

## **11. ENFORCEMENT CODE OF PRACTICE**

- 11.1 The Council has adopted an enforcement strategy as a framework for the continuing development of procedures and policies for the effective enforcement of planning control. This is based on an internal Departmental Enforcement Procedures Manual (April 1994) which outlines the procedures to be adopted when dealing with all reports of unauthorised developments. Compliance with this procedure will ensure that all cases are dealt with equitably and consistently. It should also ensure that any enforcement action is soundly based and that maladministration is avoided.
- 11.2 The guidelines that follow are intended both for members of the public who make complaints and those being complained against. Every effort will be made to ensure complainants are kept fully informed of the outcome of investigations and the potential limitations of the powers for future action by the Council.

### **Enforcement Action**

- 11.3 Every written report of unauthorised development will be recorded and an investigation of the facts of the case will be undertaken by an Enforcement Officer. The assessment of the planning merits of the case will be carried out following consultations with a Planning Officer by the Enforcement Team.
- 11.4 The Council's powers in respect of taking enforcement action are discretionary. However, the discretion of the Council is not unfettered and any exercise of its powers must be subject to the test of reasonableness. The policies of the Dacorum Borough Local Plan (1991-2011) will provide the background against which decisions are made. In some cases it will be appropriate for the Council to invite a retrospective planning application in respect of unauthorised development. It is expected that many problems can be satisfactorily resolved by a process of negotiation. This is the approach advocated by Planning Policy Guidance Note 18: 'Enforcing Planning Control' with respect to unauthorised small business uses. However, where an unauthorised use is causing an unacceptable degree of harm to amenity the Council will not allow the process of negotiation to hamper the use of formal enforcement procedures as required.
- 11.5 Where it is concluded that unauthorised development conflicts with the policies or objectives of the Borough Local Plan, or is considered demonstrably harmful to amenity, it is the Council's policy that enforcement action should normally be taken to remedy a breach of planning control.

## **Planning Conditions**

- 11.6 The Council has the power, subject to central government guidelines in Circular 1/95, to impose conditions when granting planning permission. Frequently this enables development proposals to proceed where otherwise it might have been necessary to refuse planning permission.
- 11.7 The Council has a duty to safeguard amenity by ensuring that all development is carried out or continued within acceptable limits having regard to local circumstances or the relevant planning policies. Planning conditions are an integral part of the planning process and the Council attaches particular importance to ensuring that such conditions are complied with.
- 11.8 Where planning conditions have not been complied with the Council will consider the use of enforcement procedures. This may include the use of a Breach of Condition Notice where circumstances are appropriate.

## **Compliance with Enforcement Notices**

- 11.9 Once an Enforcement Notice has been served, the Council will monitor the site of the unauthorised development in order to ascertain whether the Notice has been complied with. Enforcement Notices must be carefully drafted to ensure that the undesirable aspects of any breach of planning control are targeted and remedied.
- 11.10 It is unlikely that anything less than full compliance with an Enforcement Notice will be acceptable to the Council. The Council has discretion to prosecute for the criminal offence of non-compliance with an Enforcement Notice. In some instances it may be necessary to undertake direct action/work in default to remedy the situation. This could include the removal of plant, fixtures and fittings associated with unauthorised use and the demolition of unauthorised structures. The cost to the Council of taking such action can be recouped by placing a charge on the land in question.

## **Listed Building Enforcement**

- 11.11 Listed buildings, i.e. buildings of special architectural or historic interest, are subject to both planning and listed building enforcement procedures. Unauthorised demolition, unauthorised works of alteration or extension to a listed building, or failure to comply with any condition attached to a grant of listed building consent attract criminal liability under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- 11.12 The Council takes a very serious view of such activity and will actively seek the reinstatement of any unauthorised works undertaken in respect of listed buildings. To this end, the Council will issue Listed Building Enforcement Notices in appropriate cases. Planning Policy Guidance Note 15: 'Planning and the Historic Environment' encourages prosecutions only where a well substantiated case can be made. Prosecutions will not be appropriate in all cases, but where a complete demolition of a listed building has occurred or where works are considered to be of a serious nature, the Council will consider prosecution, but each case will be decided on its merits. Failure by developers or responsible persons to heed the advice of the Council to desist from continued unauthorised works will attract the full sanctions available under the legislation.

### **Trees**

- 11.13 Earlier sections of these Guidelines emphasise the important contribution of trees to the general amenity and environment of an area. Their protection forms a significant aspect of the Council's strategy for the environment. The Town and Country Planning Act 1990 imposes a duty on the Council to ensure that when granting planning permission for any development, where it is appropriate, adequate provision is made by the imposition of conditions for the preservation or planting of trees. In addition to the protection of existing trees or additional planting required by planning conditions, the Council may also make Tree Preservation Orders to protect individual specimens or groups of trees.
- 11.14 Where a tree protected by a Tree Preservation Order is removed, the Council has the option of making a "replacement Enforcement Notice" to secure the planting of a replacement tree. If the owner does not comply, the Council has the option of entering land to complete the necessary planting. Obstruction of the Council undertaking this action and breach of the provisions of a Tree Preservation Order are all criminal offences liable to prosecution.

### **Advertisements**

- 11.15 The use of inappropriate external advertisement material can have a fundamental effect on the appearance of an area. Relevant factors include poor siting, poor design, being illuminated or the specific method of illumination. Poorly designed signs displayed on listed buildings or in conservation areas may be particularly harmful. The display of advertisements is regulated by the Town and Country Planning (Control of Advertisements) Regulations 1992 as amended. Any person who displays an advertisement in contravention of these regulations is guilty of a criminal offence and is liable to prosecution.
- 11.16 In some circumstances where appropriate advertisements are being displayed on a listed building, the use of Listed Building Enforcement

Procedures will be more suitable than those conferred by the Advertisement Regulations.

### **Stop Notices and Injunctions**

- 11.17 In circumstances where the breach of planning control is so severe that it seriously prejudices amenity or other planning objectives it may be necessary for the Council to consider the service of a Stop Notice or an injunction to secure the cessation of the activity. A Stop Notice may only be served in conjunction with an Enforcement Notice, i.e. when an activity has commenced. The service of Stop Notices are also the subject of Government advice (Circular 21/91).
- 11.18 There may be circumstances when a breach of planning or building control is threatened which would cause serious or irreversible harm to the environment, and it will therefore be necessary or expedient for the Council to apply for a court injunction to prevent any further works.