

## **Appendix 2: Planning enforcement**

### **1. Introduction**

- 1.1 This appendix sets out the Council's approach to planning enforcement and needs to be read alongside the Council's overarching Local Enforcement Plan.
- 1.2 The plan outlines the key principles that the Council will follow when regulating, enforcing, and litigating. The plan sets out the standards that everyone can expect from the Council's regulatory services and its officers.
- 1.3 This document outlines how Council officers consider enforcement action, how work is prioritised, how cases are investigated, and what tools are available. The Council is committed to ensuring that all officers abide by this plan.

### **2. Breach of planning control**

- 2.1 The integrity of the planning service depends on the Council taking effective enforcement action when appropriate. The Council is committed to providing an effective planning enforcement service and it is understood that public perception of the planning system can be undermined when unauthorised development is accepted without any apparent attempt by the Council to intervene.
- 2.2 The basic principle of planning law is that it is generally not an offence to carry out works without planning permission. Whilst such development remains unauthorised, unless regularised, Councils must consider the expediency of taking action whilst having regard to the development plan and any other material planning considerations.
- 2.3 A criminal offence will only arise in relation to the above matters when a statutory notice has been issued and the owner or occupier has failed to comply – or in certain specific cases, such as unauthorised works to a tree that is the subject of a Tree Preservation Order, works to a listed building without the necessary consent, or the display of an unauthorised advertisement(s).

### **3. What we can deal with**

- 3.1 The Council's planning local enforcement plan applies to various types of development including:
  - unauthorised building works,
  - unauthorised changes of use,
  - internal and external alterations to listed buildings carried out without consent,
  - unauthorised demolition in Conservation Areas,
  - unauthorised works to trees covered by a Tree Preservation Order or within a Conservation Area,

- works not being carried out in accordance with the approved plans,
- breaches of planning conditions,
- the stationing of a caravan or mobile home for use as a primary place of residence,
- unauthorised advertisements,
- unauthorised engineering work i.e. a change in ground levels, and
- untidy sites - failure to properly maintain land so that it adversely affects the amenity of an area.

## **4. What we can't deal with**

4.1 The Council's Planning Enforcement team is unable to deal with the following matters:

- works that do not require planning permission,
- minerals and waste planning enforcement matters (these are dealt with by Hampshire County Council),
- works that have not yet started (except in exceptional circumstances where a serious breach can be prevented),
- boundary disputes,
- obstruction of a highway or public footpath (this is dealt with by Hampshire County Council),
- trespass on land,
- operating a business from home where the residential use of the dwelling remains the primary use,
- internal works to a non-listed building,
- clearing land of vegetation (unless there is a breach of condition, or a hedgerow is covered by the Hedgerows Regulations 1997),
- the Party Wall Act,
- parking a caravan within the residential boundary where its use is ancillary to the dwelling house,
- advertisements on the highway or on street furniture (these are dealt with by Hampshire County Council),
- enforcement of deeds or covenants (these are enforced by the landowner or other person benefiting from the covenant),
- fly-tipping (this is dealt with by the Council's Environmental Health and/or Street Scene service),
- noise issues (this is dealt with by the Council's Environmental Health team, unless a planning condition is being breached), and
- anonymous complaints unless they are of a very serious nature, and it is in the public interest to do so.

## **5. About planning enforcement**

5.1 There is no duty under the Town and Country Planning Act 1990 to take planning enforcement action - powers given to Councils are discretionary. In deciding whether to take enforcement action, the Council must decide whether it

is expedient to do so having regard to the development plan and any other material considerations.

- 5.2 Expediency can be defined as a decision-making process to establish the appropriateness of formal enforcement action using legislation, government advice, the development plan, previous planning and appeal decisions and advice from other professionals.
- 5.3 When assessing whether formal action should be taken, the Council will ensure that any proposed action is reasonable, proportionate and is in the public interest to remedy a breach or remedy any injury to amenity that has been caused by the breach. The Council will consider what the effect of formal action will be and if it will have a meaningful outcome. It must also take into account the development plan and any material considerations.
- 5.4 It is an important principle in planning that breaches of planning control are not automatically subject to enforcement action but that this power is used only when expedient, proportionate and in the public interest according to the law and guidelines. Therefore, when the Council exercises its discretion and decides not to enforce against a breach of planning control this is entirely in accordance with how the NPPF intends this form of regulation to operate.
- 5.5 The Council starts from a position of trying to resolve breaches of planning control through dialogue and negotiation, formal action is usually a last resort. However, when the breach is causing unacceptable serious harm or, formal action will be taken to remedy any injury to amenity. Enforcement action will therefore always be commensurate with the seriousness of the breach.
- 5.6 It is important to remember that, in general, it is not a criminal offence to carry out development before first obtaining planning permission. However, failure to comply with an enforcement notice, beyond the period for compliance, is an offence. However, there are exceptions to this in that unauthorised works to listed buildings, carrying out works to protected trees and the display of advertisements without the necessary consent all give rise to criminal offences which are liable to prosecution. (See further information below).
- 5.7 Planning enforcement can be a lengthy process, particularly where evidence needs to be collected or where formal notices are served and the right to appeal is exercised. A satisfactory outcome can take many months or even years to achieve. There are also time limits after which enforcement action cannot be taken although these do not apply in the case of listed buildings.

## **6. How we prioritise our investigations**

- 6.1 Although we appreciate that all allegations of breaches of planning control are important to those they affect, to make the most effective use of the resources available, cases will be prioritised, considering the significance of the breach and the level of harm caused.

- 6.2 All submitted enquiries go through an initial vetting process (undertaken by officers). This allows for the redirection of matters to ensure they are directed to the correct team and allows officers to seek additional information if required before prioritisation and allocation. Prioritisation enables the team to respond to the most harmful breaches of planning control as a priority.
- 6.3 The priority categories for unauthorised works are listed below. These timescales are the longest period in which we intend to respond to a case and in all instances the service will seek to visit as soon as possible, dependant on the risk posed.

#### **Priority 1 – High priority**

**Investigation commenced (site visit where appropriate) in up to 2 working days.**

A breach of planning control causing, or likely to cause, serious harm to the natural or historic environment or to public safety unless an immediate response is made, for example:

- demolition or alteration of a Listed Building,
- demolition of a building within a Conservation Area,
- works to trees protected by a Tree Preservation Order or within a Conservation Area, and
- any unauthorised development/activity/operation, falling within planning control that presents an immediate and serious danger to the public.

#### **Priority 2 – Medium Priority**

**Investigation commenced (site visit where appropriate) in up to 10 working days.**

- development not in accordance with the approved plans or material breaches of planning conditions during the construction process,
- development causing serious harm to the amenity of nearby residents, e.g. through impact on privacy or outlook,
- unauthorised development that has a significant adverse impact on the character of an area,
- commencement of works without clearing conditions precedent,
- advertisements in sensitive areas,
- non-compliance with planning conditions, and
- untidy sites.

#### **Priority 3- Low Priority**

The team's ability to pursue low priority cases will be dictated by the total number of cases under investigation and the number of pending high and medium priority cases. During periods that the team have a large number of cases or significant number of high/medium priority cases the team will be unable to progress those reports deemed to be low priority. The team will set out

indicative timeframes for progressing low priority investigations in their communications with you.

Breaches of planning control that cause limited or no harm to the environment or residential amenity, for example:

- residential and other development marginally above permitted development tolerances,
- minor works including fences, walls, small extensions,
- boundary treatments,
- aerials and antennae on dwelling houses,
- development not being built in accordance with approved plans, where the differences are less significant and less likely to result in amenity problems, and
- unauthorised advertisements in less sensitive locations.

6.4 The Council seeks to manage its finite resources to ensure that the highest priority cases can be addressed without delay. As a result, the response, processing, and ability to take on lower priority cases will need to be adjusted accordingly. The demand for enforcement investigations is usually very high and when a significant number of higher priority cases are on hand this may lead to significant delays in investigating cases where the planning harm is more limited.

## **7. How we investigate breaches of planning control**

7.1 We aim to acknowledge all cases within three working days and to visit the site in the timescales set out above.

7.2 In most cases it will be quite clear from a site visit and the planning history whether a breach has taken place. However, there are some cases, particularly involving changes of use, where a number of site visits will be needed or more information will be required.

7.3 Authorised officers have statutory powers to enter land and buildings to investigate breaches of planning control. Officers will produce evidence of their authority, identity and the purpose of their visit when requested. It is an offence to obstruct an authorised person exercising their right of entry.

7.4 In some cases we might need to ask complainants to help by keeping a log of activities to help provide evidence of a breach. If complainants are unwilling to do this, the Council may be unable to pursue the case.

7.5 To obtain further information the Council will, where necessary, serve the following notices:

7.6 A *Planning Contravention Notice (PCN)* is used to gather information concerning a development being carried out so that the Council can determine if a breach of

planning control has occurred. It is a criminal offence not to complete and return the PCN within the specified timescale or not to comply with any aspect of the PCN. To knowingly or recklessly provide false or misleading information on a PCN can result in a fine.

7.7 A notice, under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 can be used to establish information about the ownership of land. It is an offence to fail to respond to the notice or to knowingly or recklessly provide false or misleading information and can result in a fine.

7.8 A notice under section 330 of the Town and Country Planning Act 1990 can also be served (the Power to require information as to interests in land).

## 8. Enforcement options

8.1 A variety of enforcement options are available to the Council and are set out below.

8.2 **No action** – if it is found that an application for planning permission is not required, or the breach is very minor and causes little or no harm to the environment or nearby residents, then no further action will be taken.

8.3 **Negotiate solution** – we will try to negotiate a satisfactory solution within 12 weeks of the start of an enforcement investigation wherever possible. This approach avoids the time and cost of serving notices, defending appeals, and pursuing legal action. If building works or an unauthorised use is considered to be unacceptable, the developer will be given a realistic deadline by which to remove the building/cease the use. If this deadline is not met, then the expediency of formal enforcement action will need to be considered. Clear timescales for compliance will be given to the landowner and other interested parties at all stages.

8.4 **Retrospective application** – where a development is in line with policies in the development plan and the development is causing little or no harm, or where planning conditions can be used to make a development acceptable, the Council may invite the developer to submit a retrospective planning application depending on the nature of the breach of planning control and the expediency of doing so. This would only be appropriate in cases where formal enforcement action has not been taken. N.B homeowners/developers may make an application for retrospective permission even if not invited to do so. It is normally advantageous to allow this process to conclude before continuing with enforcement action.

8.5 **Invite an application for Lawful Development Certificate** – if it appears to the Council that a use or development might have become lawful by passage of time, the developer will be invited to submit an application for a Lawful Development Certificate. If the application is approved, no further action will be taken. If it is refused, and no appeal is lodged, the Council will decide whether formal enforcement action is expedient.

- 8.6 **Breach of Condition Notice** – where a planning condition has not been complied with, and the condition is enforceable and reasonable, a Breach of Condition Notice can be served. The notice sets out what steps are needed to comply with the condition and by what date this action must be taken. There is no right of appeal against a Breach of Condition Notice and failure to comply can result in prosecution.
- 8.7 **Enforcement Notice** – if a development is causing harm to the surrounding area, or is contrary to development plan policies, and attempts to negotiate a solution have failed, then an Enforcement Notice can be served. An Enforcement Notice will set out the reasons for issuing the notice, what steps are needed to remedy the breach and the timescale in which these steps must be taken.
- 8.8 **Stop Notice** – in cases where urgent action is needed to remedy harm being caused, a Stop Notice can be served in addition to an Enforcement Notice. The purpose of a Stop Notice is to require activities to cease before the date for compliance set out in the Enforcement Notice. These are only used in exceptional circumstances where serious harm is being caused to public amenity.
- 8.9 **Temporary Stop Notice** - These take effect immediately and do not have to be accompanied by an Enforcement Notice. They last for a period of 28 days during which the local authority must decide whether any further action is needed. They cannot be used in certain situations, e.g. the use of a building as a dwelling, on a listed building or in some cases involving use of a caravan where it is the occupant's main residence (although there are exceptions to this).
- 8.10 **Section 215 notice** – provides the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area.
- 8.11 **Injunction** - in very serious cases, where irreparable harm and serious danger is being caused, or where all other methods of enforcement have failed, the Council can seek an injunction in the County Court or High Court to restrain or prevent a breach of planning control. Failure to comply with an injunction is a contempt of court and can lead to a fine, imprisonment or assets being seized. This is only used in exceptional circumstances.
- 8.12 **Prosecutions** - The Council may prosecute responsible parties for carrying out illegal work to a listed building, displaying unauthorised adverts and any unauthorised work to a protected tree. Additionally, if any of the statutory notices are not complied with by the required date for compliance, the first step in seeking compliance is to formally write to the relevant parties to remind them of their responsibility to comply with the notice. Failure to act on this correspondence could lead to prosecution. In deciding whether to prosecute, the Council will take into account whether it is in the public interest and whether there is sufficient evidence to prove the case beyond reasonable doubt. As referred to above, this may be dependent upon complainants being willing to assist with the provision of evidence and by appearing in court.

- 8.13 **Direct action** - Where any steps required by an Enforcement Notice or a Section 215 notice (see section 178 and 219 of the TCPA 1990) have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether to exercise its power to enter the land and take the steps to remedy the harm; and to recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so. If the costs cannot be recovered, a charge will be registered on the property with the Land Registry.
- 8.14 **Planning Enforcement Order** - A Council can seek a Planning Enforcement Order through the Magistrate's Courts where a breach of planning control has been deliberately concealed in an attempt to circumvent the immunity periods for taking enforcement action. Its use will depend on whether or not there are other remedies available but also on whether or not any "concealment" was deliberate.
- 8.15 **The Proceeds of Crime Act 2002** (also known as POCA) provides for the confiscation or civil recovery of the proceeds from crime in the UK. The Council may be able to seek an award under the Act if relevant criteria are satisfied and the offence resulting from the breach of planning control has resulted in monetary or other gains being made by the individual/developer concerned.

## 9. Trees

- 9.1 Trees are protected when they are covered by a Tree Preservation Order (TPO) or trees above a certain size in a Conservation Area.
- 9.2 Anyone who permits or undertakes unauthorised works to protected trees with a TPO is guilty of an offence.
- 9.3 For a tree to be protected in a Conservation Area it must have a trunk of at least 75mm in diameter measured at 1.5m above existing ground levels; or in limited circumstances, 100mm in diameter to clear saplings away from specimen trees.
- 9.4 A person wishing to cut down or carry out works to protected trees in a conservation area is required to give 6 weeks' notice to the Council. This is to give the Council the opportunity to make a Tree Preservation Order if they consider the tree contributes to the amenity of the area. Anyone who carries out such work without serving a notice on the Council is guilty of an offence.
- 9.5 If we receive information to suggest that a protected tree is being felled, we will treat this as a high priority and visit the site as soon as possible. The planting of replacement trees in the next planting season will normally be required irrespective of whether or not any further action is taken. If the landowner fails to comply with this requirement, the Authority may serve a Tree Replacement Notice within a period of four years to ensure compliance.



## **10. Advertisements**

- 10.1 Certain types of advertisement can be erected without express permission from the Council. These classes of advertisement are defined in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- 10.2 It is an offence to display any other type of advertisement without express consent. If the Council consider that an application for the advertisement would probably be granted, then a retrospective application will be requested. Where the advertisement causes serious harm to amenity or public safety, a request will be made for its removal within a specific period. The Act also gives the Council the power to remove and dispose of structures (such as placards and posters) which are being used for unauthorised advertisement displays, but not on buildings to which there is no public right of access.
- 10.3 Where an advertisement benefits from consent under the Advertisement Regulations, the Council can take action to remove it if it is considered to be seriously harmful to the appearance of the area or poses a danger to public safety.

## **11. Listed Buildings**

- 11.1 Listed Building Consent is required for the demolition of a listed building or for its alteration or extension in a manner which would affect its character as a building of special architectural or historic interest. It is an offence to carry out such works without listed building consent.
- 11.2 The Council can prosecute and serve a Listed Building Enforcement Notice requiring the unauthorised work to be remedied. There are no time limits for taking enforcement action in respect of listed buildings. In deciding whether to serve a Listed Building Enforcement Notice, or to prosecute an owner, the Council will take into consideration the length of time that has passed since the work took place, who was responsible for carrying out the unauthorised work, and whether the historic fabric has been lost that cannot be replaced.
- 11.3 The Council will invite the owners to regularise the breach by submitting applications for listed building consent to either retain or amend authorised works. However, if negotiations fail, then the Council may serve a Listed Building Enforcement Notice. As with a general Enforcement Notice, this identifies the works required and the timescales.

## **12. Demolition in conservation areas**

- 12.1 The demolition of some unlisted buildings in a conservation area requires planning permission. This can either be applied for in conjunction with a planning application for redevelopment of a site, or a separate application for 'relevant demolition' can be made. It is an 'offence for a person to carry out or cause or permit to be carried out the demolition of an unlisted building within a conservation area without the required planning permission. Similarly, it is also

an offence for a person to fail to comply with any condition or limitation subject to which planning permission for relevant demolition is granted.