

Formal Enforcement Action

Formal enforcement action should only be taken where the Council is satisfied that there has been a breach of planning control and it is expedient to take enforcement action, taking into account the provisions of the development plan and any other material considerations. Formal enforcement action should only be taken as a last resort.

Therefore, we will normally only start formal enforcement proceedings when we have thoroughly investigated the suspected breach of planning control and explored and exhausted every opportunity to agree a timely resolution to a breach of planning control with the person responsible for that breach and/or the landowner if they are not the person who has carried out the breach of planning control.

However, we cannot defer enforcement action indefinitely and some breaches of planning control require immediate action. So, we will consider taking formal enforcement action without giving further notice when we are tackling the most serious breaches of planning control, when the time limits for enforcement are close to running out, when we cannot negotiate an acceptable solution or when the actions needed to remedy a breach of planning control have not been carried out in an agreed timescale.

It is therefore important that any person contacted by the Council about a suspected breach of planning control that they are responsible for, or that has been carried out on their land gets in contact with officers to discuss the case as a matter of urgency. It is also important that if a way to put things right has been agreed with officers to prevent further enforcement action being taken by the Council then it is important the actions needed to put things right are completed within the agreed timescale.

What types of formal enforcement action can the Council take?

There is a range of ways of tackling breaches of planning control available to the Council through formal enforcement action. In each case officers not only have to determine which of the options would be the most effective way of dealing with the breach but also which would be the most proportionate way of securing a resolution

In these terms, in most medium priority cases and in some high priority cases, issuing an enforcement notice will normally be the right approach for officers to take when it appears to them that there has been a breach of planning control and it is expedient to take formal enforcement action when taking into account the provisions of the development plan and any other material considerations (including the guidance in this document).

Enforcement Notices

An enforcement notice should enable every person who receives a copy to know:

- exactly what, in the local planning authority's view, constitutes the breach of planning control; and
- what steps the local planning authority require to be taken, or what activities are required to cease to remedy the breach of planning control. There is a right of appeal against an enforcement notice, however it is an offence not to comply with an enforcement notice once the period for compliance has lapsed. Therefore, it is important that the recipient of an enforcement notice takes immediate action to lodge an appeal against the notice if they think there are good grounds to do so or take immediate steps to comply with the notice.

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Stop Notices

A stop notice can prohibit any, or all, of the activities which comprise the alleged breach(es) of planning control specified in a related enforcement notice, ahead of the deadline for compliance in that enforcement notice. Therefore, a stop notice might be issued shortly after an enforcement notice because it is important to prevent a development from continuing before the enforcement notice comes into effect.

There are very strict limitations on the use of a stop notice so it is unlikely officers will consider issuing a stop notice unless there are very serious risks of irreparable harm from on-going development. For example, a stop notice may be considered where an unauthorised development involves the demolition of an unlisted building in a designated Conservation Area and an agreement to stop demolition with immediate effect has not been reached.

Temporary Stop Notices

A temporary stop notice requires that an activity which is a breach of planning control should stop immediately. A temporary stop notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.

The Council does not need to have served an enforcement notice before it issues a temporary stop notice and officers may consider issuing a temporary stop notices in some high and medium priority cases when it is essential to take immediate action to safeguard amenity or public safety in the neighbourhood; or

to prevent serious or irreversible harm to the environment in the surrounding area.

A temporary stop notice expires after 28 days, so officers will consider what further action is required within this period if an alternative way of dealing with the breach which would overcome the objections to it in an environmentally and legally acceptable way cannot be agreed with the recipient of the temporary stop notice.

Breach of Condition Notice

A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition. Officers will consider issuing a breach of condition in addition to an enforcement notice, as an alternative to a stop notice, where officers consider it is expedient to stop the breach of conditions quickly and before any appeal against the enforcement notice is determined.

A breach of condition notice is therefore most likely to be used in some high or medium priority cases when immediate action is required to stop a continuing breach of conditions in the interests of safeguarding amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. There is no right of appeal to the Planning Inspectorate against a breach of condition notice.

Injunction

The Council can apply for an injunction whether or not it has exercised, or proposes to exercise, any of their other powers to enforce planning control. However, starting proceedings for an injunction is one of the most serious types of enforcement action that the Council can take because if a person fails to comply with an injunction (once it has been granted) they may be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made.

Therefore, officers will only consider applying for an injunction if there have been persistent breaches of planning control such as failure to comply with the requirements of an enforcement notice over a long period and/or other enforcement options have been, or would be, ineffective in the event of a serious breach of planning control that would cause substantial and/or immediate harm to the local area.

Prosecution

When officers are dealing with high priority cases, many of the breaches of planning control may constitute a criminal offence subject to prosecution including unauthorised works to protected trees, removal of important

hedgerows, unauthorised works to listed buildings and where hazardous substances are involved.

Officers will take further legal advice in these cases with a view to pursuing a prosecution in the event of a serious breach of planning control that has resulted in substantial harm to the local area. It is therefore important that a person that is contacted by officers about a high priority case makes every effort to stop any unauthorised works or activities on site immediately.

Officers will also take further legal advice with a view to pursuing a prosecution in the event of non-compliance with the requirements of an enforcement notice, breach of conditions notice, stop notice, temporary stop notice, listed building notice, community protection order or a section 215 notice.

Listed Building Enforcement Notice

Although broadly similar, there are a number of important differences between planning enforcement notices and listed building enforcement notices including the fact that there are no time-limits for issuing listed building enforcement notices.

Officers will consider issuing a listed building enforcement notice in medium and high priority cases where works have been carried out without the necessary listed building consent, or a condition attached to that consent has not been complied with when such works materially detract from the historic or architectural significance of the building and there is no agreement to put those works right in any other way.

Community Protection Notices

Officers have the power to issue a Community Protection Notice under the Anti-Social Behaviour, Crime and Policing Act 2014 and these Notices can be used to tackle a wide range of issues including:

- untidy land / buildings;
- unauthorised use of land; and
- unauthorised buildings / structures.

Where any of the above problems are causing ongoing detrimental effects to the living conditions of the local community, a Community Protection Notice can contain reasonable requirements:

- to stop doing specified things;
- to do specified things; or,

- to take reasonable steps to achieve specified results.

Officers will consider issuing a Community Protection Notice if an earlier written warning that a Notice may be issued has been ignored and may be used as an alternative to a section 215 Notice.

Section 215 Notices (Requiring proper maintenance of land)

Section 215 of the 1990 Act provides the Council with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears to officers that the public amenity of part of the District is being adversely affected by the condition of neighbouring land and buildings, they may consider serving a section 215 notice on the owner requiring that the situation be remedied. These notices will set out the steps that need to be taken, and the time within which they must be carried out. The Council also have powers under s219 of the 1990 Act to undertake the clean-up works itself and to recover the costs from the landowner.

Advertisements and fly-posting

The Council will not take action against any adverts or fly-postings on the local road network, which would normally be dealt with by the local highway authority (Derbyshire County Council). Highways England would be expected to deal with adverts and fly-posting on the strategic road network.

In other cases, where signs, adverts or fly-posting are unauthorised and is damaging the character and appearance of the local area, officers will normally serve advance written notice to anyone who can be identified as the person responsible, that:

- in the Council's opinion the advert or sign is displayed illegally; and
- the Council intends to remove it after the expiry of a period specified in the notice.

Officers can then remove the sign or adverts 2 clear days after the notice was served.

However, the Council need not give any notice to remove fly-posters where a placard or poster does not give the address of the person displaying it and officers do not know that address and are unable to ascertain the relevant address after making reasonable enquiries.

How will human rights be taken into account in planning enforcement?

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement

action should be taken, officers, where relevant, will have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

When considering commencing formal enforcement action, officers must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped within the time limits set for compliance or by action to be taken through the courts in the wider public interest. In compliance with Article 6 of the Human Rights Act 1998, a recipient of a formal enforcement notice will also have the right of appeal or the right to a fair trial in the event of non-compliance with a formal enforcement notice or on receipt of a summons.

How will the public sector equality duty be taken into account in planning enforcement?

In deciding whether enforcement action should be taken, officers, when the relevant information is publically available or has been made available to officers, will have regard to the potential impact on any person with a protected characteristic or group of persons that share a protected characteristic that are either likely to be affected by the proposed action or likely to be affected by a breach of planning control.

Officers will also make any reasonable adjustments that have been requested and in particular, will make the process of planning enforcement as accessible as possible by ensuring all written communication is in plain English, can be produced in bigger text or different languages if appropriate, and where necessary, by visiting people at their home to discuss any breach of planning control that directly affects their living conditions or any action that will have a material effect on their quality of life.

Unauthorised Encampments

An absence of authorised sites does not mean that the Council cannot take enforcement action against unauthorised encampments. There are also extensive powers available to help the Council deal with illegal and unauthorised sites.

However, officers will only proceed with action against unauthorised encampments following liaison with the Council's Corporate Enforcement Officer Group, the equalities officer and other interested parties including the police, particularly because of the need to balance the potential of taking urgent action to remedy a serious breach of planning control whilst dealing with sensitive issues around human rights and compliance with public sector equality policy.