
Enforcement



Introduction

This advice note explains how local planning authorities should approach the need for enforcement and how and when action can be taken. It also sets out what people can do to object and the action the alleged offender can take to remedy the situation.

The need for enforcement

The District Council can take enforcement action against development, which does not have the necessary planning, or other permission. This is known as a breach of planning control.

A breach of planning control includes the erection of buildings and uses of land as well as works to trees and the display of signs. The Council can also enforce against non-compliance with conditions attached to a planning permission.

Many people feel that those who carry out development without planning permission “should not be allowed to get away with it”. Yet, it is not usually an offence for development to be carried out without planning permission. The development is merely unauthorised.

The main exceptions to this rule are unapproved works to listed buildings and protected trees and the display of

advertisements. In these cases, the Council can prosecute the alleged offender.

The Council’s duty

The Council has a general discretion, which allows it to take enforcement action only when it considers it “expedient” to do so. Expedient means only when it is appropriate given the nature and extent of the breach of planning control. Nonetheless, the Council will investigate all complaints it receives.

Before taking action, the Council will need to decide the extent of harm that is being caused. This means that action may not always be taken. Where it is taken, this can be quick and effective when it is clearly necessary. This will often result in what is known as an ‘enforcement notice’.

Enforcement action must be taken with regard to the law, the Council’s adopted policies and any other material planning considerations. In some instances a planning application may be invited so that otherwise acceptable development may be formally approved. Advice on how such applications are dealt with is set out in Advice Note 4.

Where permission is likely to be refused, the Council will negotiate to stop or remedy the harmful effects of the development. Formal action will be taken where this cannot be achieved.

There is always a need to consider Human Rights issues, particularly where residential accommodation is concerned. This is an important consideration, however harmful the breach of control may be.

South Cambridgeshire District Council’s adopted policy and priorities for enforcement are set out in *A Guide to Planning Enforcement*. This leaflet is available from the Development Services department or can be viewed online at <http://www.scambs.gov.uk/Environment/Planning/DevelopmentPlanning/Enforcement/>

Time limits for taking action

Where a breach of planning control is confirmed, it may nonetheless become immune from enforcement action. Action must be taken within the statutory time limits. These limits are essentially:

- four years from the substantial completion of operational development (building works etc.)
- four years from the change of use of any building to use as a single dwelling house;
- ten years for all other changes of use; and
- ten years for breach of conditions attached to a planning permission

There is no limitation period on the issuing of a listed building enforcement notice. This means that a new owner may be liable to enforcement action in respect of a breach by the former owner.

A further enforcement notice can be issued within four years of a previous notice for the same breach. This allows, for example, a defective notice to be corrected even though the time limit for such action has lapsed.

In those cases where enforcement action can't be taken, the development becomes lawful. This effectively amounts to a formal planning permission.

It is therefore very important to bear the relevant time limits in mind when considering the need for action. Any delay could result in an unacceptable breach of control becoming regularised when such a situation could have possibly been avoided.

What you can do and how to complain

The Council relies on the public to help identify breaches of planning control. The involvement of individuals, District Councillors and Parish Councils is

welcomed at all stages of the enforcement process.

Complaints should be addressed to the enforcement team in the planning department. It will help the Council to respond quickly and effectively if you can:

- o Put your complaint in writing. This will remain confidential and will not be made public while the complaint is being investigated.
- o Try and give us as much information as you can (e.g. the exact site address, when activities started, names, addresses and telephone numbers of owners and occupiers or other persons responsible).
- o Monitor activities to strengthen a case against an unauthorised use. This may involve you keeping a diary of events such as comings and goings, opening hours, vehicle registration numbers etc.
- o Be prepared to give evidence at hearings or inquiries to support the Council's action. In these cases, it is likely that the alleged offender will be made fully aware of your complaint.

What action can the Council take?

If the Council considers that some form of enforcement action is needed, there are several options available. The type of action will depend on the nature of the problem. Action will usually consist of one, or more, of the following:

- o **Planning Contravention Notice.** This allows the Council to find out exactly what is taking place at a site if it suspects that a breach of planning control has occurred. The notice will set out a number of specific questions relevant to the suspected breach. The person providing the information must answer truthfully, or risk a fine.

o **Enforcement Notice.**

This is the usual means by which unauthorised development can be removed or stopped. Any one affected by an enforcement notice has the right to appeal. Service of a notice does not prevent unapproved building works or use of land from continuing while an appeal is being heard (but see below). The notice must specify what the alleged breach is, the reasons for issuing the notice, what action is required and the time given to do this.

o **Stop Notice.**

This requires that an unauthorised use or building work should stop immediately. It is therefore served at the same time as an enforcement notice. It is used to ensure serious breaches of control are not allowed to continue.

The Government has recently introduced the 'Temporary Stop Notice'. This can be served without the need for an enforcement notice, but is only effective for 28 days. After this time the use or works may continue, unless other measures are undertaken.

o **Breach of Condition Notice.**

This is used to secure compliance with conditions attached to a planning permission. There is no right of appeal against this type of notice and it can therefore be an effective means to remedy a breach of control. The threat of prosecution may also be enough to ensure the condition is complied with in the future.

o **Tree Replacement Notice.**

This can be served on a landowner requiring him to replant a tree or trees that were subject to a Tree Preservation Order and removed without permission. The Council can specify the size and species of the replacement planting.

o **Untidy Land (Amenity) Notice.**

If land, such as a garden, is so untidy such that it affects local amenity, steps can be taken that require it is cleared up. Its condition, however, must not be the result

of lawful operations or use of the land.

Thus, an owner is not expected to keep a site tidy while authorised building works are being carried out.

o **Injunction.**

This can be used to control the use of land, but only in extreme cases. It will be used where other methods have failed, or are likely to fail, and the effects are particularly harmful.

What action can an alleged offender take?

Someone in contravention of planning regulations will hopefully comply with the terms of any enforcement action. Where this has to be done within a given timescale, the Council will check to see that it has been completed by the right time. If it hasn't, further action may include prosecution or an injunction. In extreme cases, the Council could take direct action such as the removal of buildings.

Appeals are often lodged against enforcement notices. This must be done before the notice comes into effect which must be at least 28 days after it has been served. If several people are served with a notice, only one person need appeal in order that the notice is challenged.

An appeal can be made on some or all of the following grounds. These are:

- that planning permission should be granted for the alleged development;
- the breach of control has not occurred as a matter of fact;
- there has not been a breach of planning control;
- it was too late to take enforcement action;
- the notice was not properly served on everyone with an interest in the land;

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- the steps required by the enforcement notice go beyond what is necessary to overcome the objections; and
- the time given to comply with the notice is too short.

There are similar grounds of appeal for listed building enforcement notices, although the appellant can also question the architectural or historic merit of the building or argue that the works were urgently necessary in the interests of safety or health or for the preservation of the building.

Appeals are dealt with in a similar way to those for planning appeals (see Advice Note 6).

If no appeal is submitted, the enforcement notice comes into effect on the due date. Where an appeal is made, the developer has time on his side. Once the appeal has been submitted, this suspends the terms of the notice. Thus unless a stop notice is issued, the unwelcome effects of a development may lawfully continue until after an appeal has been considered. An appeal may take anything up to a year to resolve in more complex cases.

If the appeal is successful, the matters referred to in the notice become lawful. No further action can be taken. If the appeal is unsuccessful, the period for compliance starts from the date of the inspector's decision letter. In some cases, this could amount to anything up to a further 12 months.

This is something Parish Councils should bear in mind when considering the merits of a particular use or building.

Please Note: This advice note is intended as a general guide. It should not be relied upon, or taken to be a full interpretation of the law.