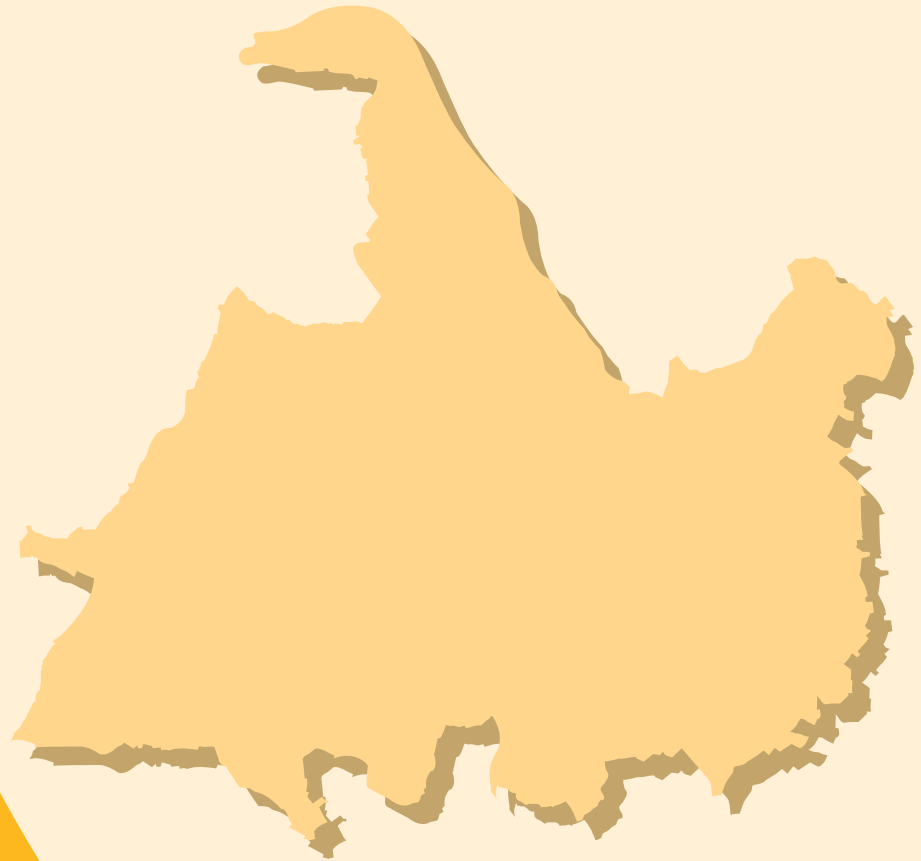


# Planning Enforcement Policy



Planning Services

November 2005



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Approved November 2005

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## **Introduction**

This document sets out the Council's approach to handling planning related enforcement matters. It lets the public know what action to expect when a breach of planning control is found, where resources will be targeted and the timescales for response to certain key stages in the process.

We aim to deliver an effective service, which is accessible and available equally to all. Our service aims to be quality driven and responsive. We also seek to ensure that our service is continually improving in line with the principles of Best Value.

## **Contacting the Planning Enforcement Team**

It is in the best interests of the service to all our residents that enforcement resources are used wisely. It is our policy normally not to respond to anonymous calls or letters and to ask that all enforcement service requests are made in writing. This helps in monitoring the number and type of cases received and may be useful later on if formal action is pursued. During an enforcement investigation, the identity of a complainant is kept confidential, so you may write to us with confidence.

## **Keeping Customers Informed**

It is important to ensure that we keep our customers informed of the progress in enforcement investigations. We have set ourselves the following local performance targets and will monitor our success against them.

- All letters received alleging a suspected breach of planning control will be acknowledged in 3 working days
- A site inspection to establish the facts will be carried out within 10 working days, or if prior arrangements need to be made with the owner/occupier of the site, a letter will be sent to them within 10 working days
- A letter will be sent to explain our findings and what action is proposed within 15 working days
- When an enforcement notice or other formal action has been authorised, we will let the complainant know within 10 working days

## Principles of Enforcement

The Local Planning Authority believes in firm but fair regulation. Underlying the policy of firm but fair regulation are the principles of:

**Proportionality** in the application of the law and in securing compliance.

**Consistency** of approach.

**Transparency** about how the service operates and what those regulated may expect from the service, and

**Targeting** of enforcement action.

### Proportionality

Proportionality means relating enforcement action to the risks. Those whom the law protects and those on whom it places duties, expect the action taken by the enforcing authority to be proportionate to the seriousness of any breach.

### Consistency

Consistency of approach does not mean uniformity, it means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in advice tendered, the response to incidents, the use of powers and decisions on whether to prosecute.

Officers need to take account of many variables:

- the scale of impact;
- matters of fact and degree;
- the history of previous incidents or breaches.

Decisions on enforcement action are a matter of professional judgement and discretion needs to be exercised. The Planning Enforcement Team will continue to develop arrangements to promote consistency including effective arrangements for liaison with other Council services and enforcing authorities.

### Transparency

Transparency is important in maintaining public confidence in the service's ability to regulate. It is about helping those regulated and others, to understand what is expected of them and what they should expect from the Council. It means making clear why an officer intends to take or has taken enforcement action. It also means distinguishing between statutory requirements and advice or guidance about what is desirable or good practice but not compulsory.

Transparency is an integral part of the role of the enforcement function. Staff are trained and procedures developed to ensure that:

- where action is required, it is clearly explained in writing why that action is necessary and when it must be carried out; a distinction being made between best practice advice and legal requirements;
- opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, because work to a listed building or protected tree is being carried out, or evidence required to support a conviction would not otherwise be available;
- a written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

### **Targeting**

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to the most serious problems by breaching planning regulations. Action will be primarily focused on those directly responsible and who are best placed to control it. We can only deal with matters which are covered by Planning powers.

The Local Planning Authority prioritise responses according to the severity of the breach.

Generally, investigation of complaints relating to damage to listed buildings or protected trees will be given the highest priority. Similarly cases involving severe amenity damage to a wide area will be given higher priority than more routine work.

***We aim to carry out an initial site inspection within 10 working days of receiving an allegation that a breach of planning control has occurred.***

Where formal enforcement action is necessary the person responsible should be held to account. Where several persons share responsibility, action will be taken against those who can be regarded as primarily responsible. Any formal notice will be served on all those with an interest in the land.

## **Prosecution**

### **Purpose**

The Council recognises the use of the criminal process to institute a prosecution as an important part of enforcement. It uses discretion in making such a decision because other approaches to enforcement may equally or more effectively satisfactorily resolve the matter. Where circumstances warrant, the Council will, however, pursue prosecution, ie, where damage to protected trees or listed buildings may be involved.

All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the Police and Criminal Evidence Act (PACE) 1984, the Criminal Proceedings and Investigations Act 1996 (CPIA), the Regulation of Investigatory Powers Act (RIPA) 2000 and the Human Rights Act 1998. As part of the investigation process, persons suspected of a criminal offence will, wherever possible:

- be formally interviewed in accordance with PACE;
- be given the opportunity to establish a statutory defence;
- have the opportunity to give an explanation or make any additional comments about the alleged offence.

The Local Planning Authority will consider prosecution when one or more of the following applies:

- it is appropriate in the circumstances as a way to draw general attention to the need for compliance with the law;
- there is a risk to public health and safety as a consequence of the breach;
- the offence was as a result of a deliberate act or following recklessness or neglect;
- the approach of the offender warrants it, eg, repeated breaches, persistent poor standards;
- the breach is considered to seriously affect public amenity.

The decision to prosecute will also take account of the evidential and public interests and tests set down in the Code for Crown Prosecutors. These include:

- the age and evidence of the state of health of the alleged offender;
- the likelihood of re-offending;
- any remedial action taken by the alleged offender.

Before an enforcement notice and/or prosecution is taken, the alleged breach or offence will be fully investigated and a report compiled by the investigating officer who will make a recommendation as to the appropriate course of action to be taken. This will be presented to the Planning Sub Committee for authority to proceed. Enforcement matters are dealt with in private. All Defendants will be notified of the decision to prosecute in accordance with the Magistrates Court Rules and CPIA.

### **Sufficiency of Evidence**

The Local Planning Authority will not pursue a prosecution or an enforcement action unless satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and there is a realistic prospect of conviction.

### **Public Interest Factors**

Where there is evidence as described above, the Local Planning Authority Planning will still not pursue a prosecution unless there are one or more of the following public interest factors in favour of such actions:

- effect of the offence on local environment;
- intent of the offender;
- history of offending against planning legislation;
- the offence or circumstances leading to it are foreseeable.

### **Penalties**

The courts have considerable scope to punish offenders and deter others. Failure to comply with an Enforcement Notice currently can attract a maximum fine of £20,000. The Local Planning Authority will seek to make the courts aware of the degree of gravity it considers should be attached to the offences. It will also actively seek to ensure that the local community is made aware of action taken to convict persons who are in breach of their legal obligations.

The Council will always seek to recover the costs of investigation and court proceedings.

### **Formal Caution**

The Local Planning Authority will consider Formal Cautions as an alternative to prosecution. Examples of where they may be appropriate are:

- to deal quickly and simply with less serious offences;
- to divert less serious cases away from the court process;
- to deter repeat offences.

Before a caution is administered the officer will ensure:

- there is evidence of the offender's guilt sufficient to sustain a prosecution;
- the offender admits the offence;
- the offender understands the nature of the formal caution and agrees to be cautioned for the offence.

Formal cautions are administered in accordance with Home Office guidelines.

## Performance Indicators

Action	Target time
Register and acknowledge all written complaints	<b>3 working days</b>
Carry out initial site visit	<b>10 working days</b>
Advise the owner/occupier of the allegation and how this will be investigated	<b>10 working days</b>
Initial response letter to complainant setting out progress/ proposed action	<b>15 working days</b>
Notify complainant that Enforcement Notice has been authorised.	<b>10 working days</b>

## Footnote

This enforcement policy incorporates and is consistent with the Enforcement Concordat produced by the Government's Better Regulation Task Force as principles of good regulation, published in April 1999. It also takes into account the requirements of procedural and evidential law as agreed with the Regulatory Impact Unit of the Home Office in August 2000.



Planning Services  
Metropolitan Borough of Solihull  
PO Box 11652  
Central Library  
Solihull  
B91 3YA  
DevelopmentControl@solihull.gov.uk  
[www.solihull.gov.uk](http://www.solihull.gov.uk)