



Horsham
District
Council

Local Enforcement Plan

March 2016



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1.0 Introduction

This document sets out Horsham District Council's policy for the enforcement of planning control within the district. Its purpose is to identify local priorities for enforcement action, so the council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of the residents of the district.

The document has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF)(March 2012) issued by the Department for Communities and Local Government which states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should 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 it is appropriate to do so.”

What is development?

Development is defined in Section 55 of the Town and Country Planning Act 1990 (as amended) as the ‘carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of any buildings or other land.’

What is development control?

It is a process which regulates the development and use of land to ensure that changes to our physical surroundings (buildings and land) are appropriate for their purpose and location.

What is planning compliance?

The Planning Compliance team investigates possible breaches of planning control and aims to resolve these using the most appropriate means of action. The integrity of the planning service depends on the council taking enforcement action when appropriate. The council is committed to providing an effective planning enforcement service and it is understood that public perception of the planning system can be undermined when unacceptable development is allowed to proceed, or to remain, without any apparent attempt by the council to intervene. Even when development is considered to be acceptable the council has a role to explain to the public why the development is considered to be suitable and to encourage a planning application to be submitted so it can be fully assessed, public comments considered, and appropriate conditions attached, if necessary.

1.0 Introduction continued

What is a breach of planning control?

A breach of planning control is defined in the Town and Country Planning Act 1990 as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.

Whether something requires planning permission is not straightforward and while there are some fairly obvious breaches, such as building a new house without planning permission, many others are more difficult to define or less well known. For example:

- Building work, engineering operations and material changes of use that are carried out without first obtaining planning permission;
- Development that has planning permission but is not carried out in accordance with the approved plans;
- Failure to comply with conditions or the terms of a legal agreement attached to a permission or consent;
- The unauthorised demolition of a building within a conservation area without planning permission;
- Works carried out to a listed building (both internal as well as external), which affect its historic character or setting, without listed building consent being granted;



- The unauthorised felling or carrying out of works to a tree which is protected by a Tree Preservation Order or which is within a Conservation Area;
- The display of a sign or advertisement without first obtaining advertisement consent;
- Fly posting;
- Failure to properly maintain land so that it affects the amenity of the area;
- Failure to comply with the requirements of enforcement notices, breach of conditions notices and stop notices.

It should be noted that a breach of planning control becomes immune from enforcement action if no formal action has been taken within the time limits set out in the Town and Country Planning Act 1990 (as amended).

Essentially these are:

- Four years from the substantial completion of a building or other operational development and for the change of use of any building to a dwelling house;
- Ten years for all other breaches (ie changes of use of land or buildings and breaches of conditions).

1.0 Introduction continued



- Boundary disputes – disputes about ownership are a private matter and cannot be controlled under planning legislation;
- Deeds and covenants are a private matter between the signatories to the documents;
- Loss of value to a neighbouring property;
- Insertion of windows in houses or bungalows – once a building has been occupied windows can normally be inserted into existing walls provided that there is not a planning condition to prevent the insertion of additional windows;
- Where development is 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015.

Similarly, planning enforcement action can only be pursued where works have taken place without the benefit of, or are inconsistent with, planning permission. Thus, domestic extensions, regardless of their impact on neighbours, are immune from planning enforcement action if they fall within permitted development rights; and those commenced during the standard life of a permission and built as approved also are beyond further control, even though a neighbour, perhaps new to the area, was not consulted.

It follows that no action is possible in respect of anticipated breaches, regardless of how reliable the rumour – action can only be taken once unauthorised development has commenced.

What is not a breach of planning control?

Many issues can require consent to be given by a landowner or a third party but do not require planning permission. In such cases, the council cannot get involved in issues that are between two private parties, as those are considered to be civil matters. Other matters may be of genuine concerns and may be covered by other legislation but are not issues that the council as Local Planning Authority can get involved with. Some of these are:

- Internal works to a non-listed building;
- Matters controlled by other legislation such as Building Regulations/ public nuisance/ Highways/ or the Environment Agency;
- Competition from another business;
- On street parking of commercial vehicles in residential areas;
- Obstruction of a highway or public right of way (the Police or Highways Authority may be able to get involved);
- Parking a caravan within the residential boundary of a property provided that its use is ancillary to the dwelling;
- Clearing land of overgrowth, bushes and trees (provided they are not subject to a Tree Preservation Order, within a Conservation Area or owned by the council);
- Operating a business from home where the residential use remains the primary use;

2.0 How the planning compliance team will deliver the service

If you are concerned that a development or activity is taking place without planning permission or does not comply with a planning permission already granted, you can report this to the Compliance Team by using our on-line complaint form.

When reporting an alleged breach of planning control, it would be helpful if you could provide:

- The exact address of the site complained about as well as the location of the activity/building works within the site (a sketch plan is often useful);
- Precise details of the nature of the activity including the number of vehicular movements/vehicle registration numbers, opening hours, number and times of deliveries, or what time work commenced (as appropriate);
- Details of the alleged contravener (if known);
- Details of the effect that the alleged breach is having upon you in terms of noise, traffic, smells, overshadowing etc.

In many instances the assistance of the general public can be crucial to the success of enforcement action. For instance, council officers cannot continually monitor sites. Accordingly, the council relies upon the general public, residents associations and amenity societies to both report and monitor alleged breaches of planning control.

Complainants' details are treated confidentially and the council will always seek to protect the identity of those making complaints, however in rare circumstances the council may be required to divulge details (usually through legal action). We will advise anyone of this before it happens and it is

extremely rare. If you are concerned about your details being used then try contacting a local residents group, your parish council or your district councillor, as they may be prepared to make the complaint on your behalf.

Please note: Whilst we appreciate that for many reasons you may prefer not to give us your details and remain anonymous, clearly we will be unable to contact you to inform you of the progress of the investigation or to seek additional information from you, unless you give us your full details.

The council reserves the right not to investigate anonymous complaints, especially if they are considered to be vexatious or when workloads are high.

When a complaint is received:

- We will promptly register every case and acknowledge receipt either by letter or by email within three working days. You will be given the name of the Enforcement Officer dealing with your complaint so you know who to contact, together with a reference number.
- We will then carry out some initial checks (usually including a site visit) in accordance with the priority given to the case, but in any event within fifteen working days.
- Complainants will be updated by telephone, email, visit, or formally in correspondence within a further fifteen working days of our initial site visit and given the opportunity to comment on our initial findings.
- When cases take a long time ie on-going monitoring is required, we will ensure complainants are updated at each significant stage

of the process. Thus, for instance, complainants will be consulted if a retrospective planning application is submitted and will be notified if an enforcement notice is issued and the relevant dates, for compliance.

- Complainants will be advised when cases are closed, and the reason. We will endeavour to resolve enquiries within three months of their receipt, however should further action be required, such as the issue of Enforcement Notices, clearly this timescale will not be possible.

It is important to remember that often the success of a case relies on the complainant working with the council to provide details of the breach, to give evidence where possible, and potentially to act as a witness. The council will discuss this with you if it is required and any refusal to be more involved than you are comfortable with will not stop the investigation of a case (unless evidence cannot be gathered as a result).

Enquiries will only be acted upon if they are motivated by planning harm. A number of enquiries can be malicious or motivated by neighbour or business disputes which have nothing to do with planning. The pursuit of such enquiries not only diverts resources away from serious breaches of planning control but also can give rise to serious harm and may even infringe human rights. If there is evidence that such issues motivate an enquiry it will not be registered or pursued.

In addition to the above, we undertake pro-active work (see section 7 of this Policy).

3.0 Principles of good enforcement

Standards

The team must perform to the agreed standards as set out in this Policy.

Openness

We will provide clear advice in plain language, which will include what action needs to be taken, why and by what date.

Helpfulness

We will provide a courteous and efficient service and our staff will identify themselves by name.

We will provide a contact point and telephone number for further dealings with us and we will encourage members of the public to seek advice/information from us.

Complaints about service

Complaints about the service will be considered in line with the council's corporate complaint procedures.

Proportionality

Any action taken should be proportionate to the level of harm involved and should take into

account relevant circumstances where it is expedient and necessary to do so.

Consistency

We will carry out our duties in a fair, equitable and consistent manner.

4.0 Priorities and timescales

Investigating alleged breaches of planning control is often complex and time consuming. In order to make the most effective use of staff resources, it is usually necessary to give priority to those cases where the greatest harm is being caused, as it would be inappropriate to investigate and pursue all allegations with equal priority and intensity. Therefore each case is prioritised according to the seriousness of the alleged breach. This priority is decided by officers, and subsequently reviewed after an initial site visit. The scale of priorities with a list of examples, is shown below:

Priority 1 – Immediate investigation

- Unauthorised works (demolition) with respect to listed buildings;
- Unauthorised works to protected trees (TPO's) or trees in conservation areas;
- Removal of landscape features protected by condition;
- Certain types of demolition in a Conservation Area;
- Unauthorised tipping operations;
- Gypsies or travellers on council-owned land.

Priority 2 – investigation within two working days

- Certain breaches of conditions attached to a planning permission eg wheel washing and materials (where a building is under construction);
- Accesses onto classified roads.

Priority 3 – investigation within seven working days

- Buildings not constructed in accordance with approved plans;
- Certain breaches of conditions of a planning permission eg hours of work, parking provision and access requirements;
- Unauthorised erection of buildings or works to land;
- Unauthorised changes of use which are considered to be materially harmful to local residents;
- Unauthorised residential use of mobile homes/caravans.

Priority 4 – investigation within 15 working days

All others including:

- Other changes of use including businesses being operated from residential properties;
- Advertisements;
- New fences;
- Floodlighting and the erection of satellite dishes;
- Any other breaches of conditions of a planning permission.

5.0 General approach to planning compliance



The integrity of the development control process depends on the council's readiness to take enforcement action when it is required to do so.

Parliament has given local planning authorities the primary responsibility for taking whatever enforcement action is necessary within their area and the council will always exercise its planning enforcement powers rigorously when it is considered expedient to do so.

In considering enforcement action, the council will have regard to:

- Whether the breach of planning control unacceptably harms public amenity, or the existing use of the land and buildings merits protection in the public interest.
- Ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of planning control which are considered to cause no harm to amenity.

- Ensuring that, if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development or an unauthorised use fail, enforcement action may be required to make the development acceptable on planning grounds, or to require it to cease.
- Statutory time limits for taking enforcement action.
- Relevant planning policies and other material considerations, including where appropriate, the individual circumstances of the person, business, or other organisation in breach of planning control.

Where significant harm to amenity can clearly be demonstrated, then the council will usually contact the person causing the breach to talk about the problem they have created. This will often result in a planning application being submitted or where something is considered to be unacceptable, there will be a discussion about removing it. Only if the person causing the breach is refusing to talk to the council or to resolve in an acceptable manner, will the council take enforcement action.

Enforcement action is discretionary. The council has discretion as to whether to take enforcement action and it is not a mandatory duty to do so- just because something constitutes a breach of planning control this is not, in itself, a reason to take enforcement action. Even when it is technically possible to take action the council is required to decide if such formal action would be "expedient" in the public

interest. There needs to be harm actually being caused that is of sufficient detriment to warrant action being taken. In other words, it must consider whether the breach of planning control unacceptably affects public amenity or safety, or whether the existing use of land or buildings merit protection in the public interest. As such a judgement has to be made in each case on its own planning merits, as to the seriousness of the breach and the level of any harm that it causes.

Apart from some listed building and advertisement cases, it is not a criminal offence to undertake works without the relevant consents. Whilst the council will not condone wilful breaches of planning control, even if it is aware that someone is going to carry out works that require planning permission, it does not automatically follow that the unauthorised works will be stopped. There would have to be considerable harm for the council to seek to stop an unauthorised development taking place. It is recognised that this can be very frustrating for complainants but the council must operate within the legislative framework. The council reserves the right to take into account what benefits someone has made by carrying out unauthorised development. Any breach of the requirements of a formal Notice (see list of formal Notices below) issued by the council will constitute a criminal offence. Should this happen, the council has the ability to seek to recover profits made either under the Town & Country Planning Act 1990 and/or under the Proceeds of Crime Act 2002 and will consider such an application to the courts for deliberate breaches.

5.0 General approach to planning compliance continued

Where informal resolution cannot be achieved, there are a variety of formal tools available to the council. The council has given delegated authority to its officers to exercise the legislative powers available to it for breaches of planning control. These tools are as follows:

- **Planning Contravention Notice** – this requires persons to provide information in respect of the development and/or activities taking place on the land. These notices are often served as a first step to gain information from the person carrying out the development and/or activity before determining whether it is expedient to serve other formal enforcement notices
- **Enforcement Notice** – this is the principal tool to remedy a breach of planning control. It will specify what the alleged breach is, the steps that must be taken to remedy it, and a time period in which to carry out those steps. It cannot come into effect until at least 28 days after it is served. Within that period, the recipient of the Notice has a right of appeal to the Planning Inspectorate, which suspends the requirements of the Notice until the appeal is determined (or withdrawn). If any person is later found to be in breach of an enforcement notice that has come into effect, the council will consider whether to prosecute (see below), since failure to comply with such a Notice is an offence. In addition, the Notice will appear on the Land Charges Register (LCR) as it runs with the land, and remains effective even once complied with.
- **Listed Building Enforcement Notice** – this is the equivalent Notice available under the listed building legislation, with the advantage that action is not subject to the four-year rule. As such, there is no time scale under which action may be taken against such breaches. As with a normal enforcement notice, recipients do have the right of appeal.
- **Breach of Condition Notice** – available in the event of non-compliance with a condition attached to a planning permission, and can require full or part compliance with the relevant conditions. Such a Notice would state the steps required to remedy the breach, and must allow a minimum of 28 days in which to comply with the requirements. There is no right of appeal, and any person found to be in breach of such a Notice will be guilty of an offence with a maximum fine currently not exceeding £1,000 on conviction.
- **Stop Notice** – when considered expedient to do so, the council can serve a Stop Notice requiring activities to cease immediately. Such a Notice is generally served at the same time as, or after the service of an Enforcement Notice, and is most commonly used to deal with breaches of planning control that are seriously affecting the amenity of nearby residents or to prevent serious or irreversible harm to the environment. There are limitations to this Notice and additionally compensation for losses directly attributable to the prohibition may be payable by the council in some circumstances if the recipient of the Notice makes a successful appeal. It is used very selectively and is not necessarily an instant solution.
- **Temporary Stop Notice** – this fairly recently-introduced measure has a number of advantages; it is effective immediately and does not require the prior service of an enforcement notice. Moreover, the risks of liability for compensation are negligible. However, it can subsist only for a maximum of 28 days (and cannot be renewed).
- **Untidy Land (s.215) Notice** – where the condition of buildings or land causes serious harm to the visual amenity of an area, the council can, where considered expedient to do so, serve a Notice on the owner and occupier, under Section 215 of the Town and Country Planning Act 1990. Such a Notice would require steps for remedying the condition of the land or buildings and specify a period of time for doing so. This period cannot be less than 28 days. Appeals are to the Magistrates' Court and, if found guilty, constitutes a criminal offence for which recipients may be prosecuted with a maximum fine of £1,000 upon conviction.
- **Court Injunction** – Although they are rarely used, legal powers are available for the council to apply to the High Court or the County Court for an injunction to stop an actual or alleged breach of planning control. Injunctions are a discretionary power and the legislation requires an assessment of the likely outcome prior to the commencement of proceedings. Injunctions can be used to require someone to stop doing something or to require them to carry out something, however there would have to be serious harm arising before the council decides on this course of action. Failure to comply with an Injunction can lead to an unlimited fine and/or imprisonment.

5.0 General approach to planning compliance continued



- **Prosecution** – the council can pursue prosecution proceedings against any person who carries out unauthorised works to trees that are protected by a Tree Preservation Order or are within a Conservation Area, unauthorised works to Listed Buildings, and certain unauthorised works of demolition works within Conservation Areas. Additionally, offenders may be prosecuted for non-compliance with a temporary stop notice, stop notice, enforcement notice and breach of condition notice. If found guilty, that person will be liable on conviction in the Magistrates Court to a maximum fine of £20,000. More serious cases may be heard in the Crown Court, where the level of fine is unlimited.
- **Direct Action (with costs recovery)** – failure to comply with the requirements of a Notice may result in the council using powers available to it to enter land and carry out such works that are required by an Enforcement Notice. All costs incurred in carrying out such works can be recovered from the landowner. Where costs are not recovered, they can be registered as a charge on the land.
- **Advertisements** – the legislation (Town and Country Planning (Control of Advertisements) Regulations 2007) which deals with advertisements is separate from that dealing with general planning matters. The display of an advertisement without formal consent is an offence, and the council does have the power to prosecute the person displaying it, if it considered that it harms the amenity of the area or public safety. There is no need for an enforcement notice, or similar, to be served. If a person is found guilty of an offence, he or she could be liable to a fine up to a maximum of £1,000.
- **Article 4 Direction** – The General Permitted Development Order 2015 permits the temporary use of land and buildings for specified purposes of limited duration. If the use causes harm to the local environment and continues beyond the time limit set out in the General Permitted Development Order, then an Article 4 Direction may be issued to restrict such uses.

6.0 What happens if someone complains about you?

If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, as such we will always seek to work with you to understand the true facts of the case.

Initially a member within the Planning Compliance Team will visit the site. Due to time constraints, this is usually without any prior warning to the owner or any tenants / employees at the site. Officers are authorised to visit

a site to investigate and will show identification when they arrive. Planning Compliance officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the Planning Compliance Officer. However, we are required to give 24 hours notice to insist on entry to a residential property but if you are happy to allow us access then we will usually take up that offer.

In the event of a breach being established, your co-operation will be sought to correct the breach either by removing or modifying the unauthorised development

or by ceasing the unauthorised use or activity prohibited by a planning condition. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this.

In some circumstances you may be invited to submit a retrospective planning application or, other appropriate application if it is considered that consent may be granted or, an application for a Certificate of Lawfulness of Use or Development may be invited in the event that you can show that the breach is immune from enforcement action and therefore lawful.

7.0 What other services does planning compliance provide?

As well as investigating enquiries into possible breaches of planning control, the planning compliance service is pro-active in:

- Ensuring compliance when formal action has been taken;
- Monitoring planning conditions to ensure that they are being carried out as required;
- Monitoring compliance to ensure that the development accords with the planning approval;
- Monitoring Legal Agreements attached to planning permissions to ensure that they are being carried out as required;
- Ensuring that works subject to Building Regulation that require planning permission have made the necessary application.

8.0 What happens if you are not happy with our service?



The council aims to provide an efficient and effective service for everyone it deals with and to maintain good relations with those who use our services. Planning enforcement is a complicated area of law and care must be taken to arrive at a correct and appropriate course of action related to alleged breaches of planning control.

If you are aggrieved with the service offered to you, there is a complaints procedure, where complaints can be investigated. Details of this procedure are available on the council's website. If you remain dissatisfied, the matter can be investigated by the Local Government Ombudsman. They will make an independent investigation of whether maladministration has occurred by the district council and if it has, recommend what remedy ought to take place.



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