

Planning Enforcement: A Guide for the Community

National policy and guidance

The Councils enforcement policies cannot operate in a vacuum; they must have regard to Government advice in the National Planning Policy Framework (NPPF) and the guidance in the National Planning Practice Guidance note.

The Local Planning Authority (LPA) has sole responsibility for taking enforcement action within their administrative area.

In deciding what action to take the Council must consider whether it is in the public interest to take the action proposed, having regard to the development plan and any other material considerations.

Enforcement action is discretionary and should only be undertaken when the breach of planning control creates significant harm.

Where possible the LPA should negotiate to resolve the breach of planning control.

Enforcement action is not appropriate against trivial/technical breaches that cause no harm.

The Law

The main legislation governing the enforcement of planning control is contained in the Town and Country Planning Act 1990. Under the Act the Council has powers:

- to enter land to make necessary inspections
- to require owners and occupiers to provide information about the ownership and use of land and buildings
- to serve enforcement and other notices on landowners and persons responsible to require breaches of planning control to stop or be improved or both.

There are time limits for taking enforcement action:

- four years after substantial completion in relation to the erection of buildings and change of use of buildings to residential use; and
- ten years for most changes of use of land or buildings and breach of condition

Planning enforcement is a very complex area of the planning system. It should be noted that the legal processes involved are often lengthy and complicated and an instant resolution cannot be guaranteed.

The integrity of the planning process depends upon our commitment to take effective action against unauthorised development which causes significant harm. Undertaking enforcement action when required is vital to this. It is important to note however, that enforcement action does not necessarily follow a breach of planning control. There is a need to strike a balance between protecting the environment, protecting the amenities of neighbours and conserving historic building and areas, whilst at the same time enabling the freedom of the owners to use or alter their property as they wish.

The main breaches of planning control include:

- Building, or engineering work and the change of use of land without a planning permission
- Unauthorised work to trees protected by a tree preservation order or in a conservation area
- Breach of conditions attached to planning permissions or the terms of a Section 106 obligation
- Non-compliance with approved plans attached to planning permissions
- Unauthorised advertisements or signs
- Unauthorised change of use of land/buildings
- Land or buildings in such poor condition that it adversely affects the amenity of the area
- Unauthorised works to a listed building
- Unauthorised demolition work in a conservation area

Land ownership disputes and breaches of a covenant attached to deeds will not be investigated as these are civil issues.

Mid Sussex General policy on enforcing planning control

The Planning and Investigations Team investigate alleged breaches of planning control and take action, if necessary, against those breaches

There are 3 full time Investigations Officers employed in the Environment Division, who report to a dedicated Team Leader. The Investigations Officers receive and investigate complaints. Responses to allegations of breaches of planning control will be in accord with the Planning Enforcement Charter.

In considering enforcement action we will assess whether the breach of planning control causes significant harm.

We will attempt to negotiate with those responsible for the breach to remedy it voluntarily but will not allow such discussion to hamper any formal enforcement action that may be required.

If appropriate we will invite the submission of a planning application to remedy the breach and impose planning conditions to overcome the planning objections.

When a breach of planning control has occurred and causes serious harm to public amenity formal enforcement action will be taken.

Planning enforcement powers

Planning enforcement issues are usually capable of resolution without resorting to formal enforcement action or prosecution. However, if negotiation fails to resolve the problem, the enforcement team has a number of tools it can use to obtain information or remedy the breach which can include:

Planning Contravention Notices (PCN)

Enforcement Notices

Breach of Condition Notices (BCN)

Section 215 Notices

Listed Building Enforcement Notice

Stop Notice

Temporary Stop Notice

Prosecution

Injunction

Appeals

An appeal may be lodged with the Planning Inspectorate against an enforcement notice. If an appeal is made the requirements of the notice are suspended until the appeal is heard. Appeals against enforcement notices may sometimes take up to a year to be heard.

If an appeal is allowed, no further action can be taken by the Council in regard to that breach. If an appeal is dismissed, legal action can only be taken if an individual then fails to comply with the requirements of an enforcement notice.