

SOLIHULL METROPOLITAN BOROUGH COUNCIL

DEVELOPMENT MANAGEMENT

LOCAL ENFORCEMENT PLAN

July 2016

Introduction

The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material planning considerations. The effective and proper enforcement of planning control is essential to community confidence in the planning system. It is important that the local environment is protected, as are the interests of residents, visitors and businesses of the borough from any harmful effects of unauthorised development. However enforcement action is a discretionary power which should only be used if and when absolutely necessary, after negotiation and any other potential remedies have not succeeded and there is a proven breach of planning control causing material harm.

The majority of enforcement work is necessarily reactive in nature as we respond to service requests and queries from customers. We will endeavour to be proactive in identifying and acting on breaches of planning control as far as reasonably possible, but this is inevitably limited and we depend largely on the general public to bring apparent breaches to our attention.

The Council typically deals with around 500 enforcement investigations every year. In the majority of cases, there will be no breach of planning control or no formal action will prove to be necessary, however the process of investigation and research, legal interpretation and advice, professional planning assessment, and negotiation, can be complex, contentious, and time-consuming. Resources are limited, and decisions must be made which will often not be welcomed by persons with conflicting interests and opinions. The purpose of this document is to set out the Council's approach to dealing with alleged or suspected breaches of planning control to help customers understand the process and principles which guide what will happen when an enforcement service request is received.

Principles of Enforcement

The Council adopts a firm but fair approach which endeavours to strike a sensible balance between the need for effective control, and the need to be reasonable and pragmatic. Underlying this approach are some well-established basic principles :

- Expediency – this is the most fundamental test of enforcement action – a local planning authority should only take formal action where it is expedient to do so. This will depend on whether the matter can be resolved by any other means, the level of harm caused, and compliance (or conflict) with adopted national and local planning policy.
- Proportionality – enforcement action and the steps required by any notice should be proportionate to the seriousness of the breach and the level of harm caused by it.

- Consistency – we will carry out our duties in a fair and wholly objective manner, focussing on material planning considerations. Whilst no two cases are quite the same, and each must be considered and determined on its own individual merits, our approach to dealing with breaches of a similar nature and circumstances, and the application of relevant policies and procedures, will be as consistent as possible.
- Transparency – we will be open about how we operate our enforcement service and offer information and advice in plain language as far as possible, although the use of some professional, technical and legal terminology is sometimes necessary. We will discuss general issues, and provide factual information on specific cases to anyone with a legitimate interest, subject to the limitations imposed by legal considerations and confidentiality.
- Confidentiality – the identity and personal details of a complainant will be kept strictly confidential and will not be released to any third party. The only potential, and very rare, exception to this may be a case which eventually leads to police involvement and/or court action, in which case prior approval will be sought. Unless they relate to a very serious and urgent matter, anonymous service requests will be given very low priority and may not be pursued at all. Private information acquired in the course of an enforcement investigation will be kept confidential as far as possible, except where it is directly relevant to the planning issues and needs to be referred to in a public document.
- Helpfulness – prevention is better than cure and we will endeavour to work with customers to advise and assist with regularising situations where a breach has occurred or begun, or is about to. Officers will provide a courteous, prompt and efficient service, and letters will provide a contact point and telephone number for customers to contact when seeking advice and information about a case. We will keep customers informed of progress, and we will try to ensure that services are effectively co-ordinated to minimise unnecessary complications or delays. Officers will not tolerate abusive or racist language or behaviour either in person, by telephone or email, or in correspondence.
- Targeting – action will be primarily focused on those directly responsible for the breach and who are best placed to control it. We will try to use our limited resources responsibly by prioritising the most serious and urgent cases. These will typically be cases where irreparable damage is being caused to listed buildings or important protected trees, or where a breach is causing serious harm to public amenity, the environment, or highway safety. We reserve the right to give a lower priority to less serious or urgent cases.
- Standards – although timescales are often not entirely within our control due to external factors, we will endeavour to carry out some key steps in the investigative process according to internally-set standards which are specified within the section below which explains the enforcement process. We will monitor our performance in relation to those standards.

What is a Breach of Planning Control?

The majority of planning enforcement investigations relate to one of the following alleged breaches:

- development (either operational or a material change in use of land) has taken place without planning permission
- development has not been carried out in accordance with an approved planning permission
- failure to comply with a condition or legal agreement attached to a planning permission.

Other matters which also fall under the scope of planning control include (in exceptional cases) untidy land.

None of the above breaches constitute a criminal offence under planning legislation until and unless there is a failure to comply, by the due date, with a formal notice which the Council has issued. However there are some other matters falling within planning control which are an offence. These include :

- Unauthorised demolition of a building (excluding specified categories) in a conservation area
- unauthorised works carried out to a listed building which affect its historic character
- unauthorised removal of, or works carried out, to protected trees without consent being granted or proper notification given
- advertisements, which require consent under the advertisement regulations, which are displayed without express consent
- failure to comply with the requirements of a planning notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, or other statutory notice.

Materiality – when assessing whether or not a breach of planning control has occurred, we will also make a judgement on whether any identified breach is a material one. Where a development has been carried out only very slightly in excess of what would otherwise be lawful, it may be considered that no material breach of planning control has occurred, even if there is, arguably, a technical breach. This is a matter of professional judgement and will be considered in the context of the scale and nature of the overall development. Non-material or minor ‘technical’ breaches will not normally be pursued.

“Not a planning matter” - we often receive complaints regarding matters that are not breaches of planning control. Often this is where other legislation covers and controls the matter. The following are examples of what we cannot become involved in through our planning enforcement service:

- boundary and land ownership disputes, private rights of way, and covenants/easements on deeds – these are civil matters that the Council cannot get involved in. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau.
- use of/or development on the highway, footway or verge that is covered by highway legislation – please contact the Council's Neighbourhood Co-ordinators Team.
- dangerous structures – please contact our Building Control Team.
- fly tipping, high hedges, and any other matter covered by other environmental legislation such as noise and smell – please contact our Public Protection Team.
- Uses operating without the necessary licence – please contact the Council's Licensing Team.

Investigating Possible Breaches of Planning Control

To start a planning enforcement investigation, service requests can be made by a variety of means, including : via the Council's Connect Service; by email; by letter; by filling out the standard form on our website; or in person at Solihull Connect. Full details of all these contact points can be found on our website at www.solihull.gov.uk

It is important that we are given the following basic information before we can log a case : name, address and contact details of the complainant (which will be kept confidential); full address of the land or property which is the subject of the complaint; and details of the alleged breach and any harm it may be causing.

Registration – each new case is recorded on our database and given a unique reference number. A case officer is allocated and their name and contact details will appear on an acknowledgement letter which we will endeavour to send within 3 working days of receiving the request.

Research/site visit – most cases need a site visit and where this can be done from the highway or some other public place we will endeavour to do it within 10 working days. Usually it will be necessary to first contact the owner/occupier to seek to establish contact, inform them of the complaint, and arrange a visit, in which case we will endeavour to send the necessary letter within 10 working days. Sometimes it may take several attempts and some weeks before access can be gained. The Council does have statutory powers to gain entry to land but will normally only use these as a last resort when it is absolutely necessary. Sometimes, no site visit is necessary, but some other form of research and investigation will be appropriate.

The investigation will seek to establish the relevant facts of the matter and thus enable a decision to be made on :

- (a) whether a material breach of planning control has occurred;
- (b) whether it is expedient to pursue the matter;
- (c) whether there is a realistic prospect of resolving the matter by negotiation, amendment, or through the submission of a retrospective application;
- (d) if not, what form of formal action may be appropriate, and how urgently.

In addition to a site visit and meeting with the owner/occupier, the Council has a number of information-gathering 'tools' available to it under the relevant legislation, in the form of statutory notices including a Planning Contravention Notice, which can be used where necessary to acquire the information needed. These will be used where appropriate to do so, particularly but not exclusively in cases where there is no co-operation and/or timely response from the owner/occupier. Failure to respond to such a notice is, in itself, an offence, and prosecution action will be considered in cases of blatant and continued non-cooperation.

Update – complainants will be updated on the progress of a case within 15 working days of receipt of the service request.

Outcome – there is a range of potential outcomes of an investigation, from least to most serious, i.e.:

- (a) the alleged development has not occurred, or is not a matter within planning control;
- (b) the alleged development has occurred, but is permitted development (i.e. development which benefits from deemed consent under the relevant legislation and thus needs no planning application);
- (c) whilst a minor technical breach, it does not amount to a material breach of planning control;
- (d) it is a material breach, but causes no material harm and is not expedient to pursue at all, or not after negotiated changes;*
- (e) it is a material breach, but it is appropriate for the owner/occupier to exercise their right to submit a retrospective planning application to seek to regularise the matter. Amendments may be sought, and conditions may be imposed, to control the development and its effects;
- (f) it is a material breach which cannot be remedied through negotiation or application and which causes material harm – enforcement action is expedient following authorisation and standard legal and administrative processes;
- (g) a material breach causing serious and immediate harm which needs to be addressed urgently using 'emergency' powers such as a stop notice or injunction.

* The Council has adopted a harm assessment form which provides a 'score system' to assist in the prioritisation of cases and help to determine whether it would be expedient to pursue an identified breach of planning control, on a case by case basis. Cases which

score below a specified threshold will not normally be pursued, though a retrospective planning application may be invited.

Retrospective Applications – it should be noted that the owner/occupier has the right to submit a planning application to seek to regularise a breach of planning control retrospectively, and where such an application is submitted the Council has a duty to determine it on its planning merits, in the same way as any other application. The only exception to this are cases where there is a relevant planning history of a refusal, dismissed appeal, and/or effective enforcement notice relating to the same development. Retrospective applications are a necessary and helpful way of resolving breaches of planning control which are not necessarily harmful, particularly bearing in mind that the majority of breaches occur as a result of ignorance, erroneous advice, or misunderstanding of complex planning regulations, rather than a deliberate attempt to subvert the planning process. The fact that an application is retrospective should not prejudice the decision which must be based, as always, solely on material planning considerations. Where a retrospective application is refused, it will normally be expedient to then pursue enforcement action, notwithstanding the right of appeal.

Taking Enforcement Action

Once a formal decision has been made to take enforcement action, we will notify both the owner/occupier and any complainants, within 10 working days. The necessary legal and administrative processes, together with competing work pressures, mean that it can sometimes take some time for the relevant notice to be prepared and served, but we will endeavour to do as quickly as possible, particularly for higher priority cases.

Powers Available

There are a number of different forms of formal action which might be appropriate, depending on the type of development, what type of breach of planning control has occurred, and how serious and immediate is the harm caused. The principal types of formal action are as follows :

- enforcement notice
- listed building enforcement notice
- stop notice
- temporary stop notice
- breach of condition notice
- completion notice
- Section 215 (untidy land) notice

- tree replacement notice
- hedgerow replacement notice
- injunction
- prosecution

In each case where formal action has been determined to be expedient, the Council will decide which form of action is most appropriate in the circumstances. Several of the above types of notice are subject to a right of appeal which 'stops the clock' on the enforcement process until the appeal has been determined or withdrawn. The Council will defend its position in any appeal unless there has been some material change in circumstances. Where there has been some such change in circumstances, and it is appropriate to do so, the Council may use its statutory powers to withdraw a notice or agree a revised set of requirements or an extended compliance period.

Prosecution

The use of prosecution action in the Courts is an important part of enforcement and we will consider pursuing such action where an offender is liable, i.e. in cases where a formal notice has not been complied with; or where an offence has occurred as a result of unauthorised works to a listed building or a protected tree, or where there has been the unauthorised display of an advertisement.

However, as with other forms of enforcement, prosecution is a discretionary power which will only be used if and when it is considered expedient to do so. The two key tests are the evidential test, and the public interest test. The former is a legal matter, whereas the latter will be determined having regard to the individual circumstances of each case including determining factors such as whether :

- there is a risk to public health and safety as a consequence of the breach
- the breach seriously harms public amenity
- the harm caused cannot be repaired
- the offence was the result of a deliberate act, was foreseeable, was committed with knowledge and understanding; and/or following recklessness or neglect;
- the approach of the offender warrants it, e.g. there is a history of repeated breaches and/or persistent poor standards
- it is appropriate in the circumstances to draw public attention to the need for compliance with the relevant legislation.

In appropriate cases we will consider the use of a Formal Caution as an alternative to prosecution. This can deal quickly and simply with less serious offences, divert less serious cases away from the court process, and deter repeat offences.

Direct or 'Default' Action

Where an enforcement or other formal notice has not been complied with by the end of the relevant compliance period, planning legislation empowers the Council to enter the land and carry out the requirements of the notice itself (or using contractors instructed to act on its behalf). The Council may then recover any expenses reasonably incurred from the owner of the land. Until recovered, such expenses become a charge on the land, binding on any successive owner. Again this is a discretionary power only to be used as a last resort, but the Council will consider the use of this power where other forms of action have failed to remedy the breach, serious harm is being caused, and failure to do so would undermine confidence in the planning system.

Proceeds of Crime Act

Any benefit derived from a breach of planning control which has continued in breach of a formal notice, in the form of financial gain or income, may be forfeit under the provisions of the Proceeds of Crime Act. The Council has successfully taken such action on more than one occasion, and will consider doing so in any case where it is considered feasible and appropriate to do so.

Time Limits

Planning legislation sets out time limits for taking enforcement action. The Council cannot serve a notice after **four years** from material completion, where the breach of planning control involves building operations (for example extensions to dwellings, new buildings and laying hard surfacing); or the change of use of any building to a single dwelling house. Other unauthorised changes of use, and breaches of conditions, are subject to a **ten year** time limit. After these periods the Council cannot take action and the use becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period.

Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Therefore, where the Council feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to protect its position and retain control over the situation.

The Localism Act has introduced a new enforcement power in relation to time limits. This allows councils the possibility to take action against concealed breaches of planning control even after the usual time limit for enforcement has expired. Such cases are unusual, but we will consider the use of this power if and when such cases come to our attention.

Contacts and Other Sources of Information and Advice

The Council can be contacted by telephone on 0121-704 6000, or by email (direct to the planning enforcement team) at planningenforcement@solihull.gov.uk

Information on the planning process, and enforcement, can be found on the planning pages of the Council's website at www.solihull.gov.uk

The Government also has a web site for planning guidance and information known as the Planning Portal – www.planningportal.gov.uk

Advice and assistance can also be sought from the RTPI's Planning Aid service which can be contacted by telephone on 0203 206 1880, or by email at info@planningaid.rtpi.org.uk