

# Planning Enforcement Policy

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## Summary of document

Fair and effective enforcement is essential to protect the quality of life for those who live, work and visit Rutland. It also protects the quality of the County's built and natural environment. The aim of this document is to explain how we will deal with suspected breaches of planning control in an effective, proportionate, consistent and helpful manner. It sets out clear guidance on how we deal with Planning Enforcement.

Our key objectives are to:

- Provide an accessible service that maintains public confidence in the planning system.
- Provide a service that is both reactive and proactive in remedying the undesirable effects of unauthorised development.
- Provide a response that is prioritised according to the harm (or potential harm) caused by a breach of planning control.
- Protect amenity and other interests
- Monitor performance in delivering the service.

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## 1.0 INTRODUCTION

- 1.1 This policy has been written in accordance with the Government guidance contained in the National Planning Policy Framework (NPPF), published in February 2019 which states:

*“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.”*

- 1.2 Rutland County Council has a duty to investigate alleged breaches of planning control, however the decision to enforce in each case is at our discretion. The power to correct breaches of planning control allows us to protect the quality of life for the people who live, work and visit Rutland and the quality of the county’s built and natural environment. This planning enforcement policy explains the planning enforcement service and what you can expect from it. Specifically it covers:

- What is a breach of planning control;
- How you can request an investigation;
- How we prioritise investigations;
- How we will carry out an investigation and how we will keep you informed;
- What you can do if a request for an investigation is made about your development; and
- The enforcement actions we can consider

- 1.3 Trees that are subject to a Tree Preservation Order or are within a Conservation Area are included within this policy. However, there is separate legislation and an application process to deal with issues concerning the impact of high hedges on neighbours. The Planning Enforcement Policy does not relate to high hedges. If you have a query concerning a high hedge please refer to the guidance on our website under [High Hedges](#).

## 2.0 WHAT IS A BREACH OF PLANNING CONTROL?

2.1 A breach of planning control is defined in Section 171A of Part VII of the Town and Country Planning Act 1990 (as amended) as follows:

*“the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted”*

2.2 Development is defined in Section 55 of the 1990 Act as:

*“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land”*

2.3 There are certain breaches of planning control that constitute criminal acts from the outset. Such breaches include:

- unauthorised work to a listed building;
- unauthorised demolition of a building in a Conservation Area;
- unauthorised works to “protected” trees; or
- the display of advertisements without the required consent.

2.4 It is not an offence to undertake development prior to obtaining planning permission. However, if enforcement action is taken against an unauthorised development then a criminal liability will be imposed for non-compliance with the requirements of an enforcement notice.

2.5 As planning enforcement operates to protect the public interest rather than the interest of one particular individual, there are certain matters that we cannot take into account, for example:

- loss of value to property;
- competition with other businesses;
- loss of a view (no right to a view);
- trespass; or
- the breach of a covenant.

2.6 There are also matters which are not planning considerations and are therefore not included in any assessment of harm. The test of a breach of planning control is how much harm it causes. Harm from breaches of planning control can take many different forms, including the following:

- impact on visual or residential amenity;

- impact on highway safety;
  - loss of amenity for the public in general;
  - loss of amenity for occupiers and users of surrounding land; and buildings or on the environment in general.
- 2.7 There may be damage to the area’s historic buildings and environment through, for example, unauthorised work to listed buildings, or failure to comply with the conditions attached to consent. The demolition of an unlisted building in a Conservation Area can also cause harm. Harm can similarly occur if unauthorised development undermines the policies of our Development Plan, or could set a precedent which, if repeated, would undermine the policies of the Development Plan. An example could be a new house in the countryside.
- 2.8 The local environment can also be harmed by not taking action, just as much as actively undertaking unauthorised works. Where for example land or buildings are neglected and their condition adversely affects the amenity of the area.

### **3.0 WHAT ARE THE TIME LIMITS FOR TAKING ENFORCEMENT ACTION?**

- 3.1 In most cases, development becomes immune from enforcement if no action is taken:
- within 4 years of substantial completion for a breach of planning control consisting of operational development;
  - within 4 years for an unauthorised change of use to a single dwellinghouse;
  - within 10 years for any other breach of planning control (essentially other changes of use).
- 3.2 These time limits are set out in section 171B of the Town and Country Planning Act 1990.
- 3.3 However, the time-limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. These are:
- section 171B(4)(b) of the Town and Country Planning Act 1990, which provides for the taking of “further” enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This mainly deals with the situation where earlier enforcement action has been taken, within the relevant time-limit, but has later proved to be defective, so that a further notice may be

issued or served, as the case may be, even though the normal time-limit for such action has since expired. This is known as the “second bite” provision

- where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired
- where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered (see Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council and Bonsall / Jackson v Secretary of State for Communities and Local Government).

3.4 Therefore, in cases of deliberate concealment, the Council may decide to serve an enforcement notice ‘out of time’ or apply for a planning enforcement order.

## 4.0 HOW TO REPORT A SUSPECTED BREACH OF PLANNING CONTROL

4.1 We prefer you to submit enquiries online or in writing to the Planning Department. However, for more urgent matters, for example where it is suspected that unauthorised works to a listed building or works to fell a protected tree may be taking place, it would be more appropriate for you to contact us by telephoning our Planning Support Team during office hours using the contact details below in table 1;

**Table 1: Contact details**

Method	Details
Website	<a href="#">Planning Enforcement Enquiry Form</a>
Email	<a href="mailto:planning@rutland.gov.uk">planning@rutland.gov.uk</a>
Telephone	<a href="tel:01572758400">01572 758400</a>

4.2 We ask that you identify yourself and provide contact details so that we can keep you informed in writing at key stages.

- 4.3 We will consider anonymous enquiries, however, anonymous reports often do not give us enough information. Therefore looking into an anonymous enquiry will be at the Council's discretion.
- 4.4 You can also speak to your local County Councillor, or Parish Council about any suspected breaches of planning control.
- 4.5 When submitting an enquiry it helps if you can provide us with as much information as possible about your concerns, particularly:
- the name and address of the alleged contravener;
  - the location of the site;
  - what has happened; the length of time it has been happening and an indication of whether it is still continuing;
  - an explanation of the harm that it is causing to you specifically, your neighbours or the area generally; and
  - what you consider would be a satisfactory outcome.
- 4.6 It is not our policy to reveal the identity of anyone making an enquiry, or any information which is likely to reveal their identity to an alleged contravener. All data received will be handled and controlled in accordance with our [Data Protection Policy](#).

## **5.0 HOW WE WILL INVESTIGATE AN ALLEGED BREACH OF PLANNING CONTROL**

- 5.1 When a suspected breach of planning control is brought to our attention, each case will be assigned a priority level according to its potential to cause harm (see table 2 below). The priority level will dictate the timeframe for:
- the first site visit and initial investigation to be carried out
  - making a decision on the likely course of action to resolve the alleged breach.
- 5.2 Each enquiry will be allocated a unique reference number which is created when the details are entered into our electronic case management system. We will acknowledge your enquiry in writing within three working days of receiving it quoting the unique case reference number, this can then be used in any future correspondence regarding your enquiry.



- 5.3 We will then check our records held against the land in question to see if there are any existing planning permissions that may accord with description of what has been reported.
- 5.4 The Case Officer will then either visit the site unannounced or will arrange a suitable time to visit the site in order to establish the facts and to determine whether or not there has been a breach of planning control.
- 5.5 The electronic case record will be updated at each stage of the investigation.

**Table 2: Alleged breach priority level**

Priority Level	Alleged Breach	Site Visit	Investigation decision
1	<p><b>For example:</b></p> <ul style="list-style-type: none"> <li>• Unauthorised works in progress to listed building;</li> <li>• Unauthorised works in progress to a protected tree.</li> </ul>	1 working day	One month
2	<p><b>For example:</b> Unauthorised demolition or partial demolition of a building which is considered essential to retain;</p> <ul style="list-style-type: none"> <li>• Unauthorised development which has been undetected and where the time limit for enforcement action will expire within the following six months; or</li> <li>• Use of land causing serious harm to the locality or the natural environment.</li> </ul>	2 working days	One month
3	<p><b>For example:</b></p> <ul style="list-style-type: none"> <li>• Any unauthorised development or non-compliance with a planning agreement, which is causing harm; or</li> <li>• Unauthorised development in a Conservation Area.</li> <li>• Display of illegal advertisements</li> </ul>	7 working days	Three months
4	<p><b>For example:</b></p> <ul style="list-style-type: none"> <li>• All other complaints relating to unauthorised development not falling within any of the above categories; or</li> <li>• Untidy land.</li> </ul>	10 working days	Three months

## 6.0 DETERMINING APPROPRIATE ACTION

- 6.1 Enforcement action is intended to be remedial rather than punitive and should always be commensurate with the breach of planning control to which it relates. Government guidance states that local planning authorities should act “proportionately” in responding to suspected breaches of planning control, our response will therefore reflect the following:
- the seriousness of the breach
  - the risks involved
  - the costs involved
  - the benefits involved
- 6.2 We will consider the provisions of the development plan policy, the guidance issued by central government and any other material considerations.
- 6.3 In deciding the most appropriate course of action, we must consider the effects of the breach and what harm is caused to the amenity of the area. This includes forming a view as to whether unauthorised works are acceptable in principle and whether a planning application should be invited in order to regularise the development. Consideration will also be given to any evidence which indicates immunity to enforcement action.
- 6.4 The main consideration will be whether, if left unaddressed, the breach of planning control would unacceptably affect public amenity to the extent that it merits protection in the public interest.
- 6.5 We will also consider the implications of the [Human Rights Act 1998](#), specifically the impact of any proposed action or inaction may have on the human rights of all parties involved.
- 6.6 It is important to note that not all breaches of planning control will result in formal enforcement action. We will only take proportionate enforcement action when we can demonstrate that the breach causes harm to public amenity, or is in conflict with the development plan, and it is expedient to do so.
- 6.7 Because our enforcement powers are discretionary, the emphasis will be on attempting to negotiate, where appropriate, a satisfactory resolution.

### **No breach**

6.8 After undertaking our initial investigation we may conclude that there has been no breach of planning control. In such cases no further action can be taken and the investigation will be closed.

### **No further action**

6.9 Even if there is a breach of planning control we may decide that it would not be expedient to take any further action. This might be because the breach is too minor and it would not be in the public interest to pursue enforcement action.

### **Harm assessment scheme**

6.10 The Council's resources are limited. It is therefore necessary to target available resources to have the maximum effect. In planning terms this means where there is the most harm to amenity or to the environment. The primary consideration is therefore the acceptability of the unlawful development in planning terms.

6.11 We will assess all breaches of planning control to grade the level of "harm" against the list of 16 planning harm factors set out in the scheme at table 3 below. The factors include;

- the nature of the breach
- safety issues
- the development plan policies
- the historic environment
- the natural environment

6.12 Where a breach of planning control scores a total of 3 or less and an unconditional planning permission is likely to be granted for the development, then it is not considered to be expedient to pursue the breach as the impact on public amenity and or interest will be small or negligible. In these instances the case will be closed and advisory letters will be sent to all interested parties advising of the need to regularise matters, normally through the submission of a retrospective planning application. Failure to regularise the unauthorised development that has occurred may affect any future sale of the land or property concerned.

- 6.13 Where a breach of planning control scores 4 or higher, and for any breach where an unconditional planning permission is not likely to be granted then the case will be taken forward and pursued until it is successfully resolved, either through negotiation or by taking formal enforcement action.
- 6.14 The use of this scheme provides a process for the closure of minor breaches of planning control allowing resources to focus on the more serious breaches rather than continuing to pursue planning applications for minor breaches simply to regularise matters. It also provides;
- A quantitative and qualitative assessment of the harm to public amenity/interest
  - An open and transparent procedure
  - Quick and effective processing of cases
  - A flexible system to make efficient use of resources

**Table 3: Harm assessment scheme form**

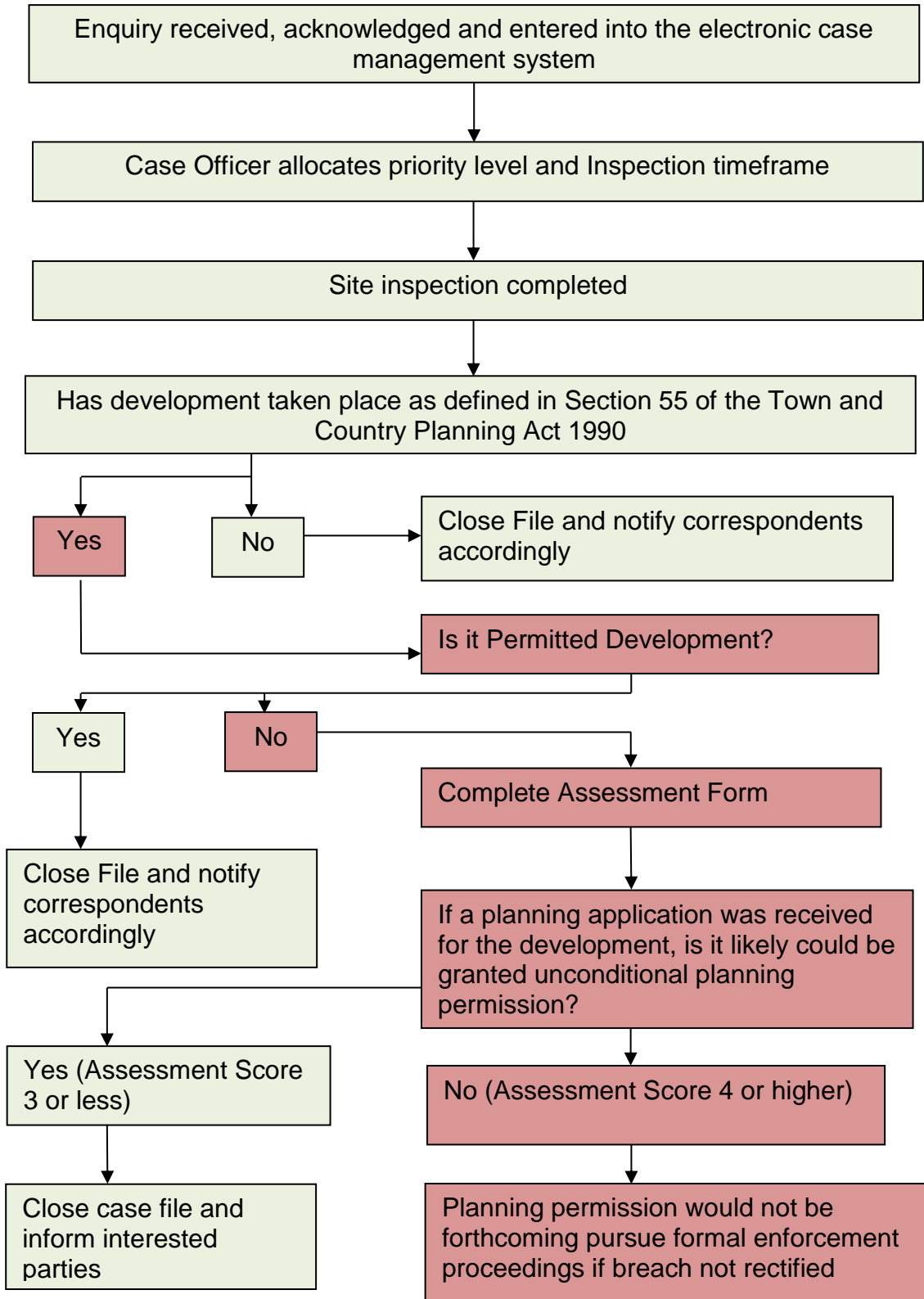
Points Allocation			Score
1	Is the breach	Worsening/ongoing (1) Stable (0)	
2	Highway safety issue	Yes (2) No (0)	
3	Other safety issues	Yes (2) No (0)	
4	Causing a statutory or serious environmental nuisance	Yes (1) No (0)	
5	Enquirer	Immediate neighbour (2) Other/Parish Council (1) Anonymous/malicious (0)	
6	Age of breach	Within 6 months of immunity (2) Less than 3 months old (1) More than 3 months old (0)	
7	Major Planning Policy Breach	Yes (1) No (0)	
8	Is there harm to a material planning consideration* *(see website for definition of material planning consideration)	Widespread (2) Local (1) None (0)	
9	Irreversible harm to a material planning consideration	Yes (2) No (0)	
10	Flood Risk	Zone 3 (2) Zone 1-2 (1) NFR (0)	
11	Breach of a planning condition or Article 4 Direction	Yes (1) No (0)	
12	Conservation Area (or adjacent to)	Yes (1) No (0)	
13	Listed building (or affecting the character or setting of)	Yes (1) No (0)	
15	Particularly sensitive site e.g. SSSI, Scheduled monument, Listed Garden, Archaeological importance	Yes (1) No (0)	
16	Undesirable precedent (please provide details)	Yes (1) No (0)	
<b>TOTAL POINTS (SCORE)</b>			

Enquiry reference number: .....

Is this development likely to receive an unconditional planning permission **YES / NO**

Officer assessment completed by: .....

### Planning Enforcement Investigation Flowchart



### **Retrospective planning applications**

- 6.15 Rather than immediately resorting to formal enforcement powers for breaches that cannot be closed under the harm assessment scheme, we will try to negotiate wherever possible to achieve a satisfactory resolution. A retrospective planning application is often the most appropriate solution, as it allows us to consider the merits of a development and the impact it has on any interested parties. It also allows planning conditions to be imposed which may be necessary to address any harm caused.
- 6.16 We aim to deal with retrospective planning applications within 8 weeks of receiving them. However if an application is invited in order to remedy a breach of planning control and it has not been received within 28 days of us asking for it, then we will consider formal enforcement action.

### **Formal enforcement action**

- 6.17 If a breach of planning control cannot be remedied through the planning application process and attempts to negotiate a satisfactory outcome have failed or if neither is an option, then we have a number of formal options available to assist in resolving the breach. Not all of the options will be suitable in each case and some actions will need to be authorised by the Planning and Licensing Committee, please refer to the Council's Constitution and [Scheme of Delegation](#) for further details.

## **7.0 ENFORCEMENT POWERS**

- 7.1 Planning legislation provides a number of discretionary powers for effective enforcement of planning control.

### **Powers to obtain information**

- 7.2 When we receive an enquiry regarding a suspected breach of planning control it will normally be something that we are not yet aware of and the details supplied may not provide all the relevant information we require. We will therefore need to establish:

- whether a breach of planning control is taking, or has taken place;
- whether any time limits apply;
- who is involved in the land; and
- if there is sufficient evidence to support enforcement proceedings.

The statutory powers we may use to obtain the information required are set out below.

## **Rights of entry**

- 7.3 Site visits are an essential part of planning control. Sometimes it is sufficient to view the site from the public highway, but more often it will be necessary to enter the land. Officers authorised by the Council in writing under the Town and Country Planning Act 1990 (as amended) may enter land, without notice to:
- to ascertain whether there is, or has been a breach of planning control on the land, or any other land
  - to determine whether any of the LPAs enforcement powers should be exercised in relation to the land, or any other land;
  - to determine how any such power should be exercised; and
  - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land or any other land.
- 7.4 Officers will only request entry to a dwelling house if they have given 24 hours' notice to the occupier prior to the visit. It is an offence to wilfully obstruct an authorised person acting in the exercise of a right of entry to land.

## **Planning Contravention Notice (PCN)**

- 7.5 A PCN may be served "where it appears that there may have been a breach of planning control". It will usually set out a list of questions about the site/development. We will normally offer a formal meeting to allow an opportunity for the recipient to clarify any points or to discuss the matter in more detail. It is an offence to fail to comply with the requirements of the notice within the period set for its return, or to make false or misleading statements in reply.

## **Section 330 Town and Country Planning Act 1990**

- 7.6 This power allows us to require information as to a persons' interests in land and the use of the premises. It involves serving a Notice on occupiers of premises and/or persons receiving rent. It is an offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.



## **Powers to enforce**

- 7.7 Once a decision has been made to take formal enforcement action, the powers available to the Council are summarised briefly below:

### **Temporary Stop Notice**

- 7.8 We can serve these where we consider that there has been a breach of planning control, and deem it necessary to stop the activity or development in question immediately to safeguard the amenity of the area. This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice. In addition it is temporary and only lasts for 28 days. There is no right of appeal to the Secretary of State. A judicial review can challenge the validity and propriety of our decision. It does not however apply to breaches of control related to listed buildings, advertisements or protected trees.

### **Stop Notice**

- 7.9 We can serve these with an Enforcement Notice, or after we have served an Enforcement Notice if we consider that a continuing unauthorised development is causing irreparable and immediate significant harm. The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice. The Stop Notice does not usually come into effect until three days after we have served it, although we can reduce this period if necessary. Work must stop immediately the Notice comes into effect. There are compensation liabilities if the Enforcement Notice is quashed, but these are not related to the planning merits of the case. There is no right of appeal; failure to comply with the notice is an offence. It does not apply to breaches of control related to listed buildings, advertisements or protected trees.

### **Breach of Condition Notice (BCN)**

- 7.10 We have the power to serve a BCN on any person who is, or has been, carrying out, causing or permitting another person to carry out development in breach of a condition imposed on a planning permission. It is an offence if a person served fails to comply with the requirements of the notice. BCNs do not apply to breaches of control related to listed buildings, advertisements or protected trees. They can be used in preference to the service of Enforcement Notices where appropriate as there is no right of appeal to the Secretary of State.

## **Enforcement Notice**

7.11 We have the power to issue an enforcement notice when it appears to us that two criteria are met:

- There is a breach of planning control; and
- It is expedient to issue the notice, having regard to the provisions of the development plan and any other material considerations.

The enforcement notice will specify the breach of planning control alleged, the steps required to remedy the breach and the time period for compliance. Failure to comply within that time gives rise to criminal offences. An appeal against a notice can be made to the Secretary of State through the Planning Inspectorate and will suspend the effect of the notice until it is determined. If the recipient(s) lodge an appeal we will tell all objectors and neighbours of the appeal and how they can make representations to the Planning Inspectorate. Any representations are available for public inspection.

## **Listed Building Enforcement Notice**

7.12 Special statutory controls are provided for buildings of architectural or historic interest, which also includes any structure or erection or any part of a building. Where works affecting a listed building's character or special architectural interest are carried out without the required consent we may consider it expedient to issue a listed building enforcement notice in order to require the restoration of the building to its former state, to alleviate the effect of the unauthorised work, or to bring the building to the state that it would have been in had any listed building consent been fully complied with.

## **Prosecution**

7.13 Court proceedings may be considered where the following offences have been committed:

- failure to comply with an enforcement notice in whole or part and the period for compliance has expired,
- works carried out to a listed building without the required listed building consent,
- works carried out to a protected tree without the required consent,
- an advertisement is displayed without the required consent, and
- removal of a countryside hedgerow without the required consent.

- 7.14 We will have regard to the Code for Crown Prosecutions in bringing a prosecution. This is based on the principles endorsed by the Attorney General for all those who prosecute on behalf of the public. There are two main criteria that must be satisfied in consultation with our legal advisors:
- 7.15 **Evidential sufficiency**; that there is sufficient, admissible and reliable evidence that a criminal offence has been committed by an identified person and that there is a reasonable prospect of conviction.
- 7.16 **Public Interest**; once there is sufficient evidence, we will consider whether it is in the public interest to prosecute. In a planning context the factors include harm caused in planning terms and whether the offence is continuing when the prosecution is brought.
- 7.17 During the course of a prosecution we will continue to review the appropriateness of continuing the prosecution. New evidence may affect the prospects of a conviction or the balance of the public interest may change, for example because of compliance.

### **Injunction**

- 7.18 Criminal sanctions can only act indirectly, meaning that an owner or interested party who fails to comply can be prosecuted and fined but in doing so this may not necessarily resolve the breach. The civil courts by means of an injunction can however order a person to comply with planning law. We can apply to the County Court or High Court for an injunction to stop an actual or imminent breach of planning or listed building control, even when the identity of the person is unknown. We can seek an injunction whether or not other enforcement action(s) have been taken. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

### **Direct Action**

- 7.19 We do have the power, in special circumstances, although usually as a last resort to;
- enter land and take the steps required by an enforcement notice, and
  - recover from the person who is then the owner of the land any expenses reasonably incurred in doing so.

Where we cannot immediately recover costs we will register a charge on the property with the Land Registry, thus assuring full cost recovery plus base-rate interest.

## **8.0 WHAT CAN YOU DO IF WE RECEIVE ANY ENQUIRY ABOUT YOUR DEVELOPMENT?**

- 8.1 We understand that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of or not understanding the planning legislation. Therefore, if you receive a letter from us or a visit from an enforcement officer, we encourage you to respond positively and provide the information which we need to resolve the matter. It is beneficial to all parties if any breach is addressed at an early stage. If it is possible to investigate the concerns without disturbing you and we are able to establish that there is no breach of planning control, we will not contact you.
- 8.2 Depending upon the level of harm being caused we may be prepared to discuss with you what alternative solutions might be acceptable, rather than require the complete removal or rebuilding of the development. However, this approach will not mean that you can delay any response or action that you have agreed to do. We expect you to respond within the stated timescales and we will pursue prosecutions for non-responses to formal notices. We will not allow long drawn out negotiations to hold back the taking of enforcement action. In many cases, particularly where the works are likely to be acceptable, perhaps with some minor changes, we will give you an opportunity to submit a retrospective planning application. This is so that we can consider the development in more detail and, if appropriate, control it through the use of planning conditions.
- 8.3 You should be aware that development that requires but does not benefit from planning permission is unauthorised, and remains subject to potential enforcement action for a set number of years. In the case of building works, or the change of use of a building to living accommodation, the time period is four years after completing the works or residential occupation of the building. Where the breach is an unauthorised change of use of land or buildings, or is a non-compliance with a planning condition, the time period for immunity from enforcement action is ten years from the date on which the breach commenced.
- 8.4 If you subsequently wish to sell a property, which has been the subject of unauthorised works or change of use and fail to regularise the matter, then you may find the sale is delayed or lost as a result. You should also be aware that we notify any interested parties when serving formal notices such as mortgage providers and that a record will be placed on the land register along with any decisions that have been made

regarding potential enforcement action and any requirements that remain outstanding.

- 8.5 Our planning enforcement staff will make themselves known to the landowner/developer when they enter a site, but it is not always appropriate or possible to give advance warning of a site visit. Enforcement officers are legally entitled to enter land and property. You do not have to be there for an enforcement officer to enter onto your land and make a site visit. If it is necessary to enter your house, (as opposed to just the garden) you will be given 24 hours' notice. It is an offence to wilfully obstruct an authorised person acting in the exercise of a right of entry to your land.
- 8.6 We will use the information we get from a site visit to help assess the harm being caused and what further action we may need to take. Allowing the enforcement officer to make a site visit and take photographs will help to reduce time delays and any potential inconvenience.
- 8.7 If an enforcement notice is served against you or on land belonging to you then we will be happy to explain the different notices and to help you understand the implications. However, we will not act as your advisor and cannot make decisions on your behalf. You should consider whether you wish to get your own independent advice from a qualified planning consultant or another appropriate property professional. If you cannot afford to employ a consultant you can contact [Planning Aid](#) which is a voluntary service which offers free independent, professional advice.

## **9.0 UNAUTHORISED WORKS TO PROTECTED TREES**

- 9.1 Protected trees that are those which are the subject of a Tree Preservation Order (TPO) or that are located within a conservation area and are protected by planning legislation. You will need to get authorisation from Council before you carry out any work to a protected tree. This includes cutting down, uprooting, lopping or topping. It is a criminal offence to wilfully damage or wilfully destroy a protected tree.
- 9.2 The penalties for anyone committing these offences if convicted in the Magistrates Court, are a fine of up to £20,000 (the fine is unlimited if there is a trial in the Crown Court). The Courts have decided that it is not necessary for a tree to have been rendered useless as an amenity; and anyone who does unauthorised works on a tree that are not likely to destroy it is liable, if convicted in the Magistrates Court, to a fine not exceeding level 4 on the standard scale (£2,500).

- 9.3 Proceedings for these offences must be brought within six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings came to the prosecutor's knowledge. However, proceedings cannot commence more than 3 years after the date the offence was committed.
- 9.4 If you suspect someone is carrying out works to a protected tree without consent then please contact the Council on 01572 758400 or 722577.

### **Investigating alleged offences**

- 9.7 An initial investigation will be carried out to establish:
- whether the tree is protected;
  - whether any consent or permission has been granted;
  - who is responsible for the work;
  - a site visit will also be carried out to gather evidence

### **Deciding what action to take**

- 9.8 If we are satisfied that there is enough evidence to prove an offence has been committed we must then decide whether it would be in the public interest to take the person(s) responsible to court. Each case will be considered on its own merits. We would not normally bring a prosecution unless the unauthorised works have resulted in a loss of public amenity and in most cases we will not normally bring a prosecution if we would have granted consent (or raised no objection) for the works done had they been applied for.
- 9.9 In considering whether to bring prosecution we will have regard to any financial advantage perceived to have been gained by carrying out the unauthorised works, and whether the person(s) responsible have been prosecuted, cautioned or warned for similar offences in the past.
- 9.10 We can take into account any expression of regret, helpfulness and co-operation with the investigation and also any indication that you were acting in good faith.
- 9.11 We will normally require the planting of replacement trees, irrespective of whether you have been prosecuted or cautioned. When we require replacement planting, we will monitor to make sure it is done. If necessary we can serve a replanting notice in order to secure

replacement planting, which can be invoked if the landowner does not voluntarily carry out replacement planting.

### **If you are responsible for unauthorised works to a protected tree**

- 9.12 As with planning enforcement complaints, officers investigating unauthorised works to protected trees have a right to enter land to carry out investigations and will take photographs that may be used as evidence later.
- 9.13 You will be given an opportunity to give your version of events during the investigation. However, if it appears to the Council that an offence has been committed and that you were responsible then you will be invited for an interview under caution.
- 9.14 If you remove a tree through unauthorised works or because it is dead or dangerous, please note, that the onus is on those responsible for the work to prove that the tree was in such a condition as to warrant its removal. The landowner has an automatic duty to plant a replacement tree of a suitable size and species at the same place as soon as reasonably possible (unless we waive the requirement).
- 9.15 Any replacement tree is then subject to the same protection as the tree that was lost. A Tree Replacement Notice can be served within a period of four years to make sure you comply. There are rights of appeal against Tree Replacement Notices.

## **10.0 UNTIDY LAND OR BUILDINGS**

- 10.1 Under Section 215 of the Town and Country Planning Act 1990 we have the power to require proper maintenance of land. If it appears to the Council that the amenity of a part of an area or an adjoining area, is adversely affected by the condition of any land. A notice may be served on the owner and occupier requiring them to carry out improvement works to their land or building(s).
- 10.2 It is our decision whether the extent of any harm to amenity of the area is serious enough to justify action being taken to require that a site be cleaned up. We will specify in writing exactly what steps the owner must carry out to improve the site and in assessing the harm, we will consider both the site and its surroundings.

## **Where will we serve a Section 215 notice?**

- 10.3 As with all enforcement investigations, we will allocate resources where they can be most effective and where the greatest harm is being caused. We will not use a Section 215 Notice where there are other more specific powers available to address the concern.
- 10.4 It is likely we will use powers under Section 215 in connection with a prominent or derelict site, particularly if it has started to attract fly tipping, or an important town centre street frontage that has fallen into disrepair, particularly if it falls within a Conservation Area, or where the condition of a piece of land impacts upon the wider landscape.
- 10.5 For example if a residential property is particularly run down, or a garden is overgrown, or cars/domestic items are being left in the garden to rot, then we can serve a Section 215 Notice. However, our policy is that a garden which is merely untended, or a house that needs some cosmetic maintenance, for example, where a window or window frame needs to be replaced, this would not qualify for a Section 215 Notice.
- 10.6 We cannot normally serve a Section 215 Notice on a site which is untidy as a result of building works that have planning permission.

### **Section 215 Notice**

- 10.7 The scope of works that can be required in a Section 215 Notice is wide and includes planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting.
- 10.8 If it is necessary for the improvements to involve work which would normally require planning permission, for example the re-building of a garage, then we will not be able to cover these works in a Section 215 Notice. In such cases, we would require a separate planning permission and therefore the use of other enforcement powers may be more appropriate.
- 10.9 We will write to the owner/occupier before serving a Section 215 Notice advising what action they are required to take in order to bring the land or building(s) back to an acceptable standard.
- 10.10 If the required works are not completed then we will consider the service of a Section 215 Notice. Where a Notice becomes effective but it is not complied with, we will explain the actions the Council can then take which could involve:



- direct action where we will carry out the works ourselves and charge the owner for all costs incurred; or
- a prosecution in the Magistrates Court, which if successful may result in a fine of up to level 3 (£1,000) and a criminal record.

10.11 The course of action will vary from site to site, and in some cases we can pursue both direct action and a prosecution. Where we cannot immediately recover cost we will register a charge on the property with the Land Registry, thus assuring full costs recovery plus base-rate interest.

## **11.0 CUSTOMER COMPLAINTS PROCEDURE**

11.1 If you feel that we have not dealt with your enquiry in a manner consistent with the standards contained within the policy, then you are able to make a formal complaint by following the [Complaints procedure](#) on our website.

## **12.0 FURTHER INFORMATION AND GUIDANCE**

12.1 Further information and guidance on the planning enforcement process is available online at [Enforcement and post-permission matters - GOV.UK](#)

12.2 Further information on works to protected trees is available online at [Tree-preservation-orders-and-trees-in-conservation-areas](#)

**A large print version of this document is available on request**



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