

Decision Number: 09 (2017-18)

Portfolio Holder Executive Decision Statement

The Local Authority (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Subject:

Enforcement Plan 2017

Details of Decision taken

To agree the Enforcement Plan 2017 for use within the service and for publication on our website

Reason for Decision

Following the retirement of the Enforcement team leader and the recasting of the post it was decided to redraft this operational document to better reflect the work of the team and the challenges facing enforcement.

The redrafting is not a fundamental change to the existing Enforcement Plan, rather it was an opportunity to plain English the text, deal with operational and management matters, update it in terms of titles and legislation and to review, reassess and set appropriate time limits for site visits.

All Documents considered:

Review of Enforcement plan 2017

Details of any alternative options considered and rejected by the Member when making the Decision:

To leave the Enforcement Plan 2016 unaltered.

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Financial implications

None - it is not intended to print this document but place it on our website.

Legal Implications and Risk Assessment Statement

None - this is an operational and management document

Equality Impacts (Consideration of impacts under the Public Sector Equality Duty)

The document sets out how our customers are to be treated as part of our operation and management of planning enforcement action. These mirror the corporate objectives.

There will therefore be no perceived impact of end users.

Local Member (s), other Portfolio Holders and/or Directors/Heads of Service Consulted

The Enforcement Team was consulted on this document along with the Chief Planning Officer and the Planning Portfolio Holders.


Details of any conflicts of interest

a) declared by any executive member who is consulted by the Decision Taker

b) and any details of dispensations granted by the Chief Executive in respect of any declared conflict

(For Democratic Services use)

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Decision taken by:	Portfolio Holder for Planning
Signed by Portfolio Holder	
Date of Decision	4 August 2017
Record made by:	Carol Humphrey, Development Manager
Date of record:	4/8/17

When completed a copy of this record must be sent to the Democratic Services Section by e-mail and a signed copy by internal mail



Planning enforcement

Sevenoaks District Council

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Introduction

The effective operation of the planning system depends on our ability to ensure that development is carried out in accordance with planning permission and to enforce against development carried out without planning permission. Effective planning enforcement is vital to make sure our customers continue to maintain confidence in the planning system.

Not all development needs planning permission. Planning law allows certain works and changes of use to take place without applying for planning permission. This is known as permitted development. [The Planning Portal](#) is a useful source of further information about permitted development.

We have produced this Enforcement Plan to help our customers understand the system and our practices.

Government advice and legislation

The government provides guidance on enforcement in its [National Planning Policy Framework](#). It says at paragraph 207 that:

“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 has also issued a document titled [“Ensuring effective enforcement”](#) which acts as a guide to planning enforcement.

Key principles of our enforcement service

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

- ❖ We will investigate all complaints received about breaches of planning control (*) and aim to visit the site concerned within the timescales set out in this document
- ❖ We will give priority to the most serious complaints based on the degree of harm caused by the development the subject of the complaint
- ❖ We will use our statutory powers, where expedient and in the public interest, to remove harmful development
- ❖ We will explore solutions to remove harm caused by unauthorised development

- ❖ We will keep complainants and those who are the subject of complaints informed throughout our investigations
- ❖ We will keep the identity of complainants confidential.

(* we do not investigate anonymous complaints)

What is a breach of planning control?

This could involve the unauthorised erection of a building or extension to a building, a material change of use or land, or the display of unauthorised advertisements. Other breaches of planning control may consist of the following:

- ❖ Unauthorised works to listed buildings
- ❖ Unauthorised works to trees subject to a tree preservation order (TPO) or in a conservation area
- ❖ Unauthorised demolition within conservation areas
- ❖ Unauthorised works to a locally listed building where an Article 4 Direction is in place
- ❖ Breaches of conditions attached to planning permissions
- ❖ Not building in accordance with the approved plans of planning permissions
- ❖ Untidy land where it affects the amenity of the area
- ❖ Unauthorised engineering operations such as raising ground levels or the construction of bunds
- ❖ Failure to comply with a planning legal agreement or pay the required Community Infrastructure Levy (CIL)
- ❖ Deliberate concealment of unauthorised building works or changes of use.

It is important to note that it is **not always an offence to carry out works without planning permission**¹. Whilst some development is unauthorised, we must consider the expediency of taking formal action. This means that some development may well be unauthorised but it will not be unlawful unless a formal enforcement notice has first been issued and the owner or occupier has failed to comply.

Matters that are not breaches of planning control

- ❖ Internal works to a non-listed building
- ❖ Obstruction of a highway or public right of way (PROW)
- ❖ Parking of commercial vehicles on the highway or on grass verges in the absence of a restrictive planning conditions
- ❖ Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property

¹ There are four notable exceptions - works to listed buildings, the unauthorised display of advertisements, unauthorised demolition of certain unlisted buildings in a conservation area and unauthorised works to trees subject to a Tree Preservation Order

- ❖ Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity
- ❖ Land ownership disputes or trespass issues which are civil matters
- ❖ Covenants imposed on property deeds - these are civil matters
- ❖ Any works, including advertisements, that are deemed to be permitted development under planning law, regulations and orders
- ❖ Dangerous structures or other health and safety issues

Enforcement action is discretionary

We have a duty to investigate alleged breaches of planning control, however taking formal enforcement action is discretionary. This means that we assess each case on its own merits so we only take formal enforcement action where it is:

- ❖ Expedient
- ❖ Proportionate.

It is important to note that a breach of planning control in itself is not sufficient reason to take enforcement action. We therefore use the test of expediency as a test of whether the unauthorised activities or development are causing harm to the environment or amenity of the area having regard to our local plan policies, the guidance in the National Planning Policy Framework (NPPF) and all other material planning considerations.

We may take the view that it is not in the public interest or expedient to take formal action in relation to minor or technical breaches where the harm is not significant.

Government guidance advises that enforcement action should be a last resort. We are expected to give those responsible for a breach of planning control, the opportunity to put matters right or to seek to regularise the breach before we resort to serving a formal notice. We must ensure that the service of a formal notice is proportionate with the scale and impact of the breach of planning control.

This means that we might not take formal enforcement action in all cases where there has been a breach of planning control identified.

How to report an alleged breach of planning control

We consider in the region of 800 complaints a year concerning breaches of planning control. In order that we can effectively deal with complaints it is important that we are provided with as much information as possible. Below is a list of the type of information that would assist us in dealing with a complaint:

- ❖ An accurate description of the location or address for the particular site

- ❖ A detailed description of the activities taking place that are cause for concern
- ❖ Names, addresses and phone numbers of those persons responsible for the alleged breach or the owners of land (if known)
- ❖ The date and time of when the alleged breach took place
- ❖ Any other information or evidence that might assist
- ❖ The name and email address of the complainant.

Complaints can be made about alleged breaches of planning control via:

- ❖ Our website - www.sevenoaks.gov.uk
 - Use our [online form](#)
- ❖ Email - planning.enforcement@sevenoaks.gov.uk
- ❖ Letter - Planning Enforcement Service, Development Management, Sevenoaks District Council, Argyle Road, Sevenoaks, Kent, TN13 1HG
- ❖ Telephone - 01732 227000
- ❖ Personal visit to our offices provided that complainant provides their name, address and telephone number.

Anonymous complaints will not be investigated unless they relate to a matter of public safety.

How do we prioritise your complaint?

In order to make the best use of our resources it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. We will do this initially when we receive the complaint. We have set out in the diagram, examples of categories and the timescale for our site visit. In general we visit each complaint site except in the most straightforward cases where this is unlikely to be necessary. The majority of our site visits are made without prior warning so that the sites can be seen in the condition described by the complainant.

We 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 other Council services, HM Land Registry etc.

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

Individual cases may be re-prioritised as the investigation progresses and as new evidence comes to light.

Category A	Category B	Category C
<ul style="list-style-type: none"> • unauthorised demolition or partial demolition of a building which it is essential to retain (eg a listed building or building within a conservation area) • development that potentially is a serious risk to public safety • unauthorised works to trees covered by a tree preservation order or in a conservation area • any unauthorised development where the time limit for enforcement action will expire in the next six months • a site visit will take place, wherever possible, within one working day of receiving the complaint 	<ul style="list-style-type: none"> • any unauthorised development or activity which causes clear, immediate and continuous harm to the locality and adjoining residents • breach of condition which results in serious harm to adjoining residents • unauthorised development in an Area of Outstanding Natural Beauty, Site of Special Scientific Interest, Green Belt, or conservation area or where an Article 4 Direction has been issued • unauthorised development which is the source of significant public complaint • a site visit will take place within five working days receiving the complaint 	<ul style="list-style-type: none"> • unauthorised development which has reasonable prospects of receiving planning permission if an application were to be submitted • minor breaches (eg erection of fences, breaches of conditions, satellite dishes, businesses operated from home) • unauthorised advertisements such as fly posting • a site visit will take place within ten working days receiving the complaint

What are the possible outcomes of our investigation

No breach established - following a site inspection we may find that there is no breach of planning control. This may be because the unauthorised use has ceased, the development does not require planning permission or already has permission.

There is a breach of planning control but where it may not be expedient to pursue. Just because a breach may exist does not automatically mean that formal action should be taken. Enforcement powers are discretionary and minor technical

breaches may not be considered expedient to pursue as they may be too minor to warrant the time and expense to do so.

The development is lawful and immune from enforcement action. This is when the unauthorised development or change of use has occurred over a long period of time without being brought to our attention. There are certain time limits involved in relation to operational development and changes of use.

These timescales are:

- ❖ 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

Negotiations take place to find a solution. In accordance with government guidance the first priority is to try and resolve any breaches of planning control through negotiation. Only when these negotiations fail to secure a solution should formal action be considered. We will not allow negotiations to become protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

Invite a retrospective planning application - see below.

Retrospective planning application

Where a planning application is received for development that has already taken place we will assess the merits of the application on the same basis as if the development had not yet started. This includes the possibility of the application being determined by our Development Control Committee.

Formal enforcement action

We have a range of formal powers under the planning legislation that we can use to remedy breaches of planning control. These are listed and described below:

Enforcement Notice

These notices are the usual method that we use to require the removal of unauthorised development. We will specify in the notice the breach of planning control and what steps are required to remedy it together with a timescale for compliance.

There is a right of appeal to the Planning Inspectorate against these notices. As an enforcement notice can be overturned on appeal, on the grounds that planning permission should be granted for the development, we will not normally take enforcement action against a development where there is a reasonable prospect that we would grant permission if an application had been made. An exception is a

Positive Enforcement Notice which can be served to impose conditions on unauthorised development in the absence of a planning application. 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

We use these in relation to land or buildings where their condition adversely affects the amenity of the area. We will set out the steps to be taken and the time period for compliance in the notice. Works that can be required include planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting but cannot include works which would themselves require planning permission. Failure to comply may result in prosecution in the Magistrates' Court [maximum fine £2,500 with additional fine for ongoing non-compliance.]

Stop Notice

A Stop Notice requires development to stop by a specified date. There is no right of appeal. Stop Notices can only be used only in conjunction with an enforcement notice. We only use these in the most serious cases where the breach of planning control is causing severe and immediate significant harm. Before serving a notice we will consider the likely consequences of requiring the activity to stop. We will review whether there are alternative actions that will achieve the desired outcome. Although there is no right of appeal there are circumstances where we may be liable to pay compensation, notably if the associated enforcement notice is quashed, varied or withdrawn or the stop notice itself is withdrawn. Failure to comply may result in prosecution in the Magistrates' or Crown Court [maximum fine unlimited].

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 we consider it is appropriate that the activity or development should stop 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

We use these orders where unauthorised development has been deliberately concealed in order to avoid detection in the period before it would otherwise become immune from formal enforcement action. If we discover an apparent breach of planning control, within six months of this discovery we may apply to the Magistrates' Court for a Planning Enforcement Order. The order allows us an enforcement year in which to take enforcement action, even after the usual immunity time 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".

Breach of Condition Notice

A breach of condition notice can be used where conditions imposed on a planning permission have not been complied with. They are not suitable for all planning conditions. There is no formal right of appeal. Failure to comply may result in prosecution in the Magistrates' Court [maximum fine £2,500].

Injunction

Where a breach of planning control is causing, or is likely to cause, significant harm, we 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.

Direct action

Where we have issued a statutory notice and those responsible for the breach have failed to comply, as a last resort, we have 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. We also have powers to recover any expenses incurred as a result of direct action. Unpaid expenses can be pursued either in the County Court or registered as a land charge payable when the land is sold.

Prosecution

We will consider a prosecution in the Courts against any person who has failed to comply with the requirement(s) of the notices we serve where the date for compliance has passed and the requirements have not been complied with:

Before commencing any legal proceedings we need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

Deciding not to take action

There will be occasions where the breach of planning control does not have a harmful impact that would justify taking any enforcement action and attempts to get the submission of a planning application have not been successful. In these cases we will decide whether to continue the investigation. We will make a judgement based on the planning issues of the case including relevant planning policies, material planning considerations, the likelihood of planning permission being granted and the possibility of planning permission granted on appeal.

Where there is a breach of control and officers propose to close a case because of lack of harmful impact, we will advise local councillors. There may be occasions where we will refer the matter to our Development Control Committee.

Proactive compliance

In addition to our role in reacting to planning complaints we also provide a proactive approach to ensure compliance with planning permissions and other consents. It is the responsibility of individual developers to comply with the conditions imposed on any planning permission or consent or with any terms identified in legal agreements or complying with CIL. The failure to comply can affect the quality of the environment and undermine the amenity of neighbours.

We do this by checking Building Control commencement notices against our planning records.

Our commitment to customers

We will keep complainants and those in breach of planning control informed at each stage of our investigation. Complainants may contact the allocated case officer and seek an update at any time during the process.

If we believe a customer is responsible for an alleged breach of planning control we will contact them. We will explain what the allegation is and give the customer opportunity to explain their side of the case.

Under the Freedom of Information Act 2000, we are not obliged to provide details of the source of any complaint although customers will be entitled to know the

name of the Member who lodges a complaint on his/her own behalf or on behalf of someone else.

Where the complaint is found to be without substance, we will advise the complainants and our file on the matter will be closed. If there is found to be a breach of planning control, we will advise the customer of the details of the breach and how it can be rectified.

We will seek cooperation 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 this.

In some circumstances we may invite a retrospective planning application, although no assurance can be given as to a successful outcome to any planning application. However, if refused, there is a right of appeal to the Planning Inspectorate.

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, we may issue a Planning Contravention Notice. This 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 we can determine whether a breach of planning control has taken place and whether formal enforcement action is appropriate. We explain the legal implications of not completing and returning the Notice when we serve the Notice

Enforcement register

We have a statutory duty maintain a publicly available Enforcement register. This is a record of all formal enforcement action that is registered as a land charge. This is in electronic form on our website www.sevenoaks.gov.uk

Complaints against the service

We aim to investigate and assess all breaches of planning control fully, and to take enforcement action where it is justified. We also aim 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

Legislation/guidance

The following list sets out the main legislation and guidance, which is considered directly relevant to planning enforcement. This is not intended to be an exhaustive list.

- ❖ Town and Country Planning Act 1990 (as amended) - this is the primary legislation relating to planning, which has been amended by subsequent legislation
- ❖ Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) - this is the primary legislation relating to listed buildings and conservation areas, which has been amended by subsequent legislation
- ❖ Police and Criminal Evidence Act 1984 (as amended)
- ❖ Regulation of Investigatory Powers Act 2000 (as amended)
- ❖ The Hedgerow Regulations 1997
- ❖ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
- ❖ The Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended)
- ❖ The Town and Country Planning (Use Classes) Order 1987 (as amended)
- ❖ The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
- ❖ National Planning Policy Framework 2012 (NPPF)

