

Enforcement



Introduction

This advice note explains how the Local Planning Authority approaches the need for enforcement, and how and when action can be taken. It also sets out what people can do to complain about an apparent breach and the action the alleged offender can take to remedy the situation.

What is the Purpose of Planning Enforcement?

Building work, or changes in the use of land or buildings, sometimes takes place without 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. At this stage, the development is merely unauthorised and constitutes a breach of planning control. In these cases the Planning Enforcement Team can investigate and take action to

reduce or remove the harm caused by the unauthorised development.

It is also important to ensure that planning permissions and other consents are implemented in full accordance with all approved plans and conditions. The Authority views all breaches of planning control seriously and it is considered essential to take appropriate enforcement action in instances where amenity and/or character is demonstrably harmed.

The Local Planning Authority has a full range of powers to tackle breaches of planning control. This ranges from negotiation skills to formal powers given by central government to take immediate action if a breach is very severe, for example unauthorised works to a listed building.

Permitted Development

Not all works require formal planning permission as planning permission for some development is deemed to have been granted by a document called the General Permitted Development Order. This is known as “permitted development”. The Local Planning Authority can provide advice on what constitutes permitted development.

Limitations

The Council has a duty to investigate breaches of planning control. However taking enforcement action is a discretionary power and should only be used when it is considered “expedient” to do so and in the public interest. Expedient means only when it is appropriate given the nature and extent of the breach of planning control. 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

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always be taken. Where it is taken, this can be quick and effective when it is clearly necessary.

Enforcement action must be taken in accordance with legislation and government guidance, 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.

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 planning control may be.

Guidance on enforcement can be found in [PPG18 – Enforcing Planning Control](#)

Time Limits

Where a breach of planning control is confirmed, it may nonetheless be 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 dwellinghouse;
- ten years for all other changes of use; and
- ten years for breach of a condition attached to a planning permission.

There is no limitation period for taking enforcement action in respect of listed buildings. This means that a new owner can be liable to enforcement action in respect of a breach by a former owner.

In those cases where enforcement action is not taken, the development will become lawful at the end of the statutory time limit.

How to Make a Complaint

In large part, the Council relies on the public to help identify breaches of planning control. The involvement of individuals, District Councillors and Town/Parish Councils is welcomed at all stages of the enforcement process. It is helpful if, other than in cases of emergency, concerns are expressed in writing/e-mail. A complainant's identity can remain confidential while and after the complaint is being investigated.

The Council's planning enforcement team investigates all validated breaches of planning control, however some complaints are outside their remit. For example the team does not deal with high hedges, boundary disputes, land ownership issues, noise and/or odour complaints (unless it constitutes a change of use or a breach of a condition of a planning permission), neighbour disputes or malicious/racist complaints. Minerals and waste matters and highway issues are normally dealt with by Cambridgeshire County Council (see www.cambridgeshire.gov.uk) and drainage problems are often referred to the Environment Agency or Internal Drainage Board.

Complaints can be made by e-mail (via the 'Planning Enforcement Complaint Form' on the Council's website www.huntingdonshire.gov.uk), telephone, in person to the Customer Service Centre, or by letter addressed to Planning Services, Huntingdonshire District Council, Pathfinder House, St Mary's Street,

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Huntingdon PE29 3TN. Complainants are asked to give us as much information as they can (e.g. the exact site address, what they think is the breach and why, when activities started, names, addresses and telephone numbers of owners and occupiers or other persons responsible). For a change of use, we may ask the complainant to compile a diary of events eg. comings and goings, vehicle registration numbers, opening hours, etc to support the Council's own investigations.

What Happens when a Complaint is Made

Following initial checks of records held, complaints received by the Planning Enforcement team are entered onto the computer system and raised as a file for investigation. An acknowledgement letter is issued giving the Case Officer's contact details. An initial site visit is usually conducted within 10 working days of the file being raised, and within 24 hours if immediate action may be necessary, at which the Officer will try to identify whether or not there is a breach of planning control and assess any harm resulting from the development. Harm comprises a number of elements. In order to assess the level of harm a scoring system is used to determine a harm rating. Each complaint is scored using this system and the rating defines the appropriate action to be taken. In cases where there is little or no harm the only action may be to advise the relevant person of the need for planning permission and invite an application to regularise the breach of planning control. In instances where serious harm is identified, the person may be required to demolish a structure or cease an activity, and ultimately formal action may be taken by way of a Notice, prosecution or injunction – see details of types of formal planning enforcement action below.

A more detailed response is sent to the complainant within 28 days of receipt of

the complaint and thereafter on a monthly basis as required. Outcomes may seem to take a while to be achieved due to the negotiations involved and the need to allow the person reasonable time to address the matter.

More information regarding how complaints are handled can be found in the Council's Planning Enforcement Policy available on the Council's website.

What the Alleged Offender Should Do

If a person is contacted by a member of the Planning Enforcement Team, he/she should provide as much information as possible to enable the Officer to decide whether or not there is a breach of planning control. A meeting on site is often the best way to do this, although it may be possible by a phone call or letter.

Prompt responses to correspondence will help to speed up the process, and he/she should make every effort to meet deadlines for remedial action. The Case Officer will check to ensure that actions have been completed satisfactorily. If for any reason a deadline cannot be met, the person should contact the Case Officer to agree what will be done.

Types of Formal Planning Enforcement Action

Government Guidance makes clear that formal action should usually be a last resort when attempts to resolve the matter amicably have failed. Put simply, enforcement action will only be considered whether the development is unauthorised, unacceptable, is not immune from enforcement and attempts to resolve it amicably have failed.

Where formal action is appropriate, there are several options available, the most common being those outlined below:

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o **Enforcement Notice**

This is the usual means by which unauthorised development can be removed or stopped. As previously stated, it is not usually an offence for development to be carried out without planning permission, but it is an offence not to comply with an Enforcement Notice. An Enforcement 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. Enforcement notices are served on all interested parties and have a right of appeal (further information regarding appeals can be found at <http://www.planningportal.gov.uk/planning/planninginspectorate>). 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;
- the steps required by the enforcement notice go beyond what is necessary to overcome the objections; and/or
- 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 by the Planning Inspectorate in a similar way to those for planning appeals.

If no appeal is submitted, the enforcement notice comes into effect on the due date. If an appeal is 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. If the appeal is successful, the matters referred to in the notice become lawful and 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. If an Enforcement Notice is not complied with prosecution proceedings can be brought and/or Officers have authority to enter land, carry out remedial work, and reclaim the costs from the landowner.

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 planning control are not allowed to continue.

A Temporary Stop Notice 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 served where breaches of planning conditions are identified. There is no right of appeal against such a Notice and non-compliance constitutes a criminal offence.

o **Untidy Land (Amenity) Notice**

If land or a building is so untidy that it affects local amenity, steps can be taken that require it to be 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

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site tidy while authorised building works are being carried out for example.

o **Tree Replacement Notice**

This requires a landowner 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 **Injunction**

Injunctions are granted in the County Court or High Court and can be used to control the use of land but only in extreme cases where the effects are particularly harmful. An injunction can be sought for an actual or likely breach of planning control. Contravention of an injunction is a criminal offence for which the Court may impose a fine or a custodial sentence.

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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.