



TUNBRIDGE WELLS BOROUGH COUNCIL

PLANNING SERVICES

Enforcement Strategy

July 2010

1.0 INTRODUCTION

- 1.01 This document sets out the Planning and Compliance Strategy of the Borough Council's Planning Service.

It should be read in conjunction with the Borough Council's adopted "Corporate Enforcement and Prosecution Policy" adopted by Cabinet 8 February 2007.

This is based on the principles of:

- Proportionality.
- Consistency.
- Transparency.
- Targeting of enforcement action.

In addition, this Corporate Policy includes a provision which requires that all decisions to prosecute will be taken in accordance with the "Code for Crown Prosecutors", and recognises that in 1998 the Borough Council signed up to working in accordance with the Governments "Enforcement Concordat".

- 1.02 The Borough Council is firmly committed to effective and appropriate enforcement of planning control and monitoring of development. In October 2006 the Council reorganised its Planning Service to include a dedicated Enforcement Team.

The Enforcement team works closely with the Planning Officers processing planning applications, Building Control and the specialist team of officers dealing with Conservation of the natural and built environment, and landscape and tree matters.

There is also close coordination and assistance from other Council Services, such as Legal, Environmental and Street Scene, Housing (unauthorised caravans) and Finance, as well as from officers working for organisations such as the Environment Agency and Kent County Council etc.

- 1.03 At all times full regard will be paid to the four corporate priorities of the Borough Council which are to:

- Promote and maintain a thriving and diverse local economy.

- Care for our environment.
- Have housing suitable for local people.
- Develop safer and stronger communities.

1.04 The aims of the Planning Enforcement Team will be:

- To be effective and responsive in the prevention and control of unauthorised development to maintain the credibility of the planning system
- To correct the undesirable effects of unauthorised development
- To ensure development is carried out in accordance with planning approvals where possible and appropriate
- To promote a service which is fair, responsive, helpful and consistent in approach
- Subject to available resources, to pursue proactive initiatives to improve the environment and built heritage of the Borough

1.05 When considering what enforcement action to take it is important to note that Planning Authorities have powers, but in most cases, other than very specialist areas, there is no statutory duty to enforce planning legislation. The Planning Enforcement system is not designed to seek retribution but is instead intended to mitigate harm. Thus, in all cases, regard must be paid to whether it is expedient to take action and to then reach a balanced view on what action it is appropriate to take. Therefore, in responding to any breach of planning control made the strategy will generally be to take one of the following courses of action:

- A. Immediate enforcement action to resolve breaches of planning control which require very urgent action and are causing significant damage to interests of acknowledged importance (this can include issuing a summons for a prosecution, a stop notice or an injunction).
- B. Inviting a listed building consent application or retrospective planning or advert consent application, if the breach that has occurred could be regularised. The legislation specifically provides that such retrospective applications can be made to regularise development already carried out. Alternatively, the owner may be invited to apply for a Certificate of Lawful Use or Lawful Development Certificate. If such applications are refused or not

received within a reasonable timescale, the expedience for issuing a formal notice (including an Enforcement Notice) will be considered.

- C. Take no further action in cases where the breach is of a minor or technical nature, or where the works or use, are acceptable without the need to impose any conditions.
- D. Establish that the complaint is not a breach, and that no action can be taken.

1.06 This enforcement strategy is based not only on the Borough Council's Corporate Enforcement and Prosecution Policy but specifically on Central Government Guidance in the following documents:

- Planning Policy Guidance Note 18: Enforcing Planning Control. D.O.E. December 1991.
- D.O.E. Circular 10/97: Enforcing Planning Control.
- Enforcing Planning Control: Good Practice Guide for Local Planning Authorities. D.O.E. 1997.
- Best Practice Guidance – Section 215 Notices. ODPM January 2005.
- ODPM Circular 02/2005 – Temporary Stop Notice March 2005.
- ODPM Circular 06/2005 – Biodiversity and Geological Conservation August 2005.
- Best Practice Guidance – Listed Building Prosecutions. Department for Communities and Local Government December 2006.

1.07 All decisions on whether it is expedient to take enforcement action will have regard to the policies of:

- Central Government Guidance.
- Tunbridge Wells Core Strategy 2010
- Tunbridge Wells Borough Local Plan 2006 – Saved Policies only.
- All other saved Supplementary Planning Guidance and draft or adopted Supplementary Documents (SPD's) and other Development Plan Documents (DPD's).

2.0 WHAT IS A BREACH OF PLANNING CONTROL?

2.01 A breach of planning control is defined in the Town and Country Planning Act as:

“the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted” (Section 171A).

2.02 In addition to the above and for the purposes of this Strategy the Borough Council considers that breaches of planning control can include:

- Building work, engineering operations and material changes of use carried out without planning permission.
- Development that has planning permission but is not carried out in accordance with the approved plans.
- Non-compliance with conditions or the terms of legal agreements (Section 106 obligations) attached to permissions.
- Works carried out to a Listed Building, which affect its special architectural or historic character, without listed building consent being granted.
- Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given.
- Display of advertisements (including fly posters) which need express consent, under the Advertisements Regulations and are displayed without consent being granted.
- The state of land or a building adversely affecting the amenity of the neighbourhood under (Section 215 of the Town and Country Planning Act and Section 79 of the Building Act).

2.03 Enforcement Notices

It should be noted that in the majority of cases it is not an offence to carry out development without planning permission. An offence in law only occurs if the Council has taken formal civil action (e.g., by serving a Notice) and the recipients have failed to comply.

It is thus necessary for the Planning Authority to first issue a formal Enforcement Notice. The recipient of a Notice has a right of appeal to the Secretary of State against the issue of the Notice or its terms, and to make an application for costs in the course of doing so. It must be appreciated that if an appeal is made, this inevitably leads to delays in bringing a matter to Court.

2.04 **Stop Notices**

A Stop Notice can be served at the same time as an enforcement notice in appropriate cases as explained in DOE Circular 10/97. Annex 3. In particular a cost/benefit assessment needs to be carried out to ensure that the requirements do not prohibit anything more than is essential to safeguard amenity or public safety in the neighbourhood or prevent serious or irreversible harm to the environment in the surrounding area.

In exceptional cases a temporary stop notice can be served which can prohibit any activity, which is in breach of planning control for a period for up to 28 days. The intention is that this then would provide an opportunity for the Planning Authority to serve an enforcement notice.

2.05 **Injunctions**

In certain exceptional cases the Planning Authority will seek to obtain an injunction using powers laid out in Section 187B of the Town and Country Planning Act 1990.

Such applications are made to the County or High Court, and it is for the Court to decide what is appropriate to restrain any breach of planning controls.

Failure to comply with such an Injunction can result in an unlimited fine or imprisonment. An Injunction can be issued against a person whose identity is unknown, as long as she/he/they can be identified by some other means.

2.06 In the case of unauthorised advertisements, works to protected trees, hedgerows or listed buildings it is possible to proceed directly to the Courts with a prosecution case.

(a) Listed Buildings

A person is guilty of an offence under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 if unauthorised works to a Listed Building which would affect the character of the listed building as a building of special architectural or historic interest are carried out without the Local Planning Authority's consent or if works are carried out without complying with a condition attached to a consent. There is no time limit on bringing a prosecution.

Thus the current owner of a Listed Building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether listed building consent is later obtained or the unauthorised works are later made satisfactory. A person found guilty of an offence may be liable to a fine of up to £20,000 for each separate offence and/or a term of imprisonment of up to two years.

In addition, the Planning Authority may consider it expedient to issue a Listed Building Enforcement Notice, to require remedial works to be carried out. The decision whether to prosecute and or issue an enforcement notice will be based on guidance in the government's document "Best Practice Guidance – Listed Buildings Prosecutions" December 2006.

(b) Advertisements

Anyone who displays an advertisement without the appropriate consent is open to a prosecution in the Magistrates' Court for an offence under Section 224(3) of the Town and Country Planning Act 1990. Unless the offence is particularly flagrant or repeated, the Planning Authority may not initially consider it necessary to prosecute for an advertisement offence. The maximum fine on conviction is currently £1,000 with an additional daily fine of one-tenth of the maximum penalty if the offence continues after conviction.

Any form of fly posting (that is, displaying an advertisement on land without the consent of the owner) is an offence. The Borough Council has powers to remove such advertisements, but if the advertisement identifies the advertiser, the Council must give 2 days notice before removal.

In addition to those powers above, in certain circumstances, Advertisement Discontinuance Notices can be issued against Advertisements that are being displayed with the benefit of express or deemed consent and which are considered to now have a detrimental impact on the amenity of the area in which they are displayed. These notices can be the subject of appeal and compensation claims.

(c) Trees and Hedgerows

The Planning Enforcement Team works closely with the Council's specialist Tree Officer on all arboricultural matters. The Tree Officer should be consulted for advice before any works are carried out to all protected trees, hedgerows and to all trees in a Conservation Area.

Unauthorised works to trees protected by a Tree Preservation Order can result in fines up to £20,000. Notices can also be served by the Local Planning Authority requiring the replacement of protected trees that have been felled.

Formal Notice must be given to the Local Planning Authority before works are carried out to most trees in a Conservation Area, and before any works are carried out to the majority of hedgerows in the countryside. In these cases the Planning Authority has powers to serve Notices requiring replacement trees or hedgerows. In particular, the Authority has power to issue a Hedgerow Retention Notice. The Authority can prosecute persons who remove hedgerows or in any other way fail to comply with any Retention Notice.

(d) High Hedges

The Planning Service is also responsible for dealing with complaints under the Anti-Social Behaviour Act 2003 regarding high hedges. Where appropriate, Remedial Notices can be issued, requiring a hedge to be reduced in height or to be managed in accordance with a long term maintenance plan. The Borough Council will obtain specialist arboricultural advice before issuing any Remedial Notice, and also try to resolve these matters through the West Kent Mediation Service at www.wkm.org.uk. The service can be contacted on 01322 615774.

(e) Other Matters

As noted above, the Authority will work with the Police and other agencies such as Kent County Council, English Heritage, the “Environment Agency” and “Natural England”, where for example there is damage to wildlife and habitats protected by the Wildlife and Countryside Act 1981, as amended; works to protected Ancient Monuments or offences under the Dealing in Cultural Objects (Offences) Act 2003.

3.0 PROCEDURES FOR DEALING WITH PLANNING ENFORCEMENT CASES

3.01 Most investigations result from complaints from the public, Councillors or Parish and Town Councils. All these individuals and groups have a role to play in planning enforcement, as they are the local 'eyes and ears' of the Planning Authority in the community. Their contribution towards planning enforcement is greatly appreciated by the Borough Council.

3.02 The Enforcement Team can be contacted by letter, telephone, website, e-mail or in person. It is advisable to make an appointment if you wish to speak to an officer in person. The appointment can either be at the Town Hall, Royal Tunbridge Wells, the Weald Information Centre, Cranbrook or in certain circumstances, home visits can be arranged.

Written enquiries are preferred and in all cases we need the following information:

- The precise location of the site or property to which the complaint relates.
- The exact nature of concern, i.e. the potential breach of planning control.
- The date the unauthorised development or works began and a note of whether and when they continue
- An indication of any harm caused.
- Where it is known, details of the identity of the person / organisation responsible.

Unless the complainant has a reason for not giving their details, and explains this, anonymous complaints will not normally be investigated. Anonymous evidence usually carries little weight in Court, and without robust, reliable evidence, most formal enforcement action is likely to fail.

All investigations are carried out on a strictly confidential basis and complainant details will generally not be revealed by the Planning Enforcement Team. However, there may be occasions where it is not possible to proceed without disclosing a complainant's identity. We will always seek a complainant's permission before making his/her details available to anyone else to give the complainant an opportunity to consider his/her position.

- 3.03 All complaints will be acknowledged within 5 working days.

All enquiries about possible breaches of planning controls including breaches of planning conditions will be entered on the Planning Service Uni-form database upon receipt, and a unique reference number will be created so that the progress of each complaint received can be monitored.

- 3.04 In 2009 the Council's Planning Enforcement Service recorded 737 complaints from the public, and this number is increasing year on year. In addition work of a proactive nature is undertaken by the Team members. Clearly, in the light of such a substantial workload, there is a need to prioritise initial responses to complaints.

Site visits and action will be prioritised according to the harm to amenity likely to be caused and to the degree of departure from development plan policies represented by the alleged breach. Regard will be had for the fact that enforcement action is discretionary, and formal action will only be taken where the breach would warrant a refusal of permission that could be supported on appeal.

- 3.05 The Council has thus adopted the following standard for prioritising response to complaints:

Planning Enforcement Priorities and Targets

Agreed by Eastern on 27 January 2010 with amendments
Agreed by Western on 10 March un-amended
Subject to review in 12 months

Top Priority

Unauthorised work causing significant damage to Listed Buildings, felling of protected trees/hedgerows, works to Ancient Monuments/SSSI/SNCIs likely to cause irreversible harm to the natural or historic environment. Developments affecting the Highway to the extent that it causes immediate danger to life.

Target: Initial investigation and site visit to control the situation carried out within one working day.

High Priority

Unauthorised developments causing significant harm to the quality of life of a number of local residents, causing or potentially causing significant harm to the landscape function of AONB or the quality of Conservation Areas etc., or harm to Listed Buildings causing lesser harm than Top Priority Cases or Developments affecting the Highway to the extent that it causes significant hazards to traffic.

Target: Initial investigation and site visit will be carried out within five working days of the complaint being lodged.

Medium Priority

Unauthorised developments which cause limited harm to individuals, *a single neighbour* or other interests of planning importance (*e.g. works not in general public view, advertisements*).

Target: Initial investigation and site visit will be carried out within 10 working days of the complaint being lodged.

Other Priority

Minor householder developments, minor works (e.g. sheds, fences, extensions), satellite dishes which appear to cause no harm to interest of planning importance – and all anonymous complaints unless they appear to fall within the Top Priority.

- 3.06 In individual cases officers should exercise their professional judgement in assessing the levels of priority. This will include development without planning permission and breaches of conditions.
- 3.07 When Enforcement and other Officers visit a site they will identify themselves and explain the reason for their visit.

The owner/occupier or people working on site may be interviewed to obtain factual information, and photographs and measurements may be taken if required. A detailed note will be made on the investigation file, which is used to record all visits and discussions at meetings or over the phone.

It should be noted that under the various Planning Acts, Enforcement and Planning Officers have the right of entry onto all non-residential land and buildings. They have further powers to enter residential property, and can apply for a warrant from the Magistrates' Court to gain access if initial attempts to gain entry (on the giving of twenty-four hours notice) are unsuccessful.

In more complex or controversial cases or where it has not been possible to establish the facts through normal investigation, or where co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice (under Section 171C of the Act), can be served relating to any breach of planning control alleged by the Council. This requires the recipient to provide specific information. Failure to respond satisfactorily to a Notice within the required timescale is a criminal offence.

3.08 Once the initial site visit report is written by the Enforcement Officer, a decision will be made by the Enforcement Team Leader about which of the four courses of action to pursue (see paragraph 1.05 above). This may involve consultation with other specialist officers such as in listed building, landscape or tree matters. The Planning Authority will then aim to keep complainants, Local Ward Members and Parish and Town Council's informed of progress at the following key stages:

- When any Enforcement or other Notice is issued.
- When any appeal is to be lodged with the Planning Inspectorate.
- When the matter is to proceed to the Magistrates Court or High Court.
- On the final closure of the matter.

3.09 It must be noted that the vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier or by the submission of a retrospective application for consideration. Legislation and central government guidance require that all formal action must be commensurate with the risk or harm associated with the breach, and formal action is not always appropriate. The Council will, however, take effective enforcement action when it is essential to protect the amenity of the area, public, or highway safety, and to maintain the integrity of the development control process within the Borough. This may therefore include the issue of a Stop Notice.

- 3.10 Decisions about the issue of any Enforcement or other Notice or the pursuit of other legal actions will generally be taken by the Head of Planning Services, in consultation with the Legal Services Manager, in accordance with the Council's Constitution. Local Borough Councillors will be informed where such action is authorised. More complex or controversial cases may be referred to a Planning Committee.
- 3.11 If an Enforcement or Stop Notice is issued the Council must be able to justify such action in the event of an appeal to the Planning Inspectorate. Appeals must be made within 28 days of issuing a Notice. Appeals can be lodged on a number of grounds and the appellant can request that his/her appeal is dealt with by a written procedure, or ask for an Informal Hearing or Public Inquiry, although the decision of which procedure is followed is made by the planning inspectorate so it should be noted that the appellants preferred option may not be followed.
- 3.12 A criminal offence occurs where an owner/occupier fails to comply with the requirements of a valid Notice. The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts. The investigation into non-compliance with the requirements of any Enforcement Notice will be carried out having regard to the Codes of Practice to the Police and Criminal Investigation Act 1984, the Criminal Procedure and Investigation Act 1996, the Human Rights Act 1998 and the Codes of Practice to the Regulation of Investigatory Powers Act 2000.

If someone is found guilty of failing to comply with the terms of an Enforcement Notice a maximum fine of £20,000 may be imposed by the Magistrates' Court and an unlimited fine can be imposed if the matter goes to the Crown Court.

- 3.13 In the case of a persistent offence against an unauthorised activity an injunction may be sought through the County or High Court.

In exceptional circumstances the Council will also consider taking direct or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work.

In such cases the Council will seek to recover its costs, possibly in a form of a charge on the land which is recoverable at the time of sale of the land or property.

The options of Compulsory Purchase or the service of a Discontinuance Notice will also be considered if all other remedies fail to remedy a breach causing serious harm to an area.

4.0 THE PROCEDURES FOR MONITORING COMPLIANCE WITH PLANNING DECISIONS

4.01 In accordance with the aims noted above in paragraph 1.04, the Enforcement Team aims to ensure that development is carried out fully in accordance with planning approvals and conditions, in order to maintain the credibility of the Planning Service.

It is important to stress that this function is pro-active and therefore subject to resource constraints.

There is close interaction among the Enforcement Team Officers, and with Development Management and Building Control Officers, as well as other Council departments including Legal and Finance. Particular assistance will be obtained from Building Control Inspectors, as they need to make regular visits to sites during construction works.

4.02 The specific objectives of compliance work are:

- a) to ensure that development is carried out in accordance with approved plans, by regular visits to sites as work proceeds
- b) to ensure that the terms of all planning conditions and legal agreements are complied with
- c) to identify instances of non-compliance at the earliest opportunity in order to facilitate resolution and to resolve instances of non-compliance by negotiation wherever possible

As part of the Enforcement strategy, and in view of the volume of monitoring work, the Planning Authority has agreed the following specific work tasks for the enforcement officers:

- Monitoring sites identified by the Development Management Case Officers as appropriate for special observation, to include sites of major applications, key priority sites, and those with specific conditions identified as particularly important by Officers or Members.
- Monitoring compliance with all Section 106 Agreements and Developers' Contributions by Conditions.
- Attending to enquiries from external sources e.g. Solicitors' letters.

- Targeted monitoring of specific types of Condition e.g. Occupancy, landscape, glazing.

4.03 Procedures

The following procedures will be followed:

- (a) In the event of a member of the public making a complaint regarding works on a site, the initial investigation will be carried out by the Enforcement Officer who will report back to the Enforcement Team Leader to decide on further action, in accordance with the criteria outlined above, as in paragraphs 1.05 and in line with the priorities outline in 3.05.
- (b) With respect to monitored sites the Enforcement Officer will make visits at appropriate intervals with particular attention being given to setting out, site levels, submission of details required by Condition, compliance with conditions relating to the carrying out of the works and relevant landscape implementation and maintenance. Any oral agreement made with the site operators / developer regarding compliance will be followed up in writing and will set out agreed actions and an appropriate timescale.
- (c) In respect of monitoring planning obligations (Section 106 agreements), a six monthly report will be made to the two Area Planning Committees. The report will be in two parts. Part A will list all receipts of payments made in the six month period and part B will list all future anticipated receipts, based on completed 106 Agreements and planning decisions issued with appropriate conditions during the six month period.
- (d) Target monitoring of specific types of conditions will be dependant on time resources being available.

5.0 REVIEW AND AUDIT

- 5.01 It is anticipated that this Strategy will be reviewed on an annual basis or sooner if there is a significant change in legislation, national or local policy. At appropriate intervals during the year reports will also be made to the two Area Planning Committees. The status of this strategy is guidance and if there is a conflict between this strategy and national legislation or policy, then the national legislation or policy will prevail.

6.0 EQUAL OPPORTUNITIES

- 6.01 The Planning Service will ensure that all persons involved in enforcement and compliance matters, including both formal and informal action and advisory visits, whether as complainants, witnesses, developers or landowners, receive fair and equitable treatment irrespective of their race, ethnicity, gender, sexuality, religious beliefs or any disability.

7.0 CONTACT DETAILS

- 7.01 If you need this document in large print, braille, audiotape or other format please contact us.

Copies of this document can be obtained from:

Tunbridge Wells Borough Council
Planning Services
Town Hall
Royal Tunbridge Wells
Kent
TN1 1RS

Officers In The Borough Council Planning Enforcement Team can be contacted as follows:

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Fax: 01892 544746

E-mail: planningcomments@tunbridgewells.gov.uk