

STEVENAGE BOROUGH COUNCIL ENFORCEMENT PLAN

September 2016



The Government produces legislation and regulations which govern what does, and does not require planning permission. Stevenage Borough Council supports development in its Borough, especially with the scale of regeneration proposed through the new Local Plan, including new homes, the regeneration of the town centre, new jobs, community facilities and shops. However, it also has a duty to protect buildings of historic importance, control outdoor advertisements, deal with untidy land and buildings and to protect trees and hedges considered to be of historic importance and amenity.

However, there are occasions where development is carried out without the necessary planning permission, or once constructed a development does not adhere to the original planning permission granted. Planning enforcement exists to help the Council take action in these circumstances, to rectify the breach of planning control.

The Council must decide if it is right to take action. A planning enforcement investigation is a serious intervention by the local planning authority. Whilst in most cases, it is not a criminal act to breach planning control; there are circumstances that can lead to prosecution and criminal conviction.

The Council will take enforcement action where it is expedient to do so. In all cases the Council must ensure that whether to act, or not, is reasonable and both the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG) stress that the Council should act proportionately in responding to alleged breaches of control. There is no clear cut rule and the expediency of each enforcement investigation will be assessed based on national planning policy, the Council's planning policies, the merits of the development and any other material considerations.

In exercising enforcement powers, the Council will not over-regulate nor pursue minor matters. In considering the number and type of reports received, and those that have a wider bearing on the public interest, enforcement investigations will focus on the following as priorities of officer time –

Unauthorised developments that directly impact on protected buildings and trees (high risk):

- Works to a listed building (or curtilage listed) without consent
- Works to a tree covered by a Tree Preservation Order (TPO) or within a conservation area without consent

Unauthorised developments that directly impact on residential amenity:

- Unauthorised conversion of dwellings and/or outbuildings to flats/bedsits
- Development not covered by Permitted Development Rights that adversely affects neighbour amenity
- Conversion of dwellings to Houses of Multiple Occupation (HMO) that are not covered by Permitted Development Rights
- Car sales and/or repairs businesses

Unauthorised developments that directly impact on visual amenity:

- Advertisements that have a detrimental impact on the amenity of the area
- Development not covered by Permitted Development Rights that harms the visual amenity of the area

Most enforcement work arises from reports to us by members of the public, and other regulatory services within the Council. All complaints are treated in the strictest of confidence and the name of the reporter will not be revealed. Due to workloads, the Council will currently not deal with anonymous reports of breaches, unless the report is considered to be high risk. Reports made in writing will be given significant priority over others, and evidence provided by third parties can help the Council if monitoring is required to establish if the alleged breach requires formal permission.

Development becomes immune from enforcement if no action is taken:

- Within four years of substantial completion for a breach of planning control consisting of operational development;
- Within four years for an unauthorised change of use to a single dwellinghouse;
- Within ten years for any other breach of planning control (essentially other changes of use).

Reports will only be recorded if they raise legitimate planning considerations. If reports raise other issues which are more appropriately dealt with by another department, we will forward these to the relevant team.

The majority of investigations do not result in formal action. However, where it has been considered expedient to take action, the Council has been successful in achieving compliance through prosecution, and undertaking works by default and recovering the costs.

In particular, in June 2015 the Council successfully prosecuted against the demolition of a listed building to the sum of £25,000 compensation, and in September 2015 working with the Council's Environmental Department successfully carried out works by default to tidy land at a private residential address.

What is a breach of planning control?

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.

For clarity, 'development' is the carrying out of building works in, on, over or under land, or a material change of use of land or buildings.

Furthermore, planning enforcement regulates any contravention of the limitations on, or conditions belonging to, deemed consent of advertisements, under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. When considering a

breach of control for advertisements, the Council considers the harm on highway safety and visual amenity only.

Other examples of breaches of planning control can include (list not exhaustive) –

- Non-compliance with conditions imposed on a planning permission
- Cutting down or carrying out works to a tree(s) in a conservation area, or a tree(s) protected by a TPO
- Internal or external works to a listed building
- Engineering works, such as changing ground levels
- Failing to maintain land in a reasonable state so that it harms the amenity of an area
- Not implementing a planning permission in accordance with the approved plans

Subsequently these are examples of what is not a breach of planning control (list not exhaustive) –

- Internal works to a building which is not listed
- Parking issues relating to the obstruction of a highway or a public right of way
- Anti-social behaviour
- Operating a home business where the primary function of the dwelling remains as a residential use
- Party wall matters
- Boundary disputes
- Deeds and covenants
- Trespass
- Health and safety issues
- Neighbour disputes
- Undertaking development which is 'permitted development'

Permitted development rights

Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impact and to protect local amenity.

There are cases when permitted development rights are removed from a property, and this can be checked by contacting the Local Planning Authority (LPA). Where these rights are removed, planning permission will be required for any development that would normally be allowed under permitted development.

These rights can include enlargements and alterations to dwellinghouses including extensions, garage conversions, loft conversions, dormer windows, outbuildings, porches and hardstandings; various changes of use including a dwellinghouse to a House in Multiple Occupation (HMO) office to residential, agricultural use to residential, and restaurants/cafes and pubs to retail; and alterations and improvements to schools, hospitals and shops.

Permitted development rights also extend to statutory bodies such as electricity providers, transport operators, local authorities and water and sewerage providers where the works are linked to the statutory duties of said bodies.

Further details of permitted development rights, particularly those relating to dwellinghouses can be found on the planning portal www.planningportal.gov.uk using the interactive house.

Where an enforcement investigation is concluded to be permitted development, the Council will not take any action, even if a third party objects.

There will be cases where an enforcement investigation is found to be a breach of control; however the level of harm is not significant or lasting in its effects on the environment and it might not be expedient to take formal action.

What action can be taken?

Where the Council consider some form of enforcement action needs to be taken, they can take the following action against a breach of planning control, this includes where retrospective planning permission has not been allowed through consideration of a formal application –

Planning Contravention Notice (PCN) – allows the local planning authority to require any information they want for enforcement purposes about any operations being carried out; any use of; or any activities being carried out on the land, and; can be used to invite its recipient to respond constructively to the local planning authority about how any suspected breach of planning control may be satisfactorily remedied.

Enforcement Notice (EN) – should advise the recipient of 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.

Planning Enforcement Order (PEO) – Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

Stop Notice (SN) and Temporary Stop Notice (TSN) - A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice, ahead of the deadline for compliance in that enforcement notice. Usually the stop notice would come in to force no less than 3 working days and no more than 28 days from the date of issue. A stop notice cannot be served independently of an enforcement notice.

Where the local planning authority requires the breach of control to stop sooner than the time scales allowed under a stop notice, a temporary stop notice requires that an activity which is a breach of planning control should stop immediately.

Breach of Condition Notice (BCN) – A breach of conditions notice requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the local planning authority in the notice.

Discontinuance Notice / Advertisement Enforcement (DN) – A discontinuance notice can require that the display of a particular advertisement with deemed consent (or the use of a particular site for displaying advertisements with deemed consent) be discontinued. A local planning authority may take discontinuance action if it is satisfied that such action is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. “Substantial injury” to the amenity of the locality is a more rigorous test than the “interests” of amenity”.

An enforcement notice can also be used by the LPA for the removal of an advertisement that has been erected without deemed consent or advertisement consent, and harms the visual amenity of the area and/or impacts highway safety.

S215 Notice – A section 215 notice requires its recipient to carry out works to untidy land or buildings to improve their appearance, where it causes sufficient harm to the public realm. Non-compliance can result in prosecution. However, the Council reserves the right to undertake the required works in default and then seek to recover the costs of carrying out the works.

Listed Building Enforcement Notice (LBN) – A listed building enforcement notice works the same way as an EN but relates specifically to a breach of control for a listed building. There is no time limit for enforcement action to be taken against unauthorised works to a listed building, and any such works carried out without consent are a criminal offence and can result in prosecution and a criminal record.

Rights of Entry - Local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes. This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control.

Prosecution – Where the breach of condition is also a criminal offence, such as unauthorised works to a listed building, or there has been non-compliance with a notice, the Council can seek prosecution at the magistrate’s court.

Direct Action – Further to S215, where the Council feel it most appropriate to carry out remedial works themselves, they can do so using direct action. The costs incurred can then be recovered from the land owner.

Injunction - A local planning authority can, where they consider it expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control.

Proceeds of Crime Act (POCA) - Proceeds of crime can be used, where appropriate, by the Council to seek to recover money earned by the landowner as a result of unauthorised development that resulted in a criminal offence.

Enforcement Investigations

Enforcement investigations will usually involve a site visit(s) together with research and/or interviews to establish whether there has been a breach in planning control, and; whether the Council should pursue action where a breach has been identified.

Enforcement cases are distributed between the four officers in the Development Management team for investigation. At any one time the team can have around 50 live un-concluded investigations. Only a small number of these will be subject to formal enforcement action.

Many cases, by virtue of the alleged breach, will involve numerous site visits, over a lengthy timescale as part of the officer's investigations.

The four team members also deal with all planning applications and associated work, and therefore, workloads need to be managed effectively to ensure both applications and enforcement are being processed correctly and in a timely manner.

Therefore, matters relating to enforcement will be prioritised by the following –

- Ongoing appeals or court actions against served notices
- New complaints of serious irreparable harm
- Ongoing breach of an enforcement notice which has come into effect
- Breaches causing serious harm
- Investigations where immunity periods are imminent
- All other complaints

Where cases have become historic due to the length of time passed from initial receipt of the alleged breach, the view may be taken to close the case without further investigation. This also applies where the reporting third party has not made further contact with the department for an extended period of time.

Where the Council has determined it necessary to take action, approval is required by members at a Planning Committee meeting, before any notices can be served.

In many cases, breaches of control are resolved through a negotiated process and are either regulated through the granting of retrospective planning permission or the breach is stopped. The Council aim to resolve each case without serving a formal enforcement notice where possible. Where a breach cannot be resolved, and enforcement action is justified, a formal notice may be served. Notices take effect 28 days from serving, during which the landowner, who is in receipt of the notice has a right to appeal.

Following the 28 day lead in period, the recipient is given a period of time in which to comply with the notice requirements. This time scale will vary in length depending on the severity and nature of the breach. The notice will specify the steps required by the Council to remedy the breach. If these are not adhered to within the set time frame, the Council can take action through criminal proceedings in the courts.

If an appeal is lodged, the notice is suspended and does not come into effect unless and until the appeal is determined. Appeals are the responsibility of the Planning Inspectorate.

In 95% of the Council's enforcement cases over the last five years, no formal action was taken. This is because either the alleged breach was permitted development or the case was negotiated with the landowner to a satisfactory conclusion, or it was not considered expedient to pursue the breach.

Cases received in the last five years

Year	No. cases
2015	77
2014	80
2013	63
2012	66
2011	66
Total over 5 years	352

Cases which resulted in enforcement action

Type of enforcement action	No. cases
PCN / S330	10
Advertisement enforcement	0
Breach of condition notice	0
Enforcement notice	2
S215 Untidy land notice	5
Prosecution	1
Total of formal enforcement actions	18

Reporting an alleged breach to the Council

Reporting an alleged breach and requesting an enforcement investigation can be done in writing by post, email or online. You can speak to an officer; however, written requests will be given greater priority. Anonymous complaints will not currently be investigated by the Council.

Contact details for the planning department are -

Planning and Engineering
Stevenage Borough Council
Daneshill House
Danestrete
Stevenage
SG1 1HN

planning@stevenage.gov.uk

01438 242838

Prior to contacting the Council, it is helpful if you can search the planning register to establish if any permission has been given for the matter you are reporting. You can search the

address of the property in question by visiting www.stevenage.gov.uk/planning and following the respective links to 'view and comment on a planning application'.

If, following this step, you are unable to find any permission for the works in question, contact the planning department to report the breach and provide the following information –

Your name and postal address; telephone number and email address;

Site address of the breach, plus additional information describing where it is if necessary (i.e. rear garden; first floor side elevation);

What the breach of planning control involves;

Details of the harm caused by the breach.

The identity of the person reporting the breach is kept confidential for the Council's investigations. However, if the matter is pursued at appeal or prosecution, and the information provided by the third party is used as evidence in the case, then anonymity cannot be guaranteed and details may need to be released by law. Where an enforcement investigation is referred by the Council to court, the person(s) who reported the matter may be called upon to provide a statement as evidence in court.

Processing an alleged breach of planning control

If you are reporting the breach –

The Council aims to log and acknowledge reports within 3 working days. You should receive the acknowledgement by email or letter, informing you of the officer dealing with the investigation.

The Council aims to provide you with an update of initial investigations within 21 working days of the report. This may involve informing you of existing permissions in place, whether a site visit has been carried out, or whether further information and investigation is required.

If at this stage, it is found that a breach has occurred, it may be some time before a further update is provided, because of the nature of the breach and the Council's need to decide whether further action is required.

If it is found that no breach has occurred, or it is not expedient to take action, the officer will contact you following closure of the case, explaining the reason for this.

Where the report relates to unauthorised works to a listed building or a tree covered by a Tree Preservation Order or located in a conservation area, the matter is considered high risk and officers will endeavour to visit the site within 24 hours of the report, or on the next available working day.

If your property is subject to an investigation -

Where the site or alleged breach cannot be seen from a public place, officers will contact you to arrange a site inspection. Most visits are arranged amicably.

If access is denied, officers have a right of entry to land and buildings in their borough to investigate suspected breaches of planning control, and this can be secured through a court order.

Following the site visit, officers will inform you of their conclusions on the breach. Depending on the level of harm and the course of action decided upon by the Council, you may wish to seek pre-application advice with the planning department on regularising the breach, or applying retrospectively for permission.

If the breach is considered harmful and officers believe it unlikely to gain retrospective permission should an application be submitted, the Council will take action by serving the relevant notice (as discussed above). The notice will explain the breach and advise you what to do to regularise the situation.

You have a right of appeal with any enforcement notice served. However, the notice should not be ignored, and you should seek advice from an impartial planning specialist or legal advocate.

An enforcement notice is a charge on the land and will be revealed on any search carried out on the property, particularly searches related to sale of the property. The notice will be revealed even if the particulars have been complied with, this is to ensure any perspective owners are aware of the terms of compliance, as they would be responsible for continued compliance in the future.

Following the expiration of the notice compliance date and any subsequent compliance dates given following an appeal, non-compliance would result in a criminal offence having occurred. The Council would then pursue prosecution and may need to interview the land owner under caution as part of the prosecution case preparation. At this stage the Council will make an assessment as to whether instigating prosecution proceedings are in the public interest.

Complaints against the processing of an enforcement case

There is no third party right of appeal against the final decision of the Council. The land owner has a right of appeal against the serving of a notice to the Planning Inspectorate or the magistrate's court.

If you have a complaint about how an enforcement investigation has been conducted, or the outcome, you can use the Council's complaints procedure. The Local Government Ombudsman can be requested to review the case, once the Council's complaints process has been exhausted.