

PURBECK DISTRICT COUNCIL PLANNING ENFORCEMENT POLICY

1. Introduction

This Policy sets out objective and easily read guidance on how Purbeck District Council (**the Council**) will use its planning enforcement powers to:

- Deal with developments or uses which are constructed or started without planning permission and
- Deal with developments which have planning permission and are not constructed or operated in accordance with that planning permission or are in breach of any planning condition which has been attached to that permission.

Both these occurrences are referred to as **unauthorised development** throughout this policy document. The preparation of this Policy has regard to the Council's planning responsibilities and the resources – personnel and financial - it has available to it.

- 1.2 Purbeck District is rural in character with numerous villages and three small towns. The remote nature of much of the District means enforcement action can be more difficult to pursue than in compact urban areas. To a large extent we rely on parish and town councils to be our “eyes and ears”: to bring to our attention developments in their areas which might require planning permission. It is this Council's responsibility to take enforcement action. This Policy sets out the approach the Council will take to the enforcement of planning control within Purbeck District.
- 1.3 The District's environment is recognized as being of high quality through the presence of nationally protected landscapes, internationally important nature conservation sites, historically and architecturally important buildings and historic villages and towns. There are also many thriving businesses and pressure for new housing, so the Council has to take care balancing the need to protect the environment whilst allowing necessary development to take place.
- 1.4 Apart from works to listed buildings and unauthorised demolition in a conservation area, it is not a criminal offence to carry out development without first obtaining consent or permission. Where unauthorised development takes place it cannot be assumed that planning permission will be granted or consent given retrospectively.
- 1.5 Unauthorised development can be defined as either: works or uses carried out without planning permission or where planning permission has been granted, works which have not been carried out in accordance with the approved scheme or any conditions which were attached to that approval.
- 1.6 Unauthorised development can cause considerable harm to: the lives of people living near it; public health or safety or the quality of the built or natural environment. Lack of action against unauthorised development by the Council can also bring the planning system into disrepute.
- 1.7 Government policy states that enforcement action should not be used solely to regularize unauthorised development by ensuring that planning permission is obtained. Government guidance also makes it clear that planning enforcement is discretionary and the Council is not obliged to take enforcement action. However nothing in this policy should be construed as the Council condoning unauthorised development.

- 1.8 The Ombudsman has found against councils where they failed to take enforcement action which was plainly necessary in order to protect public amenity or the public interest in general.
- 1.9 When assessing unauthorised development the first consideration for the Council will always be to determine whether the development is acceptable in planning terms and can therefore be allowed to remain.
- 1.10 Enforcement action can involve the Council in resource intensive activities which might have a damaging effect on its operations if the function is not managed carefully. Therefore the Council will consider thoroughly whether the use of its statutory enforcement powers is appropriate in each individual case.
- 1.11 This Policy sets out the circumstances where the Council will use its powers to control unauthorised development for which it is wholly responsible. In cases such as where the unauthorised development or use is causing harm to a Site of Special Scientific Interest, certain polluting uses and damage to a Scheduled Ancient Monument it would either pass the case over to the organisation or agency responsible for enforcement or work with them to ensure that the most appropriate form of action is taken – having regard to the most appropriate legislation - in order to deal with the unauthorised development.

2. The Need for a Policy

- 2.1 The Council needs to set out its approach to dealing with the control of unauthorised development for a number of reasons;
- So the “risks” associated with the unauthorised developments are assessed when enforcement action is considered.
 - So those who come into contact with the planning enforcement system know what they can expect from it; including parish and town councils the public and developers.
 - To give guidance to Councillors and Officials on where the resources available for planning enforcement should be focused.
 - To bring consistency to the process so that both the person or persons responsible for the unauthorised development and those being effected by it are treated fairly.

3. Assessment of Risk

- 3.1 Different types of unauthorised developments or uses pose different risks in terms of the harm they can do to quality of life, health and safety, the local environment and the reputation of the planning system.
- 3.2 In the absence of unlimited resources it makes sense to focus primarily on those unauthorised developments or uses which pose the greatest risk of causing harm to quality of life, those which affect health and safety or immediate and irreparable damage to the environment.
- 3.3 At busy times the Council will not be able to deal with cases which are assessed as low risk, using the criteria outlined below. It will need to carefully manage how it deals with these cases so that the planning system is not brought into disrepute.
- 3.4 The following sets out in general terms how the Council will assess unauthorised developments or uses employing a “risk based” approach.

High Risk of Causing Significant Harm

Unauthorised development or a use which is causing significant harm or has potential to cause significant harm to: quality of life; health and safety and/or the environment. Requiring immediate attention, for instance there is a risk of death or serious injury if the unauthorised development or use is allowed to remain or continue (examples are given below).

Medium Risk of Causing Significant Harm

Unauthorised development which is causing significant harm or potential harm to the environment of the District. The main distinction between a “high risk” and “medium risk is that “medium risk” unauthorised developments will not require immediate attention (examples are given below). Whilst there will not be an immediate risk, there will be a longer term risk that the environment of the District will be damaged if the work or use is not brought under control.

Low Risk of Causing Significant Harm.

Activities which in themselves are not particularly harmful in terms of the damage they do to health and safety, peoples’ amenity or the environment, but which left unchecked risk bringing the planning system into disrepute if someone is seen to be “getting away with it”.

4. Priority for Investigating Unauthorised Developments or Unauthorised Uses

4.1 Priority 1

Highest Priority for Action

Significant Harm to Health and Safety, Quality of Life or the Environment Requiring Immediate Attention.

- Unauthorised developments or uses which could cause injury, illness or death. This could be the creation of dangerous access, a seriously polluting activity or the storage of a hazardous substance (**health and safety**).
- Unauthorised developments or uses where demonstrable physical harm is being caused to the amenity of a locality or where the harm caused is particularly severe, to an individual. The definition includes new buildings or new uses which cause harm by either, noise, dirt, dust, smoke, vibration or fumes etc. An example would be a car repair business operating in a residential area (**quality of life**).
- Works with planning permission not being constructed in accordance with the approved scheme where significant harm to the amenity of the locality or people living nearby is being caused. This category will include buildings being constructed significantly higher than the approved finished floor levels, being constructed in a significantly different location within the approved site etc (**quality of life**).
- Works to listed buildings which irreversibly harm their character and will lead to the loss of their architectural or historic interest (**environment**).
- Urgent works or repairs notices in relation to a listed building where emergency repairs are necessary in order to keep a listed building wind and weather proof, safe from collapse or action to prevent vandalism or theft of historic features (**environment**).

- Unauthorised works to protected trees (trees within Conservation Areas or trees which are the subject of a Tree Preservation Order) – lopping, topping or felling **(environment)**.

4.2 **Priority 2**

Medium Priority for Action

Significant Harm to the Environment and Quality of Life of the District Not Requiring Immediate Action

- Development in the open countryside causing serious visual harm to the Area of Outstanding Natural Beauty, Heritage Coast, Green Belt or any other area of open countryside not covered by a recognised designation.
- Developments causing harm to the purpose of the designation of a Site of Special Scientific Interest or internationally important nature conservation site. (NB enforcement action in this case would normally only be taken on the advice of and in co-operation with Natural England).
- Works to listed buildings that would harm its character as a building of architectural or historic interest, but are reversible.
- Significant developments in conservation areas which harm its character or appearance – including: new works, alterations to buildings and /or structures.
- The construction of one or more buildings within the defined settlements of the District.
- Works or uses which require permission due to the presence of an “Article 4 Direction” i.e. an order made by the Council which removes rights to use land or carry out works without the benefit of planning permission.
- Land or property which is in a condition which would severely affect the amenity of the surrounding neighbourhood.
- Planning permission granted and not constructed in accord with the approved plans which is causing significant harm to the environment.

4.3 **Priority 3**

Lowest Priority for Action

Unauthorised developments which do not cause harm in themselves, but which left unchecked are likely to bring the planning system into disrepute

- Unauthorised developments by private householders, currently under construction or recently completed – extensions, porches, garden buildings, decking, fencing, rooflines of new buildings etc.
- Unauthorised developments by private householders which have been erected for some time e.g. for at least 6 months.
- Works with planning permission not being constructed in accordance with the approved scheme or failing to comply with conditions attached to a planning permission, where the unauthorised development is of a minor nature e.g. failure to obtain approval for

materials, failure to obtain approval for landscaping, changes to fenestration detailing, height of roofline or angle of pitch changed from approved plans etc.

- Unauthorised erection of satellite dishes, solar panels, flag or flag pole etc. or other plant or equipment attached to the outside of buildings.
- Minor alterations to the exterior of a building. Installation of flues, chimneys, windows, roof lights, balconies etc.
- Works which do not harm the character of a listed building, but do require consent.
- Running a business from residential premises where no demonstrable harm is caused to the amenity of the locality or neighbours.
- All advertisements, signs, name plates, fly posting etc (but if causing a demonstrable risk to highway safety – Priority 1.).

5. What we aim to do

5.1 In the case of **Priority 1** complaints we will aim to make a site visit within a maximum 5 working days of the complaint being received in writing – subject to staff availability. The Head of Planning Services and/or the Development Control Manager will take appropriate enforcement action immediately (issue a stop notice, enforcement notice, breach of condition notice etc.) as soon as initial investigations (including a legal assessment) indicate that this is the most appropriate course of action.

5.2 In the case of **Priority 2** complaints we will aim to make a site visit within a maximum of 10 working days of the complaint being received in writing.

- We will first try to deal with the unauthorised development by negotiation.
- Formal enforcement action will not normally be considered in the first instance.
- The Council will reserve its right to take formal enforcement action at any time should the unauthorised development be causing significant harm to the amenity of neighbours or the locality or the character appearance or quality of the environment and not be capable of resolution within a reasonable timescale.
- Formal enforcement action will also be likely should the person responsible for the unauthorised development not be prepared to cooperate, does not enter into negotiations in good faith or unreasonably prolongs negotiations.

5.3 In the case of **Priority 3** complaints we will aim to make a site visit within a maximum of 20 working days of the complaint being received in writing.

- Assessment will be made of the harm being caused by the unauthorised development.
- It will be open to the Officer carrying out this assessment – in consultation with the Development Control Manager – to decide whether the unauthorised development is causing harm to the amenity of those living nearby, the locality or the character or appearance of the local environment.

- The complainant will be notified and the person or persons responsible for the unauthorised development will also be informed that their development requires the benefit of planning permission¹.
- In the case of unauthorised developments assessed to be causing harm the Council will seek to remedy the harm caused through negotiation.
- Only as a last resort will formal enforcement proceedings be pursued and only then where demonstrable and substantial harm to either the amenity of neighbours, the amenity of the locality or the character or appearance of the locality can be established.

5.4 In all cases the Head of Planning Services/ Development Control Manager, in consultation with the Chairman of the Planning Board, can decide that no further action will be taken unless the circumstances of the breach materially change.

6. **What the Council will not do**

6.1 There are land and property related problems which are not the responsibility of the planning system. There are also other circumstances where the Council may choose not to use its enforcement powers. These areas include:

- Complaints about unauthorised development or uses not received in writing (letter or email) i.e. telephone calls must be followed up by a letter or an email.
- Boundary disputes between neighbours.
- Property and land ownership issues which are not planning related.
- Complaints received anonymously about unauthorised development or uses – we will not investigate anonymous complaints.
- Persistent complaints about unauthorised development or uses which have previously been investigated and a conclusion reached.
- Vexatious or malicious complaints about unauthorised development or uses.
- Nuisance being caused by active construction sites (with a valid planning permission) – noise, dust, fumes etc.
- Complaints about unauthorised developments or uses which are more appropriately dealt with by another organisation or agency.
- Breaches of covenants between landowners.
- Competition between businesses.
- Loss of views.
- Trespass.

[NB the list is not exhaustive]

¹ Although we will not pursue the person responsible for the unauthorised development we will ensure that they are aware that the development is unauthorised and that this may lead to problems should they wish to sell their property.

- 6.2 When a complaint is received which relates to one or more of the above areas or is assessed to be about a matter which is not covered by the scope of the planning system we will write to the complainant and explain why the Council cannot get involved. In appropriate cases the Council may choose to advise the complainant about where a solution to their problem might be found – for example in a boundary dispute the use of a solicitor or mediator may be suggested.