

## **RUSHMOOR LOCAL ENFORCEMENT PLAN**

### **1.0 Introduction**

- 1.1 This paper recommends that the Council proceeds to adopt and publish the attached draft Local Enforcement Plan.

### **2.0 Background**

- 2.1 Government advice in the National Planning Policy Framework (NPPF para. 207.) is that Councils should make a clear statement of their approach and commitment to the enforcement of planning control in a Local Enforcement Plan. This should provide a firm decision-making framework for effective enforcement procedures to be put in place.
- 2.2 The Council's Existing Planning Enforcement Charter is no longer up to date and makes references to national and local policies which are no longer in force.
- 2.3 The fundamental purpose of a published Local Enforcement Plan is to explain what we can and will attempt to do in the enforcement of planning control, but also to clarify the limitations and constraints of enforcement proceedings. The plan aims to provide a realistic explanation how Planning Enforcement can operate and clarify circumstances and issues which Planning Enforcement cannot be expected to address.
- 2.4 The Development Management Committee is due to consider the appended draft Local Enforcement Plan on 25<sup>th</sup> May 2016. Any comments arising will be reported to Cabinet.

### **3.0 Recommendation**

- 3.1 The attached Local Enforcement Plan is adopted and published.

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*Background Papers – draft Local Enforcement Plan (Appended)*

## **Rushmoor Borough Council Local Enforcement Plan 2016**

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## 1 Background

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**1.1** The integrity and credibility of the planning process depends to some extent on the use of appropriate enforcement action when necessary. Timely enforcement action can prevent a breach of planning control from becoming well established and bring sustained environmental harm to an end.

**1.2** We do not condone breaches of planning law, but we will exercise our discretion with regard to taking enforcement action.

#### What Enforcement Action Can Do

**1.3** Enforcement action can address, and attempt to remedy, unauthorised operational development, building work or use of land and buildings which has been/is being carried out without planning permission, and which gives rise to identifiable harm to the environment or the amenities of the area or neighbouring property.

#### What Enforcement Action Cannot Do

**1.4** There must always be sound planning grounds for pursuing enforcement action. Enforcement Action is not a means to punish an individual or organisation for breaching planning control, regardless of whether the breach was carried out deliberately or in ignorance. It cannot be used to control the activities of errant or unpopular developers, to rectify minor or insignificant technical breaches of planning control, nor as a means of furthering the interests of one party over another in neighbour or commercial disputes.

#### Enforcement issues

**1.5** This enforcement plan covers the following issues:

- Planning enforcement policy
- Planning enforcement options and problems
- Our approach

## General policies on enforcing planning control 2

### 2 General policies on enforcing planning control

#### National Policy

**2.1** A breach of planning control is defined in [Section 171A of the Town and Country Planning Act 1990](#) as:

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

**2.2** Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken. A summary of The Government's Planning Practice Guidance on Ensuring Effective Enforcement can be found at:

**2.3** [Ensuring Effective Enforcement](#)

#### The National Planning Policy Framework (NPPF)

**2.4** Government advice in the National Planning Policy Framework (NPPF para. 207.) is that councils should make a clear statement of their approach and commitment to the enforcement of planning control in a Local Enforcement Plan. This should provide a firm decision-making framework for effective enforcement procedures to be put in place.

**2.5** The preparation and adoption of a Local Enforcement Plan is important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- provides greater certainty for all parties engaged in the development process.

**2.6** In our Local Enforcement Plan, we set out how we aim to deal with complaints about breaches of planning control.

#### Local Policy

**2.7** The Rushmoor Core Strategy (2011) and the Draft Local Plan (Preferred Approach 2015) set out Strategic objectives. These include ensuring the delivery of high quality well-designed development; conservation and enhancement of the built and natural environment; and addressing local housing needs. Effective enforcement of planning control is a necessary component in pursuing these objectives.

## 3 Planning Enforcement Options and Problems

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#### **Scope of Powers**

- 3.1** The purpose of planning legislation is to enable control over the use and development of land in the public interest.
- 3.2** In its capacity as Planning Authority, the Council has powers to act under planning legislation. This does not enable us to intervene in private disputes over boundaries, matters of land ownership or restrictive covenants. These are matters in respect of which affected parties might wish to take private legal advice.
- 3.3** It is often assumed incorrectly that development or activity carried out in breach of planning control is a criminal offence. With the exception of the unauthorised display of advertisements, the felling of trees covered by a tree preservation order (TPO) and unauthorised works to or demolition of a Listed Building, this is not the case.
- 3.4** There are time limits on the ability of the Council to take enforcement action over a particular breach:
- built development - the Council can take no action after 4 years from the date on which operations were substantially completed
  - change of use to a single dwelling house – the Council can take no action 4 years from date of change
  - all other changes of use – the Council can take no action 10 years after the date of change
  - failure to comply with planning conditions – the Council can take no action 10 years from the date that the condition is breached or not complied with.
- 3.5** The Council is not obliged to take action against an identified breach. The decisive issue is whether the unauthorised development or activity gives rise to harm to the extent that it is necessary to attempt to undo or stop it. The Council must consider factors such as whether the breach has become lawful by virtue of the date it took place, or by having been carried out for such a period as to make it immune from action. The severity of the breach and the extent to which it contravenes the requirements of the local plan must also be considered.
- 3.6** Breaches of planning control can be deliberate, accidental, carried out in ignorance or on the basis of poor or inaccurate advice. Neither the explanation of how the breach came to occur nor the identity of the person responsible can have any bearing on the approach the Council takes. The determining issue must be whether harm results to the extent that action is justified to address it.
- 3.7** Deciding it is not appropriate to take action in relation to a minor breach of planning control does not condone unauthorised development or activity. Where there is no evidence of significant harm to amenity or the surrounding area, formal action is not justifiable.
- 3.8** Conversely, the Council must not fail to pursue, or delay unnecessarily in pursuing action against a breach of planning control where there is clear evidence of harm or other undesirable consequences.

#### **Some Options for Responding to Enforcement Complaints**

- 3.9** No Formal Action – If there is insufficient evidence of a breach, evidence indicates the breach has become lawful by default, or if the breach gives rise to no significant harm, the authority may decide that it is not expedient to take any formal action.

## Planning Enforcement Options and Problems 3

**3.10** Retrospective planning application -if slight changes could make a development acceptable in planning terms, if the imposition of conditions would exercise control over an activity to the extent that the harm arising from it would be mitigated, or if a property owner or person responsible for a minor breach requires the comfort of a formal acceptance of the development as built (for example if they wish to sell the property), the authority can entertain and determine a retrospective planning application in respect of works already carried out or commenced.

**3.11** Obtaining Information about alleged breaches of planning control – Subject to available resources, the Council will typically respond to a complaint by visiting the site and seeking evidence. This process can be assisted by complainants supplying detailed information such as timed and dated photographs or activity logs in support of their allegations, particularly where the allegation involves sustained activity giving rise to noise and disturbance.

**3.12** Planning Contravention Notice – Where there is evidence or suspicion of unauthorised development, the Council can issue a Planning Contravention Notice (PCN) to anyone involved. This can require them to supply information in respect of the activity and their role in it. It is an offence to fail to respond to a PCN within the prescribed time or knowingly to make a false statement when responding to one. In these circumstances the Council may pursue a prosecution in court.

**3.13** Enforcement Notice – If through investigation, discussion and negotiation the parties responsible are not persuaded to cease or remedy an unacceptable breach of planning control, the Council can issue an Enforcement Notice (EN). This identifies the breach, sets out what the recipient is required to do in order to remedy it, gives a date when the notice takes effect and a time period within which the recipient is required to comply with it. The recipient has a right of appeal to the planning inspectorate against a notice provided it is lodged before the notice takes effect. This is considered in the same manner as a planning appeal against refusal of permission. The outcome can be that the notice is quashed or varied, or that planning permission is granted by the Inspector subject to conditions. Failure to comply with an EN once it has taken effect is an offence which can be prosecuted in the courts.

**3.14** Planning Enforcement Order – In general, construction of a building and use of a building as a dwelling become lawful by default if they subsist for a period of four years without enforcement action being taken against them by the Council, for other uses the period is ten years. In response to some well-publicised cases where perpetrators have attempted to benefit from this provision by ‘hiding’ new dwellings within barns or haystacks, the power to seek a Planning Enforcement Order has been conferred. An order allows the Council to pursue action after the ‘lawfulness’ period has passed. The planning authority must have sufficient evidence of the apparent breach, and must apply within 6 months of the date on which sufficient evidence of the apparent breach came to its knowledge. The authority must certify the date on which that evidence came to its knowledge, and apply to a magistrates’ court whilst serving a copy on the owner and occupier of the land. The applicant, any person who has been served with the application, and any other person the court thinks has an interest in the land that would be materially affected by the enforcement action have a right to appear before, and be heard by, the court hearing the application.

**3.15** Stop Notice – If a breach of planning control involves significant and unacceptable harm, an EN can be accompanied by a Stop Notice requiring cessation of the breach within a period no less than 3 days (or later than 28 days) after the date when the notice is served. A Stop Notice cannot prevent the use of a building as a dwelling. If the notice is quashed on appeal the recipient may be entitled to compensation. Failure to comply with a stop notice is an offence.

### 3 Planning Enforcement Options and Problems

**3.16 Temporary Stop Notice** – A temporary Stop Notice can require an unacceptable breach of planning control to cease with immediate effect for a 28 day period. It cannot be used against residential occupation of a building. Compensation is payable to the recipient in certain circumstances.

**3.17 Breach of Condition Notice** – A BCN can be served in some circumstances as an alternative to an EN. A BCN requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the local planning authority in the notice. Any recipient of a breach of condition notice will be liable to prosecution if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities specified have not ceased. There is no right of appeal against a BCN.

**3.18 Injunction** – The Council can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain that breach of planning control.

**3.19 [Rights of entry](#)** – Planning officers have authority to enter private land conferred by Sections 196A, 196B, 196C, 214B, 214C, and 324 of the Town and Country Planning Act 1990; and Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- to ascertain whether there is or has been any breach of planning control on the land or any other land;
- to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
- to determine how any such power should be exercised; and
- to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

**3.20** If entry is denied, the Council can obtain a warrant from a Magistrate.

**3.21 [Listed building enforcement](#)** – Unauthorised works to, neglect, or demolition of a statutory listed building is a criminal offence which can result in prosecution or action to force reconstruction or repair.

**3.22 [Unauthorised advertisements](#)** – Whilst some temporary advertisements, such as for-sale signs enjoy deemed consent for limited periods subject to size and other criteria, the unauthorised display of an advertisement is also a criminal offence and can be the subject of prosecution.

**3.23 [Enforcement and protected trees](#)** – Unauthorised works to, or removal of a tree the subject of a Tree Preservation Order (TPO) is also an offence which can be prosecuted.

**3.24 Other matters** – the range of enforcement powers is available for dealing with other matters including [Unauthorised Encampments](#), [Enforcements on Crown land](#) and [Enforcement of hazardous substances control](#)

## 4 Our Approach

**4.1** Rushmoor planning applies a light but firm approach to the enforcement of planning control. We will always seek to resolve an unacceptable breach by giving the perpetrator fair warning and by seeking to resolve the issue by negotiation and have them remove the unauthorised development or cease the activity voluntarily. Where it is clear that such action will not be forthcoming we will begin the process of formal action.

### Before You Contact Planning

**4.2** First you should consider whether the matter in question is related to planning and secondly whether, if it involves action by a neighbour or neighbouring landowner, it would be appropriate to discuss it first with the person in question.

**4.3** It is not uncommon for complaints to be made to Planning about maintenance of boundary fences, residential occupiers carrying out 'car repairs' on a driveway, or parking of commercial or work-related vehicles in residential streets. In the majority of cases, planning legislation does not provide any control over maintenance of private boundaries; a householder who is a car enthusiast and repairs their own or friends' vehicles at home does not require planning permission to do so; and planning legislation does not extend to control over on-street parking.

### First Steps

**4.4** Our first action on receiving a complaint will be to assess whether the subject of the complaint represents a breach of planning control. If it clearly does not, the complaint will not be registered as an enforcement case. We will inform the complainant and take no further action.

**4.5** Secondly we will consider whether there is sufficient information to substantiate the complaint. If there is not, we may ask the complainant to provide further information before an investigation is commenced, such as an identifiable address or additional evidence. We may also seek this once an investigation is in progress.

**4.6** Thirdly we will consider whether the breach could give rise to significant harm, and if so we will register an enforcement case and advise the complainant(s) accordingly.

### Making A Complaint

**4.7** Other than in exceptional circumstances, we will not accept or register enforcement cases in response to anonymous complaints. However, where a telephone message is initially received relating to a potentially urgent and serious transgression that is likely to result in irredeemable harm (for example, works to a listed building or works to protected trees), it is at the officer's discretion whether or not to waive the need for a complainant to provide their details or a written complaint.

**4.8** We will not however progress or investigate any complaint based on speculation or information regarding what a particular party 'intends' to do where no actual breach of planning control has taken place.

**4.9** You can contact us about possible breaches of planning control by telephone on 01252 398788, and by e-mail or post:



## 4 Our Approach

- e-Mail: [plan@rushmoor.gov.uk](mailto:plan@rushmoor.gov.uk)
- By Post: Planning, Council Offices, Farnborough Road GU14 7JU

### Investigation

**4.10** If our initial investigation provides evidence of a breach which, in the professional opinion of the Head of Planning, would be likely to receive a recommendation for planning permission to be granted had it been the subject of an application, we will invite the person responsible to submit a retrospective planning application which will be considered on its planning merits. If they decline to do so we will report the case to the Council's Development Management Committee who may decide to take no further action.

**4.11** Even if we reach this conclusion, it may still be in the householders' interest to regularise the situation. This often becomes a serious issue when they come to sell or remortgage the property as they are often required by the purchasers' solicitor or the lending institution to provide evidence that the requisite permissions have been obtained for all extensions and alterations carried out to the property.

**4.12** If we determine that the unauthorised development or use is clearly unacceptable and contrary to planning policy, we will continue with formal enforcement action using authority delegated to the Head of Planning, and report the proceedings to the Council's Development Management Committee.

### Timescales

**4.13** Once we receive a complaint and have completed our initial assessment, we will inform the complainant(s) within one week of receiving it whether we consider it should proceed to further investigation. If we determine that it should, we will register it as a current investigation, assign it a case number and advise the complainant(s) by Email or letter giving the case officer's details.

**4.14** Timescales for dealing with cases will be set individually, rarely are two cases or complaints alike and the response we receive to an investigation could, for example lead to a very rapid resolution or a negotiation process taking some months.

**4.15** Complainants can contact the case officer at any time and request an update using the contact details provided.

**4.16** If we decide to close the case without further action, or to proceed with the formal issue of an enforcement notice, we will advise the complainant(s) by Email or letter.

**4.17** Complainants will be advised through the normal application notification procedure if a retrospective planning application is submitted in respect of unauthorised development. They will also be notified in the event of an appeal being submitted to the Planning Inspectorate against an enforcement notice. In these instances they will have the opportunity to make representations before the application or appeal is decided.

### Priorities

**4.18** Like all public authorities we are required to focus our resources to ensure that the most pressing and harmful issues are addressed appropriately. In determining the expediency of enforcement action we will therefore have regard to the seriousness of any harm which is evident as a result of a breach of

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planning control. Matters which can potentially have a serious impact on the safety or amenity of residents or occupiers of property or on the natural environment will take priority over minor breaches and matters of dispute between neighbours.

### Decision Making Framework

**4.19** The initial assessment and decision whether to escalate a complaint will be taken by the Case Officer in consultation with the Development Manager. This will also be the case with any subsequent decision on how to act on the basis of the investigation. If you are interested in the outcome or progress of a complaint you should initially contact the Case Officer or the Development Manager who will provide you with an explanation for the actions taken to date.

**4.20** If you are dissatisfied with the response you receive you can use the comments and complaints form on our website [Comments and Complaints](#)

## 5 Review of the Local Enforcement Plan

### 5 Review of the Local Enforcement Plan

**5.1** The Council will review this plan from time to time and at least every three years, in response to changes in legislation, relevant enforcement guidance and the Council's procedures.

**5.2** This document is not subject to formal public consultation. However, comments on this document will be welcomed and will be considered as part of the review process, (please email comments to [plan@rushmoor.gov.uk](mailto:plan@rushmoor.gov.uk)).