



# WILLAND PARISH COUNCIL

## Local Enforcement Plan Mid Devon District Council

### Consultation draft March 2017

Willand Parish Council has considered this document and has the following observations and questions.

#### 1. **Initial observations and comment:**

1.1 The opening paragraph is sound, written in plain English and can be clearly understood. What comes afterwards and the possible way it is interpreted and implemented, together with historical experience, gives cause for concern and has the beginnings of affecting public confidence in the system as implemented by MDDC from this point.

1.2 It is appreciated that the NPPF at paragraph 207 gives advice and much of that is viewed as contradictory after a robust opening sentence which is then followed by words which if interpreted and actioned by a weak system allows no action to be taken in most cases. Words such as 'discretionary' and 'proportionately' are used but so are the words 'manage enforcement proactively' which seem to be ignored in practice in a number of instances. The word 'expedient' is often used but does not appear in Policy DM31 or paragraph 207 of the NPPF.

1.3 DM31 also includes the sentence "*Enforcement action will be taken where it is appropriate to do so and in the public interest.*" What is not clear is who is to decide what is 'appropriate' and 'in the public interest'? Certainly, in the past the Parish Council have not felt that they, rather than an officer, have a view as to what is in the public interest. [One noticeable exception to this has been the working relationship established with one enforcement officer during the past year or so who has now left.]

#### 2. **The Objectives (page 2):**

2.1 Most of the objectives are understandable, achievable and measurable. One objective as outlined in paragraph 2.2 below is considered to be open to misinterpretation and is not proactive. It is basically considered to be permissive and concessionary to those who through ignorance or deliberate action are non-compliant and could be seen to be permitted advantage over those persons who comply with the procedures and the planning system.

2.2 The objective subject to concern reads:-  
"*Achieve a balance between protecting amenity and other interests and allowing acceptable development to remain, or to continue, in the absence of permission;*"  
This gives the impression that whatever breach or unapproved action or construction was taking place would be permitted to continue and no mention is made of regularising the position. It is suggested that the objective should be amended to read as follows: -

*“Achieve a balance between protecting amenity and other interests and allowing acceptable development to remain, or to continue, subject to the application and granting of permission or appropriate amendment of a current approval;”*

### **3. LEGISLATIVE FRAMEWORK** **WHAT IS A BREACH OF PLANNING CONTROL?** **WHAT IS NOT A BREACH OF PLANNING CONTROL?**

3.1 These sections appear factual and the content is clear.

### **4. INVESTIGATION OF REPORTED BREACHES OF PLANNING CONTROL**

4.1 Paragraphs under the headings **Receipt of complaints, Confidentiality, Registration of complaints and Background checks** are clearly written and workable.

4.2 The three tables setting out **Priorities** could be debated as to whether or not the correct priority is accorded to the appropriate description of the alleged breach. It is argued that if no change is made to the classifications the **response times** are not practical. They should be reviewed and amended to reflect a practical proactive and effective response. **High Priority** should be afforded a same day response if it is to be effective.

4.3 **Example: [extreme but makes a point]** On a Friday afternoon at about 1700 hours a parish councillor becomes aware of a developer cutting down trees and digging out a hedge which is protected under a TPO and conditions of a planning approval. No one working in planning at that time of day on a Friday. An email is sent that evening but will not be read until the following Monday. Saturday and Sunday are non-working days. Three working days are allowed to register the complaint as it is busy – Monday, Tuesday and Wednesday are gone before registration. It gets to a planning or enforcement officer on the Thursday morning. Three working days are then allowed to attend site. Thursday and Friday are missed – Saturday and Sunday are non-working days and so it will be Monday before a visit will be made. Are there any trees or hedge to see?

4.4 Similar examples can be given for the lower priorities and a builder can build a lot of house wall in 18 working days plus 6 weekend days if he is really keen to get on with things.

4.5 It is suggested that priorities section be revisited and ‘tightened up’ with a much-shortened response time. The current Enforcement Policy Statement dated November 2005 under Clause 6 (Code of Practice) paragraph 5 clearly gives instances where a site visit should take place within ONE DAY of receipt of notification.

4.6 No observations are offered to the paragraphs headed **Initial site visit; If no breach is established; Where further investigation is required; Obtaining additional information; Where a breach of control is established.**

4.7 **Proportionality:** The words as written are understood and clear BUT it is the liberal interpretation and the use of ‘discretion’ which causes conflict and loss of confidence in the enforcement process. This is particularly so when the liberal interpretation is used to take no action where there is an obvious failure to comply with conditions used to justify a planning approval or a deliberate deviation from approved plans.

4.8 **Negotiation:** This process is clear and no change is recommended.

4.9 **Retrospective planning application:** The last sentence of this section needs reconsideration.

*“If such an application is not submitted, the Council will consider whether or not it is expedient to take enforcement action.”*

Surely if a decision is made to invite a retrospective planning application it must be considered that one is required. If the person involved does not do so then, as written, it would appear that the system weakens and officers will find it expedient to take no action. Another example as to how the general public lose confidence in the process of enforcement.

## **5. COMMENCING FORMAL ENFORCEMENT ACTION:**

5.1 This section factually sets out the relevant law and procedures. Of concern is the repeated emphasis on potential cost which may occur if certain actions are taken. The inference is that the overriding consideration is potential costs if positive action is taken and appealed or subjected to judicial review. This again is seen as a cause for loss of public confidence in the system.

5.2 The table on page 15 is self explanatory BUT the last boxes of ‘Successful prosecution’ to ‘Pursue compliance if required’ surely should not have an arrow to ‘No further action required by Planning Authority’ as they will surely be the authority to monitor compliance and report back to the court if not done.

## **6. TARGETS FOR ACTION:**

6.1 Comment has been made as to the number of working days allowed for registration and visited in paragraphs 4.2 to 4.5 inclusive above.

6.2 In the table rows 2 to 4 under ‘**Target Time**’ the words “*of registration*” should be added to be consistent with the tables on pages 7 & 8.

## **7. MONITORING THE IMPLEMENTATION OF PLANNING PERMISSIONS:**

7.1 *“We rely in part on nearby residents and the Town and Parish Councils to let us know if they notice things are not being built in accordance with the approved plans, or if a condition is not being complied with.”*

If parish councils do report matters it is incumbent on the Planning Department to ensure that actions are taken AND proper communication is maintained giving the requisite feedback. Perhaps more emphasis on this point needs to be in the policy by adding an additional paragraph to this section.

8. **Offer:** Willand Parish Council would be willing to discuss any points raised in order to elaborate or clarify any points.

