

## Adur & Worthing Councils

### Planning Enforcement Policy and Guidance

#### Introduction

Breaches of planning control are taken very seriously by the Councils and it is their policy to take effective enforcement action when it is justifiable for sound planning reasons, exercising such powers as are available proportionately *depending on the level of harm being caused*.

The planning system operates to regulate the use and development of land in the public interest. In considering any enforcement action, Government guidance makes it clear that the decisive issue for Councils is whether or not the breach of control would unacceptably affect public amenity, or the existing use of land and buildings meriting protection in the public interest, and that any enforcement action should always be commensurate with the breach of planning control to which it relates. The Councils will always attempt to resolve enforcement matters amicably in the first instance. Where these initial attempts by the Councils fail to persuade the owners or occupiers of sites voluntarily to remedy the harmful effects of unauthorised development, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

This document has been prepared to set out the service provided when you contact the Councils about the enforcement of development control under the Town and Country Planning Act 1990 ('the Act') and related legislation. It is mainly concerned with:

- unauthorised development including building operations or uses of buildings or land;
- breaches of conditions imposed on planning permissions and consents;
- unauthorised advertisements on buildings or land;
- unauthorised alterations to Listed Buildings or demolition of buildings in Conservation Areas
- unauthorised works to trees protected by Tree Preservations Orders or within Conservation Areas;
- untidy and neglected land and buildings the condition of which adversely affects the amenity of the neighbourhood.

The Councils follow the national **Enforcement Concordat** which sets out the principles of good enforcement policy as:

- Standards: draw up clear standards setting out level of service and performance that public and businesses can expect
- Openness: clear and open provision of information and advice
- Helpfulness: helping businesses by advising on and assisting with compliance
- Complaints: having an effective and timely complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved to avoid incurring unnecessary expense
- Consistency: ensuring fair, equitable and consistent enforcement practice

Co-operation with other Council services and with other agencies is an integral part of the approach to planning enforcement, in order to make the most effective use of the resources available.

### **Submission of Complaints**

The Council will investigate written complaints (by letter or email) concerning individual cases falling within the above matters; those made by telephone; those made in person at the Council's offices or made via an elected local Councillor. If a complaint is made by telephone or in person, you will be asked to put the complaint in writing (by letter or email). In all cases, you must provide:-

- the exact address of the alleged unauthorised development or use;
- the details of the alleged unauthorised development or use;
- the reasons that have caused you to complain about it and, if you consider the Council should take enforcement action, the reasons why, setting out the environmental or other problems it is causing.

To avoid malicious complaints, anonymous allegations of breaches of planning control will not normally be accepted. Every effort, however, will be made to reassure anybody wishing to make a complaint that his or her details will be kept confidential so far as other legislation permits it to be. Should they still wish to remain anonymous, then every effort will be made to encourage the complainant to refer the matter to either their local ward member or to their Parish Council representative.

### **Disclosure of Identity of Complainant**

The identity of complainants will not be disclosed without first advising them of an intention to do so. However, if formal enforcement action is taken and an appeal is subsequently submitted against such action, then it may be necessary to reveal their identity as part of the evidence to support the Council's case. Similarly, where prosecution proceedings are instituted, it may be necessary to reveal identities to the Court or, more rarely, seek the attendance of complainants to provide evidence. In such cases, these matters will be discussed with complainants beforehand.

## **Prioritisation**

*Complaints will be prioritised upon receipt and acknowledged in writing (letter or email) within 5 working days of receipt informing you of the case officer's name and contact details, unless you have already been advised of this information verbally on the telephone or in person.*

Planning Enforcement will not investigate a complaint or undertake a site inspection if your complaint is **not a planning matter**. Any complaint relating to another function of the Council will be referred to the relevant Service for their consideration. You will be advised of this in writing, or by telephone, within 10 working days of the receipt of your complaint.

Complaints about breaches of planning control will be investigated in accordance with the following order of priority and, depending on the available resources, within the target response times indicated:

**1. High Priority - A site visit will be made normally within 24 hours**

- Unauthorised development causing irreversible and substantial environmental damage (including significant development within sensitive areas such as the South Downs National Park and Sites of Special Scientific Interest).
- Unauthorised demolition, partial demolition or significant alteration of a Listed Building or demolition of a significant building within a Conservation Area.
- Unauthorised works likely to cause serious harm to trees covered by a Tree Preservation Order or to significant trees in a Conservation Area.

**2. Medium Priority - A site visit will be made normally within 5 working days**

- Unauthorised development or use causing substantial harm to the local environment (including the living conditions of neighbouring residents) or to highway or public safety.
- Breach of a condition of planning permission which results in substantial harm to the local environment (including the living conditions of neighbouring residents) or to highway or public safety.
- Less significant unauthorised development within a sensitive area such as the South Downs National Park and Sites of Special Scientific Interest.

**3. Low Priority - A site visit will be made normally within 10 working days**

- Other unauthorised development where planning permission is unlikely to be granted, with priority to those cases where permission would not be granted without substantial modification to the development.

- Breach of a condition of planning permission not resulting in substantial harm to the local environment (including the living conditions of neighbouring residents) or to highway or public safety.
- The display of unauthorised advertisements or breaches of conditions of consents for advertisements.
- Untidy or overgrown land and buildings in need of proper maintenance.

## Investigation of Alleged Breach

Once investigations commence, the priority may change following the initial site visit or on receipt of additional information. The Council will ensure that resources are made available in order to conclude high priority cases satisfactorily. This will mean that lower priority cases will have less resource allocated to them. As the investigation progresses, complainants will be advised of the outcome by telephone or in writing (email or post) as appropriate. ***The aim will be to complete the enforcement investigation within 8 weeks, reaching one of the following possible outcomes set out below. However, in some cases enforcement investigations can be extremely complex and exceed this timescale.***

- Case is closed because the investigation identifies that ***no breach*** of planning control has occurred. What constitutes 'development' is defined in section 55 of the Act as broadly comprising most types of building operation (including alterations which materially change the external appearance of a building) and also material changes of use. However, some do not require applications for planning permission because they constitute 'permitted development' or fall in the same Use Class. The Planning Portal ([planningportal.gov.uk](http://planningportal.gov.uk)) provides further detail on permitted development rights.
- Case is closed because the investigation identifies that the ***breach took place too long ago*** to be within the scope of planning enforcement action. Section 171B of the Act requires enforcement action to be taken within 4 years in the case of unauthorised building operations (and use of a building or part of a building as a dwelling) and 10 years in the case of material changes of use and breaches of conditions. An application for a Certificate of Lawfulness can be made in such cases and the property owner will be encouraged to do so. The Localism Act proposes to exclude the above time limits in cases where it can be shown that there has been 'deliberate concealment'.
- ***Unclear whether a breach has occurred.*** This may be because it involves a change of use of land or buildings and it is unclear whether that change is a material one. Or because complex interpretation of the legislation is required necessitating legal advice. It may be unclear as to when the breach first took place or the use may be spasmodic in its effects. For example, use of a dwellinghouse in connection with a business does not always need planning permission; it depends upon whether its effects are so significant as to have changed the character of the use of the property materially. Site inspections over a longer time period and carrying out interviews may be necessary. The

assistance of complainants will be required in monitoring activity, for example, by the **complainant keeping a log or diary** of events witnessed. If necessary to obtain more information, the Council will serve a **Planning Contravention Notice** on the owner/occupier of the property forming the subject of the alleged breach in order to obtain relevant information to establish whether or not a breach has occurred, the persons responsible for it and whether they intend to make a retrospective application. It will often not be possible to establish/gain sufficient evidence to show that an unauthorised change of use has occurred in the absence of a log being produced by the complainant.

- Case is closed because a Breach of planning control has been identified but no retrospective application has been received and the officer's assessment, having regard to planning policies and any other material planning considerations, is that planning **permission would have been granted and that it is therefore not expedient to take enforcement action**. The unauthorised development will be assessed as if a retrospective application had been submitted.
- Case is closed because the alleged **breach has been remedied** by negotiation and no longer exists as a breach. Officers will normally first seek the co-operation of the owner/occupier of the property in rectifying the breach through the cessation of an unauthorised use or the removal of unauthorised building works.
- **Retrospective planning application** has been submitted. This will instigate the normal application process, usually taking up to 8 weeks, with notification of neighbours, consultations, assessment and decision to approve or refuse having regard to planning policies and any other material planning considerations. Retrospective applications are treated on their individual merits in the same way as proposed developments. If the decision is refusal, enforcement action would normally follow without delay. Similarly, if conditional permission is granted, but the conditions are not complied with, a breach of condition notice would normally be issued.
- Authority to serve a notice because a breach of planning control has been identified but no retrospective application has been received and the planning assessment, having regard to planning policies and any other material planning considerations, is that, **if the development were modified, planning permission could be granted and that it is expedient to take action by under-enforcement** (i.e. by taking enforcement action that requires lesser steps to be taken than removal or cessation of the entire unauthorised development). The steps required to be taken (or the activities required to cease) by an Enforcement Notice must not exceed what is necessary to remedy the breach or remedy any injury to amenity caused by the breach.
- Authority to serve an enforcement notice because a breach of planning control has been identified but no retrospective application has been received and the planning assessment, having regard to planning policies and any other material planning considerations, is that the development cannot be

rendered acceptable (including by imposition of conditions) and that planning permission **would have been refused and that it is therefore expedient to take enforcement action**. The unauthorised development will be assessed as if a retrospective application had been submitted.

With regard to **section 215 (proper maintenance of land)**, the case will be closed if it is considered that the condition of the land/building **does not cause material harm to the amenity of the area**. If it does warrant action, the co-operation of the owner/occupier will first be sought in securing the necessary level of improvement to the property within an appropriate timescale. If this is not fulfilled, a section 215 Notice will be served.

### **Deciding whether to take Enforcement Action**

As stated above, unauthorised developments will be assessed as if a retrospective application had been submitted, whether or not an application has actually been received, and the decision as to whether enforcement action is expedient will be based on the planning policies of the Development Plan relevant to the unauthorised development concerned and any other relevant material planning considerations. Currently, policies are contained in central Government Planning Policy Statements (to be replaced by the National Planning Policy Framework), the South East Plan 2009 (intended under the Localism Act to be rescinded) and:-

**Worthing Borough:** the adopted Worthing Local Plan 2003 (saved policies) and the adopted Worthing Core Strategy 2011

**Adur District:** the adopted Adur District Local Plan 1996 (saved policies)

Matters to be taken into account will also include both Councils' Supplementary Planning Guidance and Good Practice Guidance, as well as Government Circulars and Planning Policy Guidance where relevant to the case, and normal development control criteria.

For enforcement action to be taken, the breach concerned must result in demonstrable harm to the environment, including unacceptable detracting from visual appearance or residential amenity (noise disturbance or loss of daylight or privacy), or significant detriment to highway safety, being matters warranting action in the public interest. The decisions made by the Council will be capable of substantiation and reasonable having regard to valid planning considerations in order to be defensible at appeal and not result in an award of costs against the Council. The decisions made will take into account all relevant planning considerations and not be based, whether partially or otherwise, on irrelevant considerations as this can make the decision subject to judicial review in the High Court with resultant costs implications.

With regard to Human Rights, Article 8 of the European Convention safeguards respect for family life and home, whilst Article 1 of the First Protocol concerns non-interference with peaceful enjoyment of private property. Both rights are not absolute and interference may be permitted if the need to do so is proportionate, having regard to public interests. The interests of those who have carried out unauthorised

developments as well as those affected by them and the relevant considerations which may justify interference with human rights will form part of the assessment process in deciding whether enforcement action is expedient.

Where appropriate, the opinion of the Council's Legal Services will be sought on individual cases, especially where the sufficiency of the evidence available and the expediency of enforcement or other legal action is in doubt. Normally, the decisions as to whether or not to take enforcement action will be made by the Council's Planning Services Manager under delegated powers (the adopted Schemes of Delegation under the Councils' Constitutions). On occasions, it may be considered necessary to refer the matter to the relevant Council's Planning Committee for a decision in which event the complainant(s) and the owner/occupier(s) of the property concerned will be informed of the date of the Committee meeting.

## **Service of Breach of Condition, Enforcement and Untidy Site Notices**

### **Issue of a Breach of Condition Notice/Untidy Site Notice**

Where the service of these Notices has been authorised, we will normally issue within 15 working days of the authorisation where all those persons responsible are known to us, or within 35 working days where there is a need to serve a formal Requisition for Information Notice and/or obtain information from the Land Registry to identify all affected parties.

### **Issue of an Enforcement Notice**

Where the service of this Notice has been authorised, we will identify all affected parties (which normally involves the service of a Requisition for Information Notice and/or obtain information from the Land Registry) and normally issue the Notice within 35 working days of the date of the authorisation.

Whilst the above identifies the general timescales the Council will aim to comply with, where there is harm being caused we will endeavour to serve the relevant notices as quickly as possible.

## **Checking Compliance with Notices**

Upon the expiry of the relevant period for compliance with any Notice, we will inspect the site within 10 working days of the date for compliance, to check whether or not a Notice has been complied with.

Where a Notice has been complied with, no further action will be taken unless a recurrence of the breach is brought to our attention. After compliance, Enforcement Notices will not normally be withdrawn unless they are clearly 'spent' with no possibility of a recurrence of the breach.. If not withdrawn the notice will be marked as "complied with" on the land charges register.

Where a Notice has not been complied with, the Council's Legal Services will be requested to consider whether prosecution proceedings are appropriate. If there has been a material change of circumstances since the issue of the Notice or the Notice

has been complied with partially, then prior to instructing Legal Services to institute action, the matter will be re-assessed within 30 working days of the inspection.

## **Appeals**

The recipients of an Enforcement Notice, but not the complainants or any other party, have a right of appeal to the Planning Inspectorate. The Act (section 174) provides certain specific grounds for appeal regarding the breach alleged in the Notice, namely that:

- (a) planning permission ought to be granted;
- (b) the breach has not taken place;
- (c) it does not constitute a breach of planning control;
- (d) it took place too long ago and is exempt by passage of time;
- (e) the Notice was not served properly as required by the Act;
- (f) the steps required to be taken or the activities required to cease exceed what is necessary to remedy the breach or remedy any injury to amenity caused by the breach
- (g) the period for compliance is unreasonably short.

Where an appeal is submitted against an Enforcement Notice, we will notify complainants and other property owners/occupiers affected by the breach within 14 days of the appeal 'start date' set by the Planning Inspectorate. We will provide the appeal reference number and the address and timescale for the submission of representations to the Planning Inspectorate.

The grounds for an appeal against a Listed Building Enforcement Notice are more complex and are set out in section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The recipients of a section 215 (proper maintenance of land) Notice, but not the complainants or any other party, have a right of appeal to the Magistrates Court. Section 217 provides certain specific grounds for appeal against the Notice, namely that:-

- (a) the condition of the land does not adversely affect the amenity of any part of the area;
- (b) the condition of the land is attributable to and results in the ordinary course of events from the carrying on of a use or activity not in breach of planning control;
- (c) the requirements exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of the area;
- (d) the period for compliance is unreasonably short.

## **Types of Notice, Legal or other action**

**Requisition for Information** - is a Notice served upon occupiers of premises or land requiring information as to ownership interests in that land. It is used prior to the



issue of the Notices listed below because such information is necessary to ensure that a Notice is correctly served. It is an offence not to send the information required by the Notice within the time specified. On occasions, the failure to respond to such a Notice may delay the service of one of the Notices listed below.

**Planning Contravention Notice** - is a Notice served on owners or occupiers of premises or land or those carrying out operations on land where it appears to the Council that there may have been a breach of planning control. The Notice requires those on whom it is served to answer specific questions and provide information about the use or operations, ownership interests and the persons responsible within a specified time period. It also affords the person on whom it is served the opportunity to discuss the alleged breach with Council officers. It is not a legal charge on the land or property to which it relates but it is an offence not to reply to the questions in the Notice within the time specified or to knowingly make a false statement.

**Section 215 Proper Maintenance of Land Notice** - is binding on those on whom it has been served. Its purpose is to secure the tidying of land or buildings in the interests of the amenities of an area. If an appeal is submitted against the Notice before it comes into effect, it cannot be enforced until the appeal is determined by the Magistrates Court. It is an offence not to comply with this Notice within the specified time period. This type of notice is 'spent' at such time that it is complied with and any recurrence of the problem would require a fresh notice to be served.

**Enforcement Notice** - is binding on those to whom it is served and the land to which it relates. It is served on all those with an ownership interest in the property and is used to secure the cessation of unauthorised uses, activities and operations and the removal of the building or other works involved. It can also be used for breaches of conditions. A Notice represents a legal charge on the property. There is a right of appeal against the Notice before it comes into effect; it cannot then take effect until the appeal has been determined by the Planning Inspectorate. It is an offence not to comply with the Notice within the specified period (which may be varied by an appeal decision). If an appeal is allowed and the notice is quashed, planning permission is deemed to be granted. Enforcement Notices otherwise remain in effect in perpetuity unless withdrawn.

**Breach of Condition Notice** - is served where a breach or non-compliance with a condition attached to a planning permission has occurred. It is served upon those responsible for the breach. There is no right of appeal against this Notice and it is an offence not to comply with it in the specified time period.

**Listed Building Enforcement Notice** - is a special form of enforcement action which relates to unauthorised development in respect of statutorily Listed Buildings of Special Architectural or Historic Interest and demolition of unlisted buildings in Conservation Areas. If an appeal is submitted against the Notice before it comes into effect, it cannot take effect until the appeal is determined by the Planning Inspectorate. It is an offence not to comply with this Notice within the specified period.

**Stop Notice** - is a special form of notice which can be used to stop particularly serious breaches from taking place. It is served together with an enforcement notice and stops activities during the 28-day period before the enforcement notice comes into effect and during the period when any appeal against it is awaiting a decision. There can be significant financial implications with such action and this power is used in only exceptional circumstances.

**Temporary Stop Notice** - is a special form of notice which can be used to stop an activity believed to be in breach of planning control immediately. It does not have to be served with an enforcement notice but only stops the activity for 28 days.

**Prosecution** - is legal action brought by the Council, normally in Worthing Magistrates Court, in relation to the following main types of planning breach:-

- non-compliance with any of the above Enforcement, Breach of Condition, or Planning Contravention Notices within the specified periods;
- unauthorised works affecting the character of Listed Buildings without the necessary listed building consent from the Council;
- unauthorised demolition of buildings in Conservation Areas without the necessary conservation area consent from the Council;
- unauthorised works to trees protected by TPO without the necessary consent or works to trees in Conservation Areas without the necessary 6 weeks prior notification;
- the display of unauthorised advertisements without the necessary express consent of the Council.

The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 (PACE) when interviewing persons suspected of a criminal offence (in so far as it applies to those being interviewed by a non-police agency,) The Council will also comply with the Criminal Procedures and Investigations Act 1996 (CPIA) and the Regulation of Investigatory Powers Act 2000 when investigating and prosecuting offences.

The Council are empowered to prosecute under Section 222 of the Local Government Act 1972, although any decision to prosecute must be taken in accordance with the Code for Crown Prosecutors. The principles laid down by the Code for Crown Prosecutors require two tests to govern the decision making process. Firstly under the **Evidential Test**, the Prosecutor shall be satisfied that there is enough evidence to provide a realistic prospect of conviction. Thereafter, the Prosecuting authority must consider the **Public Interest Test** under which a prosecution will usually proceed unless there are public interest factors against prosecution that clearly outweigh the reasons for prosecution. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

The Council will take all reasonable steps to recover its costs of having to take prosecution proceedings. Copies of the Code for Crown Prosecutors can be found on the Crown Prosecution Service website [www.cps.gov.uk](http://www.cps.gov.uk)

**Injunction** – can be sought from the High Court or County Court to prevent the continuation of offences being repeated by the same person after a number of prosecutions, or in an emergency, and the penalty can include imprisonment.

**Direct action by the Council** – can be taken as a last resort if an Enforcement Notice comes into effect and is not complied with even after prosecution. The Council has power to enter the land, carry out the steps required by the Notice and recover the cost from the owner (or by registering a charge on the property). Where there is a perceived threat to either an officer of the Council or a member of the public, and following an appropriate risk assessment, the police will be requested to attend in order to ensure that safety of staff is not compromised in any way.

There are also some other specialist enforcement notices dealt with by planning control but more rarely. These include **Hazardous Substances Contravention Notice** under the Planning (Control of Hazardous Substances) Act 1990 and **High Hedge Remedial Notice** under Part 8 of the Anti-social Behaviour Act 2003.

**For further information and advice please contact:**

Development Management (Planning Enforcement),  
Adur & Worthing Councils, Portland House, Richmond Road, Worthing, BN11 1LF

Tel: 01903 239999 or 221346

E-mail: [planning.enforcement@adur-worthing.gov.uk](mailto:planning.enforcement@adur-worthing.gov.uk)

website: [www.adur-worthing.gov.uk/planning](http://www.adur-worthing.gov.uk/planning)

**Background Papers:**

- The Enforcement Concordat March 1998
- PPG18 - Enforcing Planning Control
- The South East Plan (Regional Spatial Strategy)
- Worthing Local Plan 2003
- Worthing Core Strategy 2011
- Adur Local Plan 1996
- Criminal Procedures and Investigations Act 1996 (CPIA)