

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

The Council's 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 three working days.
- **We will** ...give priority to the most serious complaints based on the degree of harm caused by the development subject of the complaint.
- **We will** ...use our statutory powers 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.

(* Except that we do not investigate anonymous complaints)

The following sections explain our approach in more detail.

3. INVESTIGATING COMPLAINTS

3.1 How to Report Alleged Breaches of Planning Control

The Council welcomes the reporting of suspected breaches of planning control and looks to the public to be its eyes and ears. 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 website:

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

The Council will not disclose any information that would identify a complainant. Maintaining confidentiality is intended to ensure that people are not deterred from reporting breaches or possible breaches. The personal information of a complainant will be processed in accordance with the Data Protection Act 1998.

Anonymous complaints cannot be investigated. But if you do not want to reveal your identity to the Council you can ask your local Member or your local Parish or Town Council to put forward your complaint.

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 imposed on a planning permission that has been granted

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

The Council also has powers to take action against untidy land or buildings where their condition causes harm to the amenity of the area.

The Planning Enforcement Team only deals with breaches of planning control. There are some things that are covered by other departments or other authorities, such as on street parking, the safety of a building, fly tipping, noise/smell complaints and licensing restrictions. If complainants are unsure whether their complaint relates to a planning matter the Enforcement team can provide advice.

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.

3.3 Prioritising Complaints

Taking enforcement action can be a complex process requiring significant staff time. The Council must therefore prioritise cases to ensure that prompt action is taken against the most damaging developments. In very urgent cases, a site visit will be made immediately. However, in all cases, we 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.

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

Less Urgent

- Unauthorised developments which may receive planning permission
- Minor breaches, including breaches of conditions
- Unauthorised advertisements

3.4 Site Visits

In all but the most straightforward cases, officers will visit sites to establish whether a breach of planning control has taken place and establish the nature of the breach. The majority of site visits are made without prior warning so that sites can be seen in their normal state.

Officers are required to identify themselves as investigation officers as soon as they enter a 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, though not 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.

Whilst on site, officers will ask questions of any present occupiers, and may also 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 resources are used effectively.

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 Planning Contravention Notices

A planning contravention notice is a tool to gather information. It can be served by the Council on owners and occupiers of land where it is believed that 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 6.3 below).

3.7 What if there is No Breach of Planning Control?

Sometimes complaint investigations reveal no evidence of a breach of planning control. This may be because the development being complained about is not happening (most likely in relation to alleged change of use), that it does not require planning permission or that it is being carried out in accordance with a valid planning permission. In these circumstances the complainant will be advised of the position and the investigation will be closed. Such cases will not be reopened unless the complainant is able to provide more substantive evidence of the alleged breach of planning control

3.8 Immunity from Enforcement Action

In some cases breaches of planning control may become immune from enforcement action. Where a breach continues undetected and consequently without any intervention by way of enforcement action, it will become lawful by the passage of time. In such circumstances the Council is unable to stop 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

3.9 Deliberate Concealment

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.

4. SECURING COMPLIANCE

The Council has a variety of enforcement options that may be utilised when resolving a breach of planning control. These range from informal resolution and seeking a planning application to using the range of statutory powers available. The approach followed will depend on the severity of the breach.

4.1 Informal Action

In non-urgent cases where there is a breach of control the Council will initially seek an informal resolution. This may be by requesting a retrospective planning application within a specified period to enable the merits of the development to be assessed or it may be by setting a deadline for compliance. All requests will be made in writing, making it clear that failure to achieve compliance by the end of the period may lead to the use of statutory powers.

In more serious cases 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 and may go straight to the use of statutory powers rather than giving a period for compliance.

4.2 Considering a Retrospective Planning 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. This includes the ability of Local Members to call applications to the Development Control Committee. The proposal will receive no more or less favourable treatment because it has already taken place.

Where there is a reasonable prospect that permission would be granted for a development that has taken place without permission the Council will strongly encourage the submission of an application. Prospective applicants will be reminded of the benefit to them of obtaining a planning permission and the potential difficulties they may face in the future if there is no record of permission being granted for development, particularly if they ever want to sell the property. Local land charges searches carried out for prospective purchasers will reveal that planning permission has not been obtained and this is likely to cause difficulty for future sales.

4.3 Use of Statutory Powers

The Council has a range of powers to issue notices to remedy breaches of planning control where there is evidence of harm arising from the work carried out.

In deciding whether to use its powers the Council has a duty to determine whether enforcement action is necessary. .

Where a decision is made to take action the type of notice issued will depend on the nature of the breach of planning control. The Council is prepared to use all of the measures listed below where they are necessary to secure compliance.

- **Enforcement Notice**

These will be issued within 28 days of authorisation and are the usual method of requiring the removal of unauthorised development. The notice needs to specify what constitutes the breach of planning control and what steps are required to remedy the breach together with a timescale for compliance. There is a right of appeal against these notices on grounds which include that permission should be granted for the development, that the breach of control specified in the notice has not happened, that the requirements of the notice are excessive and that more time should be allowed for compliance.

As an enforcement notice can be overturned on appeal on the grounds that planning permission should be granted for the development, the Council will not normally take enforcement action against a development for which permission would be granted 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**

These can be used in relation to untidy land or buildings where their condition adversely affects the amenity of the area. The notice will set out the steps to be taken and the time period for compliance. 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**

This is a powerful tool that requires a development to stop by a specified date with no right of appeal. Stop Notices can only be used only in conjunction with an enforcement notice and only in the most serious cases where the breach of planning control is causing irreparable and immediate significant harm. Before serving a notice we will consider the likely consequences of requiring the activity to stop and will review whether there are alternative actions that will achieve the desired outcome. Although there is no right of appeal there are circumstances in which the Council 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 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**

This can be used where unauthorised development has been concealed to avoid detection in the period before it would otherwise become immune from action. 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".

- **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 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, 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.

4.4 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.

4.5 Prosecution

While 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 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.

4.6 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 the Council has to decide whether to continue the investigation.

Where there is a breach of control and Officers propose to close a case because of lack of harmful impact local Members will be consulted and given the opportunity to refer the matter to Development Control Committee.

5. 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 then checked against the relevant planning application 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

6. COMMITMENTS TO CUSTOMERS

6.1 Keeping People Informed

We will 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.

6.2 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, it will tell you what the allegation is and give you the opportunity to explain your side of the case.

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.

The Council 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.

6.3 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.

6.4 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 justified. 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)