



LOCAL ENFORCEMENT PLAN

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Revision 1 - July 2015
Revision 2 - July 2016
Revision 3 - Feb 2018

1.0 Introduction

- 1.1 Although planning enforcement is discretionary and not a mandatory function of Local Planning Authorities, it is commonly recognised that the integrity of the Development Management process depends upon an Authority's commitment to take effective action against unauthorised development. This Local Enforcement Plan sets out how the Council deals with complaints relating to breaches of planning control.
- 1.2 The topics covered within this Local Enforcement Plan are listed as follows:
- Policies applicable within Stratford on Avon District
 - Type of breaches of planning control
 - Resources available for enforcing planning control
 - Procedure for investigating planning enforcement complaints
 - Tools available to enforce breaches of planning control
 - Review of Local Enforcement Plan
 - Privacy statement
- 1.3 The Council's Local Enforcement Plan was first published in October 2012 and last updated in July 2016. This is the latest updated version following changes to resources and a review of the procedure for dealing with enforcement complaints.

2.0 Policies applicable within Stratford on Avon District

- 2.1 The main policies applicable within Stratford on Avon District are those contained within the Development Plan which comprises:
- Stratford-on-Avon District Core Strategy (2011-2031)
- 2.2 In addition to Council policy, national policy is contained within the National Planning Policy Framework, published in March 2012. The government also published guidance on enforcement within the Planning Practice Guidance in March 2014 which is regularly updated.
- 2.3 Council wide policy on Enforcement is contained in the following documents:
- Stratford District Council Enforcement Policy Statement
 - Stratford District Council – Corporate Enforcement Protocol
- 2.4 There are various designations of the landscape within the District. These include: Green Belt, Cotswolds Area of Outstanding Natural Beauty, Special Landscape Areas and Areas of Restraint.

2.5 Stratford-on-Avon District currently contains 75 designated Conservation Areas. The District also contains over 3300 buildings included in the statutory lists of buildings of Special Architectural and/or Historic Interest.

3.0 Type of breaches of planning control

3.1 The Council receives nearly 700 planning enforcement complaints each year. Many of these are dealt with (or resolved) in a relatively short period of time, as there is either no breach of planning control, or the enquiry relates to minor technical breaches of planning control which can be resolved without formal action.

3.2 A range of complaint types occur throughout the District from extensions to residential properties, building works, breaches of planning conditions, unauthorised change of use, engineering operations, advertisements, works to Listed Buildings and works to protected trees.

4.0 Resources available for enforcing planning control

4.1 A team of five staff within Planning & Housing is employed to investigate cases. The team is made up of 3.5 Planning Enforcement Officers who are managed by the Planning Manager (Performance, Appeals & Enforcement). There is also a permanent Senior Planning Officer (Enforcement) within the team. A further Senior Planner is based in the team but deals primarily with Lawful Development Certificate applications.

4.2 Legal support is given by the Legal Team and administrative support is provided by Customer Support Services.

5.0 Procedure for investigating enforcement complaints

5.1 The following section of this Local Enforcement Plan sets out the sequence in which enforcement complaints progress, from initial receipt through enforcement to compliance. It is consistent with government guidance on ensuring effective enforcement.

5.2 When an enforcement complaint is received it will be registered on the Council's planning database system. Anonymous complaints will only be investigated if the alleged breach relates to unauthorised works to a listed building or works to trees which are in a Conservation Area or protected by Tree Preservation Order.

5.3 The name and address of all complainants is kept confidential. It may be necessary that the complainants details are required to be disclosed for legal reasons. However, prior approval will be obtained.

- 5.4 The complaint will be acknowledged and the complainant will be advised which Planning Enforcement Officer (PEO) will be dealing with the matter.
- 5.5 Following a Review of the Local Enforcement Plan in late 2017/early 2018, a revised scheme of prioritisation for investigating complaints was agreed. A copy of the scheme of prioritisation is attached as **Annex 1**. This does not mean that no action will be taken for 'Desirable' cases. It simply means that such cases may take longer to resolve, as resources will concentrate on cases relating to more serious breaches including 'Critical' cases and those with potential to have a 'Significant Impact'.
- 5.6 After receipt of an enforcement complaint, the PEO will investigate the planning history of the site and assess whether or not the complaint constitutes a breach of planning control. A breach of planning control is defined 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". If there has been no breach of planning control the case will be closed and the complainant advised of this decision.
- 5.7 Some complaints may relate to works which do not fall within the definition of a breach of planning control. These include:
- Display of advertisements without advertisement consent
 - Works to trees within Conservation Areas or those trees protected by Tree Preservation Orders
 - Alterations to Listed Buildings without Listed Building Consent
 - Unauthorised removal of hedgerows
 - Non-compliance with a formal Notice or Order
- 5.8 These complaints will be dealt with in the same way as breaches of planning control, whereby the PEO will check to see if the works need consent from the Local Planning Authority. If the works do not require consent, the case will be closed and the complainant advised.
- 5.9 In some cases a site visit may be necessary before the PEO can determine whether not there has been a breach of planning control or if consent is required. For 'Critical' matters where the unauthorised works are in progress the Council aims to carry out an initial site visit within 24 hours of the receipt of the complaint. For alleged breaches which may have a 'Significant Impact' or there is a high level of public interest, these will be given a higher priority than the 'Desirable cases'. For such cases it is anticipated that site visits will be carried out within 10 working days. For 'Desirable cases, an initial site visit (if considered necessary) may take up to 4 weeks to carry out.
- 5.10 If following the site visit it is evident that there has not been a breach the case will be closed and the complainant advised.

- 5.11 Where it is clear that development has taken place without the relevant consent and it may be necessary to control the development by conditions, an application will be invited to regularise the development. This follows government guidance on ensuring effective enforcement.
- 5.12 Requesting a retrospective planning application has the advantage of the Council being able to obtain full details of the works that have been carried out and enables interested parties to be formally consulted before a decision is made. It may also be possible to make amendments to the scheme or impose conditions which overcome the concerns of interested parties.
- 5.13 A period of 1 month will normally be given for a valid application to be submitted for breaches which relate to householder works. However for all other unauthorised works a 2 month period will be given for a valid application to be submitted.
- 5.14 Where the reported breach is only a minor technical breach and does not result in any planning harm, an application will not be invited. In these cases the PEO will seek consent from the relevant Ward Member to close the case. This enables resources to focus on the more serious breaches of planning control.
- 5.15 For some cases however where the breach is causing significant harm, the Local Planning Authority will consider whether it is expedient to take formal enforcement action rather than inviting a planning application. The type of enforcement action available for such cases is outlined in Section 6.
- 5.16 When a retrospective application is received, the planning application will be determined on its own merits. Unless the breach is causing serious harm it is normal practice to await the determination of the planning application before deciding whether to take enforcement action. The enforcement case however will remain open until the application has been determined. If the retrospective application is approved, the enforcement case will be closed.
- 5.17 If the application is refused the case will remain open until the breach is satisfactorily resolved. Under the Constitution, the Head of Planning & Housing has delegated authority to issue an Enforcement Notice if an application has been refused. Where a retrospective application has been refused, enforcement cases will not normally be held in abeyance for an appeal to be lodged and determined. This would allow for a linked appeal if an appeal is lodged against the refusal and the Notice.
- 5.18 If an application is not submitted the Local Planning Authority must decide whether or not it is considered expedient to take formal enforcement action. In making this decision, the Local Planning Authority will have regard to the provisions of the Development Plan and any other material considerations, to assess whether the breach causes an unacceptable level of planning harm. Matters assessed may include the location of the breach, its visual impact, its effect on neighbours' amenity or its impact on highway safety.

- 5.19 This assessment will inform the likely outcome of a planning application, had it been made, and will therefore inform a decision on the best course of action.
- 5.20 Consistent with national government guidance on enforcement, formal action will not be taken where there is a trivial or technical breach of planning control which causes no material harm or adverse impact on the amenity of the site or the surrounding area.
- 5.21 In some cases, it may be appropriate for Officers to enter into negotiations with the alleged contravenor to either secure compliance with a condition or permission, or to negotiate changes to a development to make it more acceptable in planning terms. These negotiations may negate the need to take formal enforcement action. The timescale for officers to engage in negotiations will not extend beyond the timescale given for the submission of a retrospective planning application (as described above). Following this period the case will be reviewed with consideration given to formal action.
- 5.22 Where a breach of planning control has occurred, the enforcement case will only be closed, where there is agreement between the PEO and the relevant Ward Member. If there is not agreement between the PEO and the Ward Member for the case to be closed, the issue will be reported to the Regulatory Committee for decision as an exempt item. If the case is closed under delegated powers or following a committee meeting the complainant will be advised of the decision.
- 5.23 For cases where the unauthorised development is causing significant harm which cannot be satisfactorily overcome or mitigated by conditions or changes to a development, it may be appropriate for the Council to take formal enforcement action. The type of enforcement action to be taken will be dependent on the circumstances of the case. The type of action taken must also be proportionate to the nature of the breach of planning control. The different forms of enforcement action which are available to a Local Planning Authority are summarised in Section 6.
- 5.24 The Head of Planning & Housing has delegated powers to take appropriate enforcement or legal action as identified in the Constitution. For some types of action agreement must be sought from the relevant Ward Member before taking formal action. If there is not agreement between the PEO and the Ward Member the issue will be reported to the Regulatory Committee for decision as an exempt item. The complainant will be advised when a decision has been made.
- 5.25 Both the National Planning Policy Framework and Planning Practice Guidance on enforcement confirm that enforcement action is discretionary and advise Local Planning Authorities that they should act proportionately in responding to suspected breaches of planning control.

- 5.26 A reasonable balance therefore needs to be achieved, between protecting amenity and other interests of acknowledged importance and enabling acceptable development to take place, even though it may initially have been unauthorised. Where the balance of public interest lies will vary from case to case.
- 5.27 In considering whether to take enforcement action, the Council must also take into account the Human Rights Act 1998 and the Articles contained therein with particular reference to the Right to a Fair Trial, the Right to a private family life and the protection of property.
- 5.28 The Council also has a duty to work towards the elimination of unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups in the carrying out of their functions, in accordance with The Equality Act 2010.
- 5.29 Once the decision has been made to take formal enforcement action, the relevant notice will be issued either by the Enforcement team or Legal team. When a Notice has been issued the Enforcement Register is updated. If a notice has been complied with the Register is also updated.
- 5.30 An electronic version of the Enforcement Register can be viewed on the Council's website. This is updated on a quarterly basis.
- 5.31 Depending on the type of enforcement action taken, there are various rights of appeal, which may suspend the effect of a notice until the appeal is heard. Further information on this is contained within Section 6.
- 5.32 Formal notices give the person responsible for the breach a specified time limit in which to remedy the breach. Once this time period has expired the PEO will check whether the notice has been complied with. If the notice is complied with, no further action will be taken by the Authority and the file closed. If, however, the notice has not been complied with, the Local Planning Authority in liaison with Legal must consider whether or not to prosecute, and/or to apply for an Injunction requiring an activity to cease or for certain development to be removed. In some cases the Local Planning Authority may take Direct Action to secure compliance. These forms of action are explained in more detail in Section 6 below.

6.0 Tools available to enforce breaches of planning control

- 6.1 The following section of this Local Enforcement Plan provides a summary of the various tools available to deal with alleged breaches of planning control. The Local Planning Authority must assess, in each case, which power (or combination of powers) is best suited to dealing with any particular anticipated/apprehended, or actual, breach of control to achieve a satisfactory, lasting and cost effective remedy, having regard to the circumstances of the case.

6.2 It should also be noted that the type of enforcement action taken should be commensurate and proportionate with the breach of planning to which it relates.

6.3 There are three 'requisition' powers for planning enforcement purposes:

- Section 330 of the Town and Country Planning Act 1990
- Section 16 of the Local Government (Miscellaneous Provisions) Act 1976
- Section 171C of the Town and Country Planning Act 1990 (Planning Contravention Notice)

Section 330 of the Town and Country Planning Act

6.4 This power may be used in order to obtain relevant information at an early stage of the enforcement process. It involves serving a notice on either the occupier of the premises or the person receiving rent for the premises.

6.5 This form of notice may also be used for investigating enforcement under the Planning (Listed Buildings and Conservation Areas) Act 1990 functions.

Section 16 of Local Government (Miscellaneous Provisions) Act 1976

6.6 These provisions are primarily intended to enable an authority to establish the facts about ownership of land.

Planning Contravention Notice (Section 171c)

6.7 The main method for Local Planning Authorities to obtain information about activities on land, when it appears to the Local Planning Authority that a breach of planning control has occurred, is to serve a Planning Contravention Notice (PCN). A PCN takes the form of a series of questions relating to the suspected breach of planning control. It is an offence to fail to respond to the notice within 21 days, or to make false or misleading statements in reply. This notice however is not available for use in respect of suspected works to listed buildings or protected trees.

Powers of Entry for Enforcement Purposes

6.8 In addition to the investigative powers outlined above, Officers also have power to enter land, specifically for enforcement purposes. This right is limited to what is regarded as necessary, in the particular circumstances, for effective enforcement of planning control. A notice period of 24 hours, however, is required before entry can be demanded to a dwellinghouse. Prior notice is not required for access to domestic outbuildings or garden land industrial, commercial or farmland etc.

6.9 A Code of Practice introduced in April 2015 recommends that contact should be made with owners/occupiers before exercising powers of entry, unless it is impracticable to do so or would defeat the purpose of the inspection. The full version of the code can be found at <https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

6.10 Powers of entry also exist in accordance with a warrant, and procedures in respect of those matters can also be found within the above Code of Practice.

- 6.11 The following section refers to types of formal enforcement action which may be taken by the Local Planning Authority in order to require a particular use or development to cease or for works to be removed or modified:

Enforcement Notice

- 6.12 An Enforcement Notice can only be served when the Local Planning Authority is satisfied that there has been a breach of planning control and when it is considered expedient to do so. An Enforcement Notice requires specific steps to be taken which may include a use to cease or for a structure to be removed. It must also specify the period for compliance.
- 6.13 An Enforcement Notice must contain an explanation of the reasons it is being issued. The reasons should be carefully considered and be specific to the case. Failure to comply with an Enforcement Notice is a criminal offence.
- 6.14 The recipient of an Enforcement Notice has a right to appeal to the Secretary of State. Such an appeal will suspend the effect of the Notice until the appeal is determined. If an appeal is lodged all complainants and interested parties will be advised of the appeal details and how to make representations.

Listed Building Enforcement Notice

- 6.15 A Local Planning Authority may serve a Listed Building Enforcement Notice if unauthorised works have been or are being carried out to a listed building. Like an Enforcement Notice the recipient of this type of Notice has a right to appeal to the Secretary of State.

Breach of Condition Notice

- 6.16 This form of notice may be used as an alternative to the Enforcement Notice to remedy against failure to comply with any condition attached to a planning permission or limitation specified in The Town and Country Planning (General Permitted Development)(England) Order 2015. It does not apply to breaches of conditions attached to listed building consent or advertisement consent.
- 6.17 There is no right of appeal for a Breach of Condition Notice.

Stop Notice

- 6.18 When the effects of unauthorised activity are seriously detrimental, a Stop Notice may be served to ensure that an activity does not continue if an appeal is lodged against the Enforcement Notice. A Stop Notice can only be served where an Enforcement Notice has been issued. A Stop Notice can relate to any, or all, of the uses or activities specified in the Enforcement Notice. It does not apply to works to a listed building.
- 6.19 It is an offence to contravene a Stop Notice. Whilst there is no right of appeal against a Stop Notice, the validity of a Notice or the decision to issue the Notice can be challenged in the Courts by an application for Judicial Review.

Temporary Stop Notice

- 6.20 Where the Local Planning Authority considers that a breach of planning control should stop immediately it may serve a Temporary Stop Notice. Such a notice expires 28 days after it has been served and during this period the Council must decide whether it is appropriate to take further enforcement action. Once a Temporary Stop Notice has been served it is not possible to serve further Temporary Stop Notices for the same breach of planning control.
- 6.21 There are restrictions on the use of temporary stop notices; for example, such a notice cannot prohibit the use of a building as a dwelling house and may not prevent the continuance of an activity which had been carried out for a period of four years.

Discontinuance Notice

- 6.22 The Town and Country Planning (Control of Advertisement) Regulations enable a Local Planning Authority to take discontinuance action against any advertisement, which normally has the benefit of any of the categories of deemed consent.
- 6.23 A Discontinuance Notice may only be served if the planning authority is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public.
- 6.24 There is a right of appeal against a Discontinuance Notice.

Section 215 Notice/Untidy Land Notice

- 6.25 Under Section 215 of the Town and Country Planning Act, a Local Planning Authority may serve a notice on the owner or occupier of the land, if it appears that the amenity of a part of their area, or an adjoining area is adversely affected by the condition of the land.
- 6.26 A Section 215 notice may deal with 'buildings' as well as land. There is an appeal provision, where the recipient may challenge the notice in the Magistrate's court.

Completion Notice

- 6.27 A Completion Notice may be served if the Local Planning Authority is of the opinion that development (which has started within the statutory 3 year period) will not be completed within a reasonable period. For this type of Notice, the period for compliance has to be a minimum of 12 months. The Local Planning Authority must also refer the Notice to the Secretary of State for confirmation.
- 6.28 There is a right of appeal against a Completion Notice.

Injunction

- 6.29 A Local Planning Authority can apply to the High Court or County Court for an injunction to restrain an actual or apprehended breach of planning control. An injunction can be sought whether or not other enforcement action has been taken and when the identity of the person responsible for the breach is unknown.
- 6.30 When a planning obligation (Section 106 agreement) has not been complied with the Council may apply for an injunction to secure compliance with the legal agreement.
- 6.31 A Local Planning Authority may also apply for an injunction to restrain a breach or apprehended breach of tree preservation or listed building control.
- 6.32 The decision whether to grant an injunction is always in the absolute discretion of the Court. The Court will need to be satisfied in the case of every injunction application that enforcement action in this form is proportionate.

Tree Replacement Notice

- 6.33 It is a criminal offence to
- a) cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order (TPO)
 - b) wilfully damage, top or lop a tree protected by a Tree Preservation Order in a way that is likely to destroy it
- If any of these works are carried out, the Council must decide whether or not to prosecute.
- 6.34 A Local Planning Authority may issue a Tree Replacement Notice requiring the owner to plant a tree or trees of appropriate size and species if a tree has been removed in contravention of a TPO or if a protected tree has been removed because it was dead or dangerous.
- 6.35 The cutting down, topping, lopping, uprooting, wilful damage, or wilful destruction of trees within a Conservation Area is also a criminal offence. A Tree Replacement Notice can also be served in respect of the unauthorised removal of tree(s) in a Conservation Area.
- 6.36 An appeal can be lodged against a Tree Replacement Notice.

Hedgerow Replacement Notice

- 6.37 It is a criminal offence to intentionally or recklessly uproot or otherwise destroy a hedge protected by the Hedgerows Regulations 1997 (which includes hedgerows on or adjacent to agricultural, equine or common land etc). If any of these works are carried out, the Council must decide whether or not to take Direct Action.

6.38 A Local Planning Authority may issue a Hedgerow Replacement Notice requiring the owner to replant a hedgerow of appropriate size and species if a hedgerow has been removed in contravention of these Regulations.

6.39 An appeal can be lodged against a Hedgerow Replacement Notice.

High Hedge Remedial Notice

6.40 The Local Planning Authority may issue a High Hedge Remedial Notice if an evergreen/semi evergreen hedge is found to be a 'nuisance' when assessed in accordance with the Anti-Social Behaviour Act 2003, part 8, High Hedges.

6.41 If an owner or occupier of the land where the hedge is located fails to comply with the Notice the owner or occupier will be guilty of an offence.

6.42 An appeal can be lodged against a High Hedge Remedial Notice.

Prosecution

6.43 The Local Planning Authority may prosecute for unauthorised works to trees, listed buildings, and the display of advertisements without consent.

6.44 The Local Planning Authority may also prosecute against the failure to comply with the majority of the types of Notices described above.

6.45 The decision on whether to prosecute is based on the Evidential Test and also a Public Interest test. In determining the fine the Court is required to have regard to any financial benefit which has accrued or appears likely to accrue in consequence of the offence.

6.46 Where a criminal offence has occurred, and the Defendant(s) has been found guilty, the Local Planning Authority may request that the Court makes a Confiscation Order under the Proceeds of Crime Act 2002. The Confiscation Order will relate to any financial benefit arising from a criminal activity.

Direct Action/Default Powers

6.47 Section 178 of the 1990 Act allows Local Planning Authorities to enter land and carry out any of the requirements of a Notice themselves. The Local Planning Authority may recover any expenses reasonably incurred with the direct action from the owner of the land. Such expenses, until recovered, become a charge on the land, binding on the successive owner.

Legal agreements

6.48 Legal agreements can be used to restrict development or the use of land, or to require specific operations or activities to be carried out. The advantage is that the Agreement goes with the land and not an individual.

6.49 In April 2012 new powers were introduced through the Localism Act 2010. These include:

Section 70C

- 6.50 A Local Planning Authority may decline to determine a retrospective application for development which is the subject of an Enforcement Notice served after 6 April 2012.

Section 171BA – Planning Enforcement Order

- 6.51 A Local Planning Authority may apply to the Court for a Planning Enforcement Order if evidence comes to light that a breach of planning control has been concealed. This prevents the development from becoming immune from enforcement action if it has been deliberately concealed.

Section 225A – Removal Notices

- 6.52 Section 225A allows a Local Planning Authority to remove, and then dispose of, any display structure in their area which, in the Local Planning Authority's opinion, is used for the display of advertisements in contravention of the regulations. This power is subject to the Council first serving a 'Removal Notice' upon the persons who appear to be responsible for the structure.

- 6.53 There is a right of appeal against a Removal Notice to the Magistrate's court.

- 6.54 In 2014 new powers were introduced for Councils through the Anti-Social Behaviour, Crime and Policing Act 2014. Those powers which can be used to deal with planning enforcement complaints include:

Community Protection Notice (CPN)

- 6.55 This can be used where the behaviour of a person, business or organisation is considered to have a detrimental effect on the quality of life of those in the locality. The behaviour has to be of a persistent or continuing nature.

- 6.56 This form of action can be used as an alternative approach to Section 215 notices referred to above.

- 6.57 There is a right of appeal and the failure to comply with a CPN is a criminal offence.

7.0 Review of Local Enforcement Plan

- 7.1 To enable continuous improvement of the enforcement function, the key elements of this Local Enforcement Plan will be reviewed. These key elements include:

- relevant policies
- type of breaches of planning control
- resources available
- procedures for investigating complaints
- tools available to enforce breaches of planning control

- 7.2 The operational review of these elements will enable the Council to identify where changes need to be made to the Local Enforcement Plan and how procedures can be improved to provide a more efficient enforcement function.

7.3 The workload of the Enforcement team is reported to the Regulatory Committee on a regular basis.

8.0 Privacy Statement

8.1 The Council has published its Privacy Notice which sets out how data will be handled and made available to the public. A copy of the latest version of the Privacy Notice can be viewed on the Council's website.

References

National Planning Policy Framework (March 2012)

Planning Practice Guidance

Annex 1

CASE PRIORITY

Critical – Matters which will be dealt with immediately (if the works are in progress)

- Demolition and alteration of Listed Buildings
- Demolition of buildings in Conservation Areas
- Unauthorised works to trees covered by a Tree Preservation Order or in a Conservation Area
- Unauthorised removal of protected hedgerows

Significant Impact/High Public Interest

- **Non-compliance with Construction Management Plans**
- **Non-compliance with tree protection/landscaping conditions**
- **Development commenced prior to discharge of conditions**

Desirable - Matters which will be dealt with as resources permit

- All other cases