

Sevenoaks District Council

Local Enforcement Plan

1. INTRODUCTION

Effective operation of the planning system depends on the ability to enforce against development carried out without planning permission and planning legislation gives District Councils powers to take action where necessary against development that does not have permission.

The Government provides guidance to local authorities on enforcement in its National Planning Policy Framework. It says:

Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.

The Government's Planning Practice Guidance also advocates the preparation of a local enforcement plan.

This document is the Council's Local Enforcement Plan. It was adopted on [insert date].

2. KEY PRINCIPLES OF THE ENFORCEMENT SERVICE

Our approach to enforcement is based on the following key principles.

- The identity of complainants will be treated as confidential information. It is considered that disclosing the identity of those persons who report breaches or possible breaches is likely to result in fewer reports being made to the council .
- Where a new complaint is received we will aim to visit the site within three working days.
- Complainants and those who are the subject of complaints will be kept informed of the progress of enforcement investigations and of the outcome.
- We will prioritise the investigation of complaints based on the degree of harm caused by the development subject of the complaint.
- We will seek to achieve a solution that removes harm caused by unauthorised development.
- We will use our statutory powers where necessary and proportionate to remove harmful development.
- We will not take enforcement action against unauthorised development that causes no harm.

The remaining sections explain our approach in more detail.

3. INVESTIGATING COMPLAINTS

3.1 How to Report Alleged Breaches of Planning Control

The Council encourages the reporting of suspected breaches of planning control. As development can gain immunity from enforcement action over time, it is important that any suspected breaches are reported as soon as possible in order that harmful development can be removed or minimised. Those reporting a breach of planning control are asked to do so via the Council's web-site

<http://www.sevenoaks.gov.uk/services/housing/planning/planning-enforcement>

providing as much information as possible in all fields.

, The Council will not disclose any information that would identify a complainant. If nevertheless you do not want to reveal your identity you may wish to ask your local Parish or Town Council to put forward your complaint. The personal information of a complainant will be processed in accordance with the Data Protection Act 1998

Anonymous complaints are not investigated.

3.2 What is a Breach of Planning Control?

A breach of planning control is either: -

- Carrying out development without the required planning permission (this includes carrying out development contrary to approved plans);
or
- Failing to comply with any condition or limitation subject to which planning permission has been granted

Some development, referred to in the legislation as "permitted development", does not need an express grant of planning permission from the Council and we cannot take enforcement action against it.

The Planning Enforcement Team can only investigate breaches of planning control. It cannot enforce the requirements of other legislation, for example on street parking, safety of a building, clearing land of undergrowth and bushes, safety of a structure, fly tipping, noise/smell complaints and licensing restrictions.

The Council will not intervene in private civil disputes such as breaches of restrictive covenants, boundary disputes or disputes that relate to damage to or reduction in value of land or property.

If complainants are unsure whether their complaint relates to a planning matter the Enforcement team can provide advice.

3.3 Prioritising Complaints

Taking enforcement action can be a complex process requiring significant staff time. The Council, therefore, must prioritise cases to ensure that prompt action is taken against the most damaging breaches of planning control. In very urgent cases, a site visit will be made immediately. However, in all cases, we will aim to make a site visit within 3 working days.

Complaints are prioritised as follows: -

Very Urgent

- Unauthorised works to listed buildings
- Unauthorised works to protected trees
- Any other development that causes irreversible demonstrable harm, such as the deposit of waste

Urgent

- Any unauthorised development/activity which causes clear harm to the locality including the living conditions of adjoining residents
- Breach of a condition which results in demonstrable harm to amenity in the neighbourhood

Non Urgent

- Unauthorised developments which are likely to receive planning permission
- Technical breaches, including breaches of conditions
- Unauthorised advertisements

3.4 Site Visits

In all but the most straightforward cases, officers will undertake a site visit to try to establish whether a breach of planning control has taken place. The majority of site visits are made without prior arrangement, and officers are required to identify themselves as investigation officers as soon as they enter the site.

The Council's planning investigation officers have powers of entry, for the purpose of investigating alleged breaches of planning control (see appendix).

Where site visits are made and no occupier can be found at the time of visit, officers have power to inspect the land in his or her absence. Officers do not have powers to force entry into any dwelling house. Where appropriate, officers will leave a business card requesting the occupier of the land to contact the Council.

If, during a site visit, officers are refused entry onto land or buildings, the Council has the right to apply to the Magistrates' Court for a warrant to enter the property. This course of

action will be taken only in cases where it is considered both necessary and proportionate to the alleged breach under investigation.

Whilst on site, officers may ask questions of any present occupiers, and may take measurements and photographs. Any information gathered will be used to ascertain whether a breach of planning control has taken place. If a breach has occurred, this information will be used to assess the most appropriate course of action to resolve the matter.

3.5 Gathering Evidence

Where a complaint relates to an alleged unauthorised use of land, officers will make a reasonable attempt to determine whether a breach has taken place. In most cases a 'reasonable attempt' will consist of a number of site visits at days and/or times deemed most suitable for the allegation. This approach ensures that the Council's limited resources are used effectively. Where officers can find no evidence of a breach of planning control the investigation will be closed and no further action taken. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.

Officers may also make use of the 'planning contravention notice' if they have reasonable suspicion that a breach of planning control is likely to have occurred, [this tool will be used in accordance with Government guidance and best practice

Officers may use a variety of other methods to determine whether or not a breach of planning control has taken place, including obtaining information from witnesses to an alleged breach, and consultation with Council departments, HM Land Registry etc.

The Council may also seek clarification from case law or obtain legal advice where the subject of an investigation is complicated or contentious.

3.6 Immunity from Enforcement Action

When investigating breaches of planning control, officers must identify whether or not a breach is immune from enforcement action.

Where a breach of planning control continues, undetected and therefore without any intervention by way of enforcement action, it will become lawful by the passage of time. In such circumstances the breach becomes immune from enforcement action and lawful, which means the Council is unable to remove or mitigate the development.

Immunity timescales are as follows: -

- Four years where the breach consists of unauthorised building, mining, engineering or other operations

- Four years for a change of use of any building to use as a single dwelling house
- Ten years in any other case, including breaches of planning conditions

However, deliberate concealment of a breach of planning control in order to gain immunity from enforcement action does not necessarily benefit from the statutory immunity timescales. New powers conferred by the Localism Act 2011 allow the Council to apply to the Magistrates' Court for a Planning Enforcement Order, where a deliberate concealment of a breach of planning control becomes evident. Where such a breach of planning control is discovered, consideration will be given to the expediency and anticipated success of using such powers. The application can be made at any time within six months of the date on which there was sufficient evidence to justify the application.

3.7 Planning Contravention Notices

The Council has powers to issue planning contravention notices and serve these on owners and occupiers of land where they believe a breach of planning control has occurred. The Council may ask questions regarding the alleged breach, to acquire information necessary to determine whether a breach has taken place. A planning contravention notice is a formal notice and failure to respond, or knowingly to provide false information, is a criminal offence. The notice allows the recipient to explain why there has been no breach of planning control if this is the case. Failure to reply to a planning contravention notice will not stop the Council from taking enforcement action where it is considered appropriate.

Issuing a planning contravention notice does not constitute the Council taking enforcement action. A planning contravention notice is not registered as a land charge and is not included on the Council's Enforcement Register (see paragraph 7.3 below).

4. DECISION MAKING

4.1 Basis for Decision Making

Where it is established that there is a breach of planning control the Council has to decide whether to take action.

It is not a criminal offence to carry out work or change the use of land or buildings without first obtaining planning permission and the Council does not have a duty to take enforcement action where there is a breach of control.

Enforcement action will not be taken simply because development has taken place without permission. There must be evidence of harm arising from the work carried out.

The Council does have a duty to determine whether enforcement action is necessary and in doing so it must consider whether it is “expedient” to take action. The expediency test involves assessing the planning merits of the unauthorised development and the impact of the Council’s enforcement powers, to determine whether action is required to control the unauthorised development or require its cessation/removal.

An enforcement notice can be overturned on appeal on the grounds that planning permission should be granted for the development and the Council will not therefore not normally take enforcement action against a development for which permission would be granted under its policies if an application had been made.

The key issues will therefore be similar to the situation if a planning application was submitted for the development. The Council will consider whether the development is consistent with relevant national and local policies and also take into account other relevant planning considerations.

4.2 Recording of Decisions

Decisions not to take enforcement action will be agreed by the Senior Investigation Officer with reasons recorded in writing.

5. SECURING COMPLIANCE

The Council has a variety of enforcement options that may be utilised when resolving a breach of planning control.

5.1 No Action

Where it is determined that an unauthorised development is acceptable based on its planning merits, the land owner and/or occupier will be invited to submit a retrospective planning application in an attempt to regularise the matter. In the event that such an application is not forthcoming no further action will be taken on the basis that it is not expedient or in the public interest to pursue.

5.2 Considering an Application

Where a planning application is received for development that has already taken place the Council will assess its merits on the same basis as if the development had not yet commenced. The proposal will receive no more or less favourable treatment because it has already taken place.

5.3 Informal Action

In the majority of cases where it has been established that further action is expedient, the Council will initially seek informal resolution of the breach of planning control. Informal resolution may be by way of requesting a retrospective application in order that the development may be controlled either with or without conditions, or by requesting cessation or removal of the breach of planning control within a specified deadline. The time allowed will be reasonable and will take into account the amount of work required, the seriousness of the contravention and the implications of non-compliance. The Council will make all requests in writing, and failure to achieve compliance will result in consideration being given to formal action.

Where the harmful impact of the development is such that the Council would be very unlikely to grant permission it will not seek a planning application before taking action.

5.4 Statutory Notices

The Council has powers to issue notices to remedy breaches of planning control. The type of notice issued will be dependant upon the nature of the breach of planning control and, in most cases, such action will be taken only where attempts to negotiate an informal resolution have been unsuccessful.

- **Breach of Condition Notice**

These will be issued within 14 days of authorisation and can be used where conditions imposed on a planning permission have not been complied with. They

are not suitable for all conditions. There is no right of appeal. Failure to comply may result in prosecution in the Magistrates' Court [maximum fine £2,500].

- **Enforcement Notice**

These will be issued within 28 days of authorisation and are the usual method of remedying unauthorised development. They can also be served to restrict or impose conditions on a particular operation which would otherwise be unacceptable. There is a right of appeal against these notices. Failure to comply may result in prosecution in the Magistrates' or Crown Court [maximum fine £unlimited].

- **Listed Building Enforcement Notice**

These are very similar to Planning Enforcement Notices. They specify the unauthorised works to a listed building and the requirements necessary to remedy the harm. They can be served on their own, e.g. where unauthorised works to a listed building required only listed building consent and not planning permission, or in conjunction with a Planning Enforcement Notice. Failure to comply may result in prosecution in the Magistrates' or Crown Court [maximum fine £unlimited].

- **Section 215 Notice**

These can be used in relation to untidy land or buildings where their condition adversely affects the amenity of the area. Failure to comply may result in prosecution in the Magistrates' Court [maximum fine £2,500].

- **Stop Notice**

These can be used only in conjunction with an enforcement notice and where the breach of planning control is causing irreparable and immediate significant harm. Failure to comply may result in prosecution in the Magistrates' or Crown Court [maximum fine £unlimited]. There is no right of appeal and the Council may be liable to pay compensation if it is later decided that such a notice was not appropriate.

- **Temporary Stop Notice**

These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice is issued only where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area. Failure to comply may result in prosecution in the Magistrates' or Crown Court [maximum fine £unlimited].

- **Planning Enforcement Order**

Where a local planning authority discovers an apparent breach of planning control, within 6 months of discovery it may apply to the Magistrates' Court for a Planning Enforcement Order. The order allows the authority an 'enforcement

year' in which to take enforcement action, even after the usual immunity limits have expired. The Magistrates may make a planning Enforcement Order only if they are satisfied that, on the balance of probabilities, the "actions of a person or persons have resulted in, or contributed to, full or partial concealment of the apparent breach or any of the matters constituting the apparent breach".

- **Injunction**

Where a breach of planning control is causing, or is likely to cause, significant harm, the Council may apply to the Courts for an injunction compelling the breach to stop. In order to grant an injunction the Court needs to be satisfied that it is just and convenient as well as proportionate to do so in light of the Article 8 right to a private life contained within the European Convention on Human Rights. At the hearing, the Judge will invariably weigh up the public interest of granting an injunction in terms of upholding the integrity of the planning system and abating the material harm, as against the private interests of the landowner/occupier to use his land as he or she sees fit. From a practical point of view, the Circuit Judge who will hear the application may be inexperienced in planning and environmental law. Accordingly, Judges commonly take a common-sense, broad-brush approach. If it can be demonstrated that there has been a flagrant breach of planning [rather than some technical or slight indiscretion], material harm is caused and the defendant shows no sign of rectifying the situation, the Court is likely to look sympathetically upon the application.

5.5 Direct Action

Where the Council has issued a statutory notice and those responsible for the breach have failed to comply, the Council has powers to carry out the works specified in the notice. This is referred to as 'direct action'. Direct action is a useful tool that can resolve many different breaches of planning control, and is generally most effective when used to remove unauthorised building operations. The Council has powers to recover from those responsible any expenses incurred as a result of direct action, and unpaid expenses can be pursued either in the County Court or registered as a land charge payable when the land is sold.

5.6 Prosecution

Whilst it is not a criminal offence to carry out development without first obtaining planning permission, it is an offence to erect unauthorised advertisements, fell a protected tree without consent, carry out unauthorised works to a listed building or fail to comply with an enforcement, breach of condition, planning contravention or stop notice.

A prosecution is more likely to ensue where the individual or organisation has: -

- Deliberately or persistently ignored written warnings or formal notices

- Endangered, to a serious degree, the health, safety or well being of people or the environment

Prosecution may be the most appropriate course of action in other circumstances, or where direct action is considered inappropriate or has proved ineffective in resolving the breach. The Council will pursue a prosecution only where there is a realistic prospect of conviction, and where it is in the interests of the wider public to do so.

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; and remedial action taken by the alleged offender

6. MONITORING THE IMPLEMENTATION OF PLANNING PERMISSIONS

The Planning Enforcement Team is notified of commencements of development by the Council's Building Control Department. These are checked by the Planning Enforcement team against planning application decisions to ensure that:

- All necessary permissions have been granted
- All pre-commencement conditions have been discharged
- All financial contributions that form part of a Section 106 Agreement or, where relevant payments under the Community Infrastructure Levy, have been received by the Council

The Council does not routinely check compliance with the approved plans or individual conditions but will do so if a complaint is received.

7. GENERAL INFORMATION

7.1 Keeping People Informed

The Council aims to keep complainants and those in breach of planning control informed at each stage of the investigation. Complainants may contact the case officer and seek an update at any time during the process.

7.2 If You Are the Subject of a Complaint

If the Council believes you to be responsible for an alleged breach of planning control and contacts you in this regard, you are entitled to know what the allegation is, and have the opportunity to explain your side of the case.

Please note that under the Freedom of Information Act 2000, the Council is not obliged to provide details of the source of any complaint although you will be entitled to know the name of the Councillor who lodges a complaint on his/her own behalf or on behalf of someone else.

Where the complaint is found to be without substance, you will be advised accordingly and the Council's file on the matter will be closed. If there is found to be a breach of planning control, you will be advised of the details of the breach and how it can be rectified.

Your cooperation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable time period will be allowed for you to do this.

In some circumstances you may be invited to submit a retrospective planning application, although no assurance can be given as to a successful outcome to any planning application. However, if refused, such applications carry a right of appeal.

We will try to minimise possible impacts on any business which may be subject of enforcement action, but this does not necessarily mean that the enforcement action will be delayed or stopped.

Enforcement Notices will contain the precise details of the breach, the reasons for the action, the steps required to overcome the breach and the time period for compliance.

In the early stages of an investigation, you may be issued with a 'Planning Contravention Notice' that requires information concerning the development carried out and precise details of those responsible and/or involved. This Notice is used to establish facts so that the Council can determine whether a breach of planning control has taken place and whether formal enforcement action is appropriate. The legal implications of not completing and returning the Notice will be explained to you.

7.3 Enforcement Register

The Council has a statutory duty to hold and maintain an Enforcement Register, which is a public record of all formal enforcement action that is registered as a land charge. This register is in electronic format on the Council's website.

7.4 Complaints Against the Service

The Council aims to investigate and assess all breaches of planning control fully, and to take enforcement action where it is considered expedient to do so. The Council also aims to ensure high customer service standards are maintained with all parties involved in an enforcement investigation.

Where customers have a complaint about the way an enforcement investigation has been carried out the complaint will be investigated in accordance with the Council's Complaints Policy, details of which can be found at www.sevenoaks.gov.uk.

APPENDIX

LEGISLATION AND GOVERNMENT GUIDANCE

1 Primary Legislation

When investigating alleged breaches of planning control, the Council will act in accordance with the provisions of both primary legislation [Acts of Parliament] and secondary legislation [Statutory Instruments].

The primary legislation is the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act, 1991) together with the Localism Act, 2011. This legislation sets out the definition of 'development', and provides the Council with the majority of its planning enforcement powers.

2 Secondary Legislation

Key secondary legislation includes: -

The Town and Country Planning (Use Classes) Order 1987, and all amendments

The Use Classes Order [UCO] separates the many different uses of land into 'classes', and sets out which changes of use of land are outside the scope of development. The UCO deals only with 'primary' uses of land; any use class that is not listed or constitutes a 'mixed use' is defined as 'sui generis' and sits within its own class. The UCO defines the changes of use that cannot be 'material', and therefore advises only which changes of use are excluded from development. The UCO does not define what constitutes a material change of use, therefore if a change of use is not excluded it must be assessed on its own merits as a matter of fact and degree.

The Town and Country Planning (General Permitted Development) Order 1995, (as amended)

The General Permitted Development Order (GPDO) sets out what forms of development have the benefit of 'deemed' planning permission. All works or activities that are defined as being 'development' that are not covered by the GPDO will require express planning permission.

3 Government Guidance

Paragraph 207 of the National Planning Policy Framework sets out the general approach to planning enforcement.

The Council will also have regard to Planning Practice Guidance (Department for Communities and Local Government)

4 Other Legislation, Guidance and Codes of Practice

When investigating breaches of planning control the Council will also act in accordance with the following: -

- Code for Crown Prosecutors
- Human Rights Act 1998
- Equality Act 2010

5 Powers of Entry

The Council's planning investigation officers have powers of entry, for the purpose of investigating alleged breaches of planning control, under the following provisions: -

- Town and Country Planning Act 1990 (as amended)
- Town and Country Planning (Listed Buildings and Conservation areas) Act 1990 (as amended)
- Planning (Hazardous Substances) Act 1990 (as amended)
- Planning (Hedgerow Regulations) Act 1997
- Local Government (Miscellaneous provisions) Act 1976, 1982
- Planning (Consequential Provisions) Act 1990 (as amended)