

**APPENDIX A**

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# **Tandridge District Council**

## **Local Enforcement Plan**

September 2019

**LOCAL ENFORCEMENT PLAN**

1. THE PURPOSE OF THIS DOCUMENT
2. MISSION STATEMENT
3. POLICY CONTEXT
4. WHAT IS PLANNING ENFORCEMENT
5. MATTERS THE LOCAL PLANNING AUTHORITY CAN INVESTIGATE
6. MATTERS THE LOCAL PLANNING AUTHORITY CANNOT INVESTIGATE
7. HOW PLANNING ENFORCEMENT CASES ARE PRIORITISED
8. REPORTING A BREACH OF PLANNING CONTROL
9. WHAT TO DO IF A COMPLAINT IS MADE ABOUT YOUR DEVELOPMENT
10. OUTCOME OF AN INVESTIGATION
11. PERFORMANCE MONITORING AND REVIEW
12. CONTACTS AND FURTHER INFORMATION

**Annex 1 – Glossary**

**Annex 2 – Other Authorities Contact Details**

**Annex 3 – Workflow chart following report of planning control breach**

## 1. **THE PURPOSE OF THIS DOCUMENT**

- 1.1 The purpose of this document is to set out Tandridge District Council's approach to planning enforcement in its area. It explains what developers, their agents and members of the public may expect from the Council, and how the Council will prioritise the use of its resources. Appendix 1 explains technical planning terms used in this document. Terms which appear in this glossary are identified in *underlined italics*.

## 2. **MISSION STATEMENT**

The Council is committed to ensuring the protection of the District against breaches of planning control and will take necessary action where it is considered to be proportionate and expedient to do so. Planning enforcement is considered to play an essential role in ensuring that there is a robust planning process and that any unauthorised development is addressed. The enforcement of planning is important in order to:

- Protect people and land from the effects of unacceptable development;
- Remedy the unacceptable harmful effects of unauthorised development; and
- Maintain public confidence in the planning system

## 3. **POLICY CONTEXT**

- 3.1 The National Planning Policy Framework (NPPF) advises Local Planning Authorities to: "...consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate."

3.2 Planning enforcement is a complex area of planning law. The legislative planning framework which has informed this policy is principally contained in:

Town and Country Planning Act 1990 (as amended)  
Planning (Listed Buildings and Conservation Areas) Act 1990  
Planning and Compensation Act 1991  
The Human Rights Act 1998  
Planning and Compulsory Purchase Act 2004  
The Town and Country Planning (Control of Advertisements) (England) Regulations 2007  
Equality Act 2010  
Localism Act 2011  
Use Classes Order 1987 (as amended)  
Police and Criminal Evidence Act 1984  
Proceeds of Crime Act 2002  
The National Planning Policy Framework  
Planning Practice Guidance

#### **4. WHAT IS PLANNING ENFORCEMENT**

4.1 A breach of planning is defined within the legislation as being either:

- 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.

4.2 Planning enforcement is dealt with under Part VII of the Town and Country Planning Act 1990 and is a vital part of the overall planning function. The Council is required to act proportionately in responding to suspected breaches of control. The Council will use the enforcement powers provided by the planning legislation where there has been a breach of planning that is causing unacceptable harm. The use of these powers will have regard to:

- Whether it is a practical and good use of public resources to take planning enforcement action;
- Planning policy
- The Human Rights Act 1998 and the Equality Act 2010
- Where it is expedient to take planning enforcement action within an acceptable timescale to prevent serious *harm* to public *amenity*, where negotiations fail to achieve compliance, or where offences have occurred that would mean negotiation would be inappropriate

4.3 Government advice is that formal planning enforcement action should be taken as a last resort. In the majority of cases the Council aims to resolve identified breaches of planning control by negotiation. If negotiation proves unsuccessful within identified timescales, the Council will consider whether formal action should be taken.

## **5. MATTERS THE LOCAL PLANNING AUTHORITY CAN INVESTIGATE**

### **What constitutes Development**

5.1 Not all building works or changes of use require formal planning permission or consent from the Council. Local Planning Authorities are only concerned with “Development”, which is defined by section 55 of the Town and Country Planning Act 1990 as:

- Operational Development – for example building, mining, or engineering works
- Material Change of Use of buildings or land – changing from one use class to another

5.2 Development is not:

- Works which affect only the interior of the building;
- Works which do not materially affect the external appearance of the building

5.3 If there is no Development as defined by the Town & Country Planning Act 1990, there is no breach of planning and no planning enforcement action is available to the Council under its planning powers.

#### **Breaches of Planning Control**

5.4 A breach of planning control may result from:

- Carrying out work either without planning permission, or in a way that is different to that which has been granted planning permission;
- Carrying out work without compliance with planning conditions attached to a planning permission;
- Changing the use of land or buildings without planning permission

5.5 It is not a criminal offence to carry out works without planning permission or related consents. These works are termed as being unauthorised and only become illegal if they are retained in contravention of formal planning enforcement action that has come into effect.

#### **Time Restrictions**

5.6 A breach of planning control may become immune from planning enforcement action if no enforcement action has been taken within the time limits set out in the Town and Country Planning Act 1990, unless the works comprise a criminal offence or the immunity was obtained through deception.

5.7 The Council cannot take planning enforcement action relating to building works or a change of use to an independent residential dwelling if the breach of planning control is more than 4 years old. Other changes of use or breach of condition become immune if the breach of planning control is over 10 years old.

## **Exceptions and Specific Consents**

- 5.8 Works to a listed building, unauthorised works to protected trees, or the display of an advertisement without prior specific consent from the Local Planning Authority are dealt with differently:

Listed Buildings: It is a criminal offence to carry out works to the inside or outside of a listed building which require consent, without first obtaining that consent. The local authority can bring a prosecution for this offence, or serve a listed building enforcement notice, or do both. Unauthorised works to a listed building never become immune from enforcement action.

Advertisements: It is a criminal offence to display an advertisement without the appropriate prior consent

Works to protected trees subject to Tree Preservation Orders or within a Conservation Area: Subject to certain exceptions, it is a criminal offence to cut down, top, lop, uproot, wilfully damage or wilfully destroy a tree protected by a Tree Preservation Order, or growing within a Conservation Area, or to cause or permit such actions, without the Council's prior specific consent

## **Amenity of Land**

- 5.9 The condition of land or buildings adversely affecting the amenity of the area: The Council can investigate the physical condition of buildings or land where there is an allegation that their condition is causing significant *harm* to the visual *amenity* of an area. This can include dilapidated buildings and vacant and overgrown sites. Under certain circumstances Section 215 of the Town and Country Planning Act 1990 can be used to require works to remedy the condition of the land or buildings.

## **Business Use & Relationship with Licensing**

- 5.10 A balanced and inclusive economy brings benefits to an area; however, businesses also need to be considerate to their neighbours. Where planning permission is granted for a change of use to a business or leisure use, it is likely that opening times will be restricted to protect the amenities of occupiers of nearby properties. Where it is found a business is operating outside of the

permitted hours of opening and harm is being caused to nearby occupiers planning enforcement action may be taken.

- 5.11 The time restrictions on the planning permission may be different to those on the license, however this does not prevent the Council from taking planning enforcement action where harm is being caused. Regardless of other licensing conditions attached, the occupiers of the premises will need to comply with the conditions on the planning permission.

### **Large/ Complex Developments**

- 5.12 Planning enforcement officers may pro-actively monitor the progress of large or complex developments as required by the Council. Formal planning enforcement action may be taken if a breach of planning is identified that is causing harm and cannot be resolved through negotiation.

## **6. MATTERS THE LOCAL PLANNING AUTHORITY CANNOT INVESTIGATE**

- 6.1 The Local Planning Authority cannot investigate the following issues:

- Internal works to a non-listed building, which are not part of a change of use
- Boundary wall disputes or other land ownership disputes, including breach of covenant
- Highway obstructions including parking and traffic (unless there is breach of planning conditions on a relevant planning permission)
- Clearing of unprotected trees or landscaping and gardening works (unless there is breach of planning conditions on a relevant planning permission)
- Out of hours construction and related disturbances (unless there is a breach of planning conditions on a relevant planning permission)
- Graffiti, unless it is classed as an advertisement or failure to properly maintain land, or where the graffiti causes harm to the amenity of the area, in which case a Section 215 notice can be considered.



- Dangerous structures or damage to property, unless it is a listed building or is related to action being considered under s215 of the Town and Country Planning Act 1990. (Dangerous structures can be investigated by the Council under its building control function but not under its planning function except in the circumstances set out above).
- Site safety and security
- Sewers, soakaways or other drainage matters (unless there is breach of planning conditions on a relevant planning permission, or it relates to the formation of hard surfaces such as driveways)
- Business competition

6.2 Although the matters above cannot be investigated by the local planning authority, they may be investigated by other relevant authorities such as Environmental Health, Building Control or the Health & Safety Executive. Appendix 2 details those authorities and their contact details.

## **7. HOW ENFORCEMENT CASES ARE PRIORITISED**

7.1 Each allegation of a breach of planning is treated on its own merits and will be assigned a priority according to the harm being caused. All cases will be kept under review, which could result in the priority assigned to the case changing. The priority categories are detailed below:

1. High Priority: These are developments which are perceived to cause significant and potentially irreparable and irreversible harm to the environment. For instance, they could include the unsympathetic alteration or demolition of a listed building, significant tipping or land-raising operations, unauthorised works to protected trees or ongoing works that are not in accordance with ecological conditions, and unauthorised development where it is known the time limit for taking action is imminent.
2. Medium Priority: These are developments that may cause some demonstrable harm to the environment, but immediate remedial action is not considered necessary. These could include large domestic extensions, use of buildings or

dwellings for business purposes, or breaches of pre-commencement planning conditions relating to building operations.

3. Low Priority: These include matters which are minor planning infringements that cause little or no harm to the environment or nuisance to nearby local residents, the investigation of complaints with only very limited details or no harm is identified, and pro-active condition monitoring and plan checking.

7.2 The initial case priority may be re-assessed following the first site visit. Further re-assessment may take place during the investigation and any resulting action.

### **Time targets for initial site visits**

7.3 The Council aims to carry out the initial site visit within the following timescales:

- High Priority Cases - within two working days of receipt by the Local Planning Authority
- Medium Priority – within ten working days of receipt by the Local Planning Authority
- Low Priority – within fifteen working days of receipt by the Local Planning Authority

7.4 The investigating officer will contact the complainant within 21 days of receipt advising them of the outcome of the first site visit and progress of the case. The complainant will also be advised if a planning application is received, or if formal action is taken, as well as receiving notification when the file is closed detailing the reasons for that closure. It is requested that complainants wait to be contacted by the investigating officer before enquiring about the progress of an enquiry. Please be assured that updates will be provided at key points throughout the investigation as detailed above.

7.5 There are a number of tools available to officers in order to investigate alleged breaches of planning. These may include unannounced site visits, to see how the land is being used, Land Registry searches to establish land ownership and the issue of Planning Contravention Notices requiring formal response to

specified questions.

## **8. REPORTING A BREACH OF PLANNING CONTROL**

8.1 If it is believed a breach of planning control has occurred, a planning enforcement investigation will be initiated. Unless the breach of planning control involves works to protected trees, a listed building or demolition, all reports of breaches of planning should be made in writing. Enquiries about current and on-going works to protected trees, listed buildings and the demolition of buildings can be made by telephone.

8.2 The quickest and preferred way to report a potential breach of planning is in writing by submitting the planning enforcement form on the Council's website: <https://www.tandridge.gov.uk/Planning-and-building/Planning-applications-and-enforcement/What-if-someone-does-not-follow-the-planning-rules>. Alternatively enquirers can email or write to the Council. The following information must be included with the correspondence:

- An accurate description of the location or address for the site where the planning breach is taking place;
- A detailed description of the activities taking place and how they are causing harm. Please include the details of any persons, or companies, known to be involved in the alleged breach;
- The date and times of when the alleged breach(es) took/are taking place;
- Any other information or evidence (including photos) that may be able to assist;
- The complainant's name and address or e-mail address, and telephone number if possible. Where an email address is given this will be used to keep the complainant informed of progress.

**The Council does not investigate anonymous complaints**

8.3 The Council will maintain the confidentiality of complainants at all times, unless The complaint is made by another statutory body. However, the substance of the complaint is not confidential. In some cases, it may be necessary to rely on evidence from complainants in order to take formal action, which may include acting as witness at appeal or in court. Should such occasion arise, the complainant will be asked whether they are prepared to provide evidence. Support and guidance will be provided to the complainant throughout this process. Should a complainant not agree to acting as a witness, the case will be reviewed, and consideration given to any further action. Information about the complainant is not available under a Freedom of Information request.

## **9. WHAT TO DO IF A COMPLAINT IS MADE ABOUT YOUR DEVELOPMENT**

9.1 The Council understands that, in many cases, a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of planning laws. Therefore, if a letter has been received from the Council or a visit proposed by a Council officer, we encourage full cooperation and ask that all information requested to resolve the matter is provided.

9.2 The Council has a duty to investigate every alleged breach of planning control. We do not disclose the identity of the complainant. The matter may be resolved quickly if there is no breach of planning control, or a resolution can be found without recourse to formal enforcement action. However, this does not mean any response or action can be delayed as the Council will expect a response within the timescales it has set. The Council will pursue legal action where the requirements of formal notices are not met.

### **Site Visits**

9.3 The investigating officers have legal rights of entry to land and property in order to investigate an alleged breach of planning control or compliance with the requirements of a formal notice. These officers carry cards bearing their name, powers and authorisation. The site visit is used to identify what *harm* is being caused and if/what further enforcement action is necessary. Allowing the officer to make the visit and take photographs will reduce time delays and potential

inconvenience.

- 9.4 Most site visits are made without prior warning so that sites can be seen in their normal state. Where at all possible; the officer will make themselves known to the occupier when they enter the site. If the investigation relates to a private residence, as opposed to just the garden, occupiers are entitled to 24 hours' notice of the visit. If a resident actively prevents the officer from entering onto the land, the Council may obtain a warrant to enter the site. If a warrant has been secured, any obstruction to access the site will be a criminal offence.
- 9.5 Where a breach of planning control appears to have occurred and it is clear who is responsible, officers will explain this to them and confirm in writing what they should do to remedy the breach of planning control. It will set out a timescale for action, and detail the possible consequences if they do not comply. Where a breach of planning control is unlikely to be acceptable, those responsible will be warned that works should cease and that the development remains at risk.
- 9.6 Where a breach of planning control has occurred but the unauthorised development broadly accords with local planning and national planning policy, a retrospective planning application to regularise the breach of planning control may be invited subject to any suggested amendments. If the Council approves such an application, conditions may be imposed with which the applicant will be required to comply.
- 9.7 In cases where planning permission has already been obtained and the deviation from the approved plans is very minor, it may be possible to submit an application for a non-material minor amendment. An invitation to submit an application is made without prejudice to the formal decision of the Council as the Local Planning Authority. All planning applications are judged on their individual merits and subject to consultation, therefore a successful outcome cannot be guaranteed by the investigating officer.
- 9.8 Where a retrospective planning application has been submitted that is unacceptable in principle, this will not delay the planning enforcement process.

Where it is considered necessary, the Council may opt to issue an enforcement notice before the planning application, or any related appeal, has been determined. This will enable planning and enforcement appeals to be determined at the same time and ensure no further delay in enforcement action

9.9 Development which requires but does not have the benefit of planning permission is a breach of planning control and will be revealed in a local land search if reported. This may affect the owner should they wish to sell the property or re-mortgage. We are required to make any party known to have an interest in the land aware of formal enforcement action and we will send them a copy of a formal notice.

## 10. **OUTCOME OF AN INVESTIGATION**

### **No Action to be taken**

10.1 **No breach of planning control identified:** the site visit and/ or planning history search confirm there is no breach of planning, for example: works which are considered to be permitted development or matters which are not within the control of the planning legislation.

10.2 **Breach of planning control established but not expedient to pursue:** these are technical breaches which are not causing *harm*, such as fences and garden buildings slightly higher than the permitted development tolerance, or where planning permission is likely to be granted without conditions.

10.3 **Development is immune from planning enforcement action:** the development has been ongoing in excess of the relevant time periods within planning law (4 & 10-year rule) and has attained immunity from planning enforcement action. These timeframes are set out in Section 171B of the Town and Country Planning Act 1990 (as amended).

10.4 **Planning permission granted:** retrospective planning permission has been granted for the unauthorised development.

10.5 **Breach of planning control ceased:** the identified breach of planning control has

ceased following negotiation or as result of formal planning enforcement action.

### **Formal Enforcement Action**

10.6 Where it has been decided to take formal action, the main options are:

Breach of Condition Notice - to require compliance with a planning condition on a live planning permission. Contravening a breach of condition notice is an offence. There is no right of appeal against a breach of condition notice.

Enforcement Notice – can be issued where a development is being, or has been, carried out without planning permission, or where a condition is not being complied with. The notice requires works or action to take place, or a use to cease, sufficient to remedy the *harm* caused by the breach of planning control. The recipient has a right of appeal against an enforcement notice to the Planning Inspectorate. Enforcement notices are registered as charges on the land. Contravening a planning enforcement notice is an offence

Listed Building Enforcement Notice – subject to the extent and nature of unauthorised works on a listed building, consideration will be given as to whether to commence prosecution. As an alternative, or as an addition, a Listed Building Enforcement Notice may be served to make sure the required remedial works are undertaken. This notice is similar to a planning enforcement notice described above.

Listed Building Urgent Works Notices and Listed Buildings Repairs Notices – the Council can take action to secure the repair of a listed building when it is concerned about its continued conservation.

Stop Notice – this can be issued with, or after a planning enforcement notice, if continuing unauthorised development is causing irreparable and immediate significant *harm*. Contravening a stop notice is an offence. This type of notice carries compensation liabilities for the Council. An alternative means of taking action against this type of breach is for the council to seek an injunction.

Temporary Stop Notice – this can be issued where there is a breach of planning and activity or development needs to stop immediately. These notices are only valid for a period of 28 days. The recipient of the notice can seek a judicial review of the decision to issue the notice if they do not accept it is valid, or if they believe the decision-making process is flawed.

Concealed Breaches – the Localism Act 2011 gave additional powers to Local Planning Authorities to take action against breaches of planning that have been deliberately concealed after the relevant time periods have expired

Injunction – where it is considered that a particularly serious breach of planning control has occurred, is occurring or is likely to occur and that immediate action is needed to stop it, the Council may seek injunctive relief against an actual, intended or apprehended breach of planning control. Failure to comply with an injunction constitutes a contempt of court and can lead to a fine or imprisonment.

Prosecution – can be taken where the requirements of a formal notice are being breached. In some instances, legal proceedings can commence without the need to serve any formal notices, such as: unauthorised works to listed buildings and protected trees, or the illegal display of advertisements. The Local Planning Authority will apply two tests when considering prosecution:

- **The evidential test** – is there admissible and reliable evidence that the offence has been committed and that there is a reasonable prospect of conviction.
- **The public interest test** – is it in the public interest to prosecute?  
And will have regard to the provisions of the Proceeds of Crime Act 2002 – we need to tie this in a bit better.

Section 215 Notices - can be issued where the condition of land or buildings adversely affects the amenity of an area. The notice requires specific steps to be undertaken to secure an improvement to the condition of land or buildings. The recipient of the notice has a right of appeal to the Magistrates Court.



Contravening a S215 notice is an offence.

Direct Action – where the steps required by an enforcement notice, breach of condition notice, or s215 notice are not taken within the period for compliance, the Local Planning Authority can enter the land or property and carry out the required work. Costs are recoverable from the owner or registered as a charge on the land so that the Council can recover its costs when the property is sold.

Works to Protected Trees – the Local Planning Authority has power to prosecute in the event of unauthorised works. If trees are removed completely, it will also be the duty of the landowner to plant replacement trees of appropriate size and species in the same location.

## **11. PERFORMANCE MONITORING AND REVIEW**

11.1 The Council will seek to continuously improve its planning enforcement service by regularly monitoring, reviewing and updating its policies and procedures as a matter of good practice. In doing so, it will consult with stakeholders to make improvements in the delivery of the service.

11.2 Performance review reports will be prepared on a quarterly basis for presentation and consideration by the relevant Committee and therefor subject to regular reporting to and scrutiny of Members. Performance review reports will outline performance against Key Performance Indicators (KPI's) and will also consider service standards and performance in the context of available resources, workloads and outcomes.

11.3 The Council has a Planning Enforcement Register available to the public which contains details of Enforcement Notices, Stop Notices, Breach of Condition Notices and Planning Enforcement Orders that have been issued. The Council also publishes an up-to-date list of Notices issued under Section 215 of the Act against untidy sites. The Planning Enforcement Register and list of Section 215 Notices can be viewed via the Councils web-site:

<http://tdcws01.tandridge.gov.uk/ArcusPlanning/EnforcementSearch/EnforcementSearch>

## 12. CONTACTS AND FURTHER INFORMATION

### 12.1 Customer Services

Tandridge District Council

8 Station Road East

Oxted

Surrey RH8 0BT

Telephone: 01883 722000

Report a suspected breach of planning: <https://www.tandridge.gov.uk/Planning-and-building/Planning-applications-and-enforcement/What-if-someone-does-not-follow-the-planning-rules>

12.2 Planning Portal – this is the Government’s online planning resource where information can be found about the planning system and latest government policy: <https://www.planningportal.co.uk/>

12.3 Planning Aid England - <https://www.rtpi.org.uk/planning-aid/> offers planning advice and support to individuals and communities

12.4 Service Standards – the Council’s Customer Service Charter is available at: <https://www.tandridge.gov.uk/Planning-and-building>

## **Annex 1 – Glossary**

Amenity – includes the visual appearance of a building and its impact on the surrounding area. It also includes the impact on the occupiers of neighbouring properties arising from the change of use of a building or land (eg noise and disturbance)

Harm – the development has to be harmful to matters of planning importance such as: loss of privacy, loss of sunlight/ daylight, access or traffic problems, excessive noise and disturbance, and inappropriate design and layout. The harm identified must be able to withstand potential challenge vis appeal to the Planning Inspectorate

Permitted Development – certain developments can be carried out without requiring planning permission from the Local Planning Authority, under a general planning permission granted by Parliament. Permitted development rights can be restricted by property type, location and conditions on existing planning permissions.

Use Class – in planning the type of use of a building or land is grouped into use classes. Planning permission may be required to change from one use to another

## **Annex 2 – Other Authorities Contact Details**

Health and Safety Executive – reporting a health and safety issue

<http://www.hse.gov.uk/contact/concerns.htm>

Environmental Health - reporting function on Tandridge District Council website

<https://www.tandridge.gov.uk/Environmental-concerns>

Surrey County Council - planning enforcement for minerals and waste

<https://www.surreycc.gov.uk/land-planning-and-development/planning/applications-register/enforcement-of-minerals-and-waste#who>

Report a Breach of Planning Control

