **Not expedient**

Where a technical breach of planning control has occurred, but it is not proportionate to take enforcement action due to the low level of planning harm, or where officers are satisfied that planning permission would be granted without the imposition of conditions.

### **Lawful due to the passage of time**

Where a breach of planning control is established, but the activity has been going on, or the structure has been substantially complete for so long, the development is immune from enforcement action and has become lawful.

### **Service of an Enforcement Notice**

An Enforcement Notice will clearly state:

- The matters that constitute a breach of planning control.
- The steps required to remedy the breach of Planning control.
- The date by which the steps to remedy the breach must be completed.
- There is a right of appeal to this type of notice for the person/s served.

### **Service of a Breach of Condition Notice**

This will require compliance with a condition that has been imposed on a planning permission. There is no right of appeal to this type of notice.

### **Service of a Stop or Temporary Stop Notice**

These are used to stop an unacceptable activity on land. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above. A Temporary Stop Notice only lasts for 28 days.

### **Service of a Section 215 Notice (Untidy land)**

These notices are used to require the proper maintenance of land and buildings. They will set out what the issue is, what person responsible is required to do and the timeframe to achieve compliance. The appeal to this notice is heard in the Magistrates Court.

## **What to do if we contact you about your development**

If it is possible to investigate the concerns raised without disturbing you and establish that there is no breach of planning control, we will not contact you.

If we do contact you about your development, please work with us to resolve the matter as quickly and effectively as possible.

Our initial contact may be in person by an unannounced site visit, or it may be via telephone or letter.

**We do not conduct investigations for third parties.**

### **Powers of Entry**

We have legal powers to enter land and/or premises to undertake our official duties, and the wilful obstruction of an officer exercising a right of entry is a criminal offence. On entry we always identify ourselves and are able to show written authority if required. We must give you 24 hours' notice before we can access a building used as a dwelling house.

- We will work with you to understand the nature of the development you have undertaken.
- We may need to inspect, measure and photograph the site.
- We will consider the development on its merits against planning law and local and national planning policies and guidance.
- If the Council considers that your development involves a breach planning control that would not be granted planning permission and causes planning harm, it can take formal action against you.
- We will always give you information on what your options are to resolve any breaches identified.
- We will ordinarily give you the opportunity to remedy any breach before formal action is taken.

### **Planning Contravention Notice (PCN)**

As part of our investigation, we may serve you and any other parties with an interest in the land with a PCN. This notice allows the planning authority to formally require the recipient to answer questions and provide information we need for enforcement purposes eg: about any operations being carried out, any use of, or any activities being carried out on the land. It also gives you the opportunity to formally respond constructively to the local planning authority by providing any additional information you think it relevant to your situation and how any suspected breach of planning control may be satisfactorily remedied.

### **Planning Enforcement Order (PEO)**

Where there has been deliberate concealment of a breach of planning control, we may apply to the Magistrates Court for a PEO. Where a PEO is granted we have one year and 22 days to serve an enforcement notice irrespective of how long ago the breach first occurred. The 4 year and 10 year periods for immunity do not apply.

## **Harm Assessment – Triage Scheme**

### **Procedure for initial processing reported breaches of planning control.**

#### **Purpose**

This document sets out the council's harm assessment procedure in relation to the handling of identified breaches of planning control. It assesses the "planning harm" the breach is perceived to cause and provides a process for the efficient closure of cases.

#### **Background**

In the past when the council considered an alleged breach of planning control the case was not closed until the site had been visited and the breach of planning control remedied. This resulted in the enforcement team continuing to use resources to pursue minor breaches of planning control that were not causing harm to public amenity and/or interest.

#### **The Scheme**

The assessment is applied to all allegations made to the council identified by officers as being in breach of planning control. The scheme allows the team to assess the information and grade the "harm" of that breach against a series of scored planning criteria.

The agreed level of harm triggering a site visit and further investigation (the score) is 5 and above. Where the cumulative score is 4 and under, it is not considered to be expedient to pursue the breach as the impact on public amenity and/or interest will be/is considered negligible.

Cases that don't meet the threshold will be closed and advisory correspondence will be sent to the informant that no action will be taken.

Breaches of planning control that attract a score of 5 or more will be visited and further investigated by officers.

#### **Operational Aspects**

The harm assessment form will be completed as part of the triage process within 5 working days of a report being received. If no further action is to be taken, then the informant will be contacted in writing and informed of the outcome of our assessment. If the threshold is exceeded, then the case will be prioritised for a site visit in accordance with the priorities set out in the Enforcement Statement and allocated to an enforcement officer for further investigation.

#### **Conclusion**

The harm assessment approach provides:

- A quantitative and qualitative assessment of harm to public

amenity/interest.

- A procedure that is open and transparent.
- A quick and effective processing of incidents.
- A flexible system to make efficient use of resources.
- Equality of treatment of dealing with incidents.

The criteria and scoring are considered an effective way to identify minor/trivial breaches of planning control, as well as providing an opportunity for it to be used in prioritising of other breaches of planning control to be progressed by the enforcement team.

The details of the scheme will be reviewed on an annual basis.

Appendix 1

**TRIAGE HARM ASSESSMENT FORM**

Each new allegation identified as a breach of planning control will be allocated scores as set out below to assess its harm. The total will provide its harm score. Cases below the threshold score of 5 will not be visited and a decision made based in a desk assessment only.

Points Allocation			Score
1	Is the breach:	a breach of condition (3)  Worsening/ongoing (2)  Stable (0)  Score each issue	
2	Highway safety issue:	Yes (2)  No (0)	
3	Other safety issues:	Yes (2)  No (0)	
4	Causing/potential to cause a statutory or serious environmental nuisance	Yes (1)  No (0)	
5	Age of breach:	Within 12 months of immunity (2)  Over 12 months to immunity (0)	
6	Is there planning harm:	Widespread (2)  Local (1)  None (0)	
7	Irreversible harm: Biodiversity Protected species Trees Conservation area Listed Building	Yes (2)  No (0)  (2 points per issue)	

8	Flood Risk	Zone 3 (2) Zone 1-2 (1) NFR (0)	
9	Listed building (or affecting the character or setting of a listed building)	Yes (3) No (0)	
10	Particularly sensitive site e.g. Conservation area, SSSI, AONB, Greenbelt Scheduled monument Listed Garden, Archaeological importance	Yes (1) No (0)  (1 point per designation)	
11	Cumulative Impact?	Yes (1) No (0)	
TOTAL POINTS (HARM SCORE)			

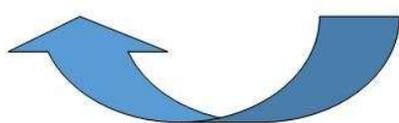
# Enforcement Investigation Process

## Step 3

### Case required

Further investigations are necessary. A case will be allocated and an acknowledgement letter will be sent to you providing the reference number of the case.

**5 working days\***



## Step 2

### Triage

The information submitted will go through our triage/harm assessment process to see if the issue is a breach and meets our threshold for a site visit and further investigation.

If no further investigation is deemed necessary you will be informed in writing and the case will be closed.

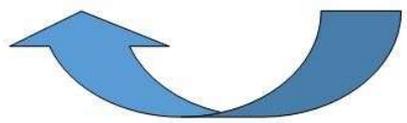
## Step 5

### Breach confirmed

**Not expedient** - Write report and close the case

**Expedient** - Move to step 6

**6 weeks\***



## Step 1

### Report Received

The best way to report a matter to us is through our online form on our website. Please remember to include your telephone number.

## Step 4

### Investigations underway such as:

- ☑ Check planning history
- ☑ Site visit
- ☑ Meeting with owner/occupier
- ☑ Consider legislation and guidance
- ☑ Consider third party evidence
- ☑ Discuss with other council teams or other agencies
- ☑ Land registry searches
- ☑ Obtaining information via formal notices (Planning Contravention Notice, Requisition for Information or Interview Under Caution)

## Step 7

### Negotiations successful

**No** - Continue to Step 8

**Yes** - Case will be closed and you will be informed of the outcome.

**16 weeks\***

## Step 8

### Consider expediency of formal action:

Assess against local and national policy  
 Consider the harm caused and the material planning considerations  
 Consultee comments  
 Consider relevant appeal decisions/case law  
 and Human Rights and equalities legislation.

**16 weeks\***

## Step 9

### Commence formal action such as:

Draft notice and report  
 Discuss implications with other teams including the councils legal team  
 Gain authorisation in accordance with the councils constitution.  
 Inform the local ward councillor. Preparation of documents for service.

**30 weeks\***

*\*timescales are approximate, some complicated cases may take considerably longer. A flexible approach must be taken, if circumstances change we may need to alter our course of action.*