

PLANNING ENFORCEMENT POLICY STATEMENT



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1. Introduction

- 1.1 The planning system seeks to regulate the development and use of land in the public interest. The effective and proper enforcement of planning control is essential to protect the local environment and the interests of residents, visitors and businesses of the District from the harmful effects of unauthorised development. It is also important for public acceptance of the planning system as a whole that unauthorised development is kept under control.
- 1.2 This document sets out Lewes District Council's policy for the enforcement of planning control within the District. Effective operation of this policy will support the Council's priorities in the Council Plan and Departmental Service Plan to protect and enhance the quality of the local environment.
- 1.3 The South Downs National Park (SDNP) was designated in April 2010 and affects about half of Lewes District Council's area. As from 1 April 2011 the South Downs National Park Authority (SDNPA) will assume the responsibility of Planning Authority for the designated area. The SDNPA has decided that a wide range of planning services, including enforcement, should be provided by Lewes District Council for that part of the district within the National Park. There will be an agreed delegation and liaison procedure with the SDNPA dependant upon the significance of the case.

2. Our Aims

- 2.1 The Council will seek to control unauthorised development, works and operations and ensure effective compliance with planning permissions, Listed Buildings and other relevant consents and regulations through an approach to enforcement that is fair, proportionate, targeted, timely, consistent and clear, and in the interests of protecting the environment, local amenity and the community.
- 2.2 It is the developer's responsibility to ensure that the appropriate consent is applied for and that any development takes place in accordance with the decision, including any conditions or legal agreements. However, on occasions, unauthorised development does take place.
- 2.3 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches by statutory and other means. Breaches of planning control are viewed very seriously and it is our policy to exercise these powers appropriately and rigorously so that development takes place in accordance with the

appropriate legislation, or with the conditions and limitations imposed on any planning permission.

- 2.4 The integrity of the development control process depends on the Council's readiness to take effective enforcement action when it is essential. Public acceptance of the development control process is quickly undermined if unauthorised development, which is unacceptable on planning merits, is allowed to proceed without any apparent attempt by the Council to intervene before serious harm to amenity results from it.
- 2.5 The Council will therefore act positively and swiftly in tackling breaches of planning control in accordance with the considerations and process described in Section 6 of this Enforcement Policy Statement.
- 2.6 The purpose of this policy document is to ensure that Councillors and officers, external agencies and the general public are aware of the Council's proactive approach to its planning enforcement responsibilities.
- 2.7 Lewes District Council is always trying to improve the service we provide. Please contact us if you would like to make comments or suggestions about how we can improve our planning enforcement service.

3. Openness

- 3.1 The planning enforcement service will:
 - Review performance regularly and publish results. The success of policies will be monitored and a report presented to the Planning Applications Committee on a quarterly basis to show the results of enforcement investigations, actions and outcomes. The enforcement policy will be subject to review at least every three years, but the policy will be reviewed on a more regular basis if circumstances dictate.
 - Provide information and advice to individuals and organisations so as to remain transparent at all times.
 - Keep all interested parties informed as to the progress with any investigation.
 - Where formal action is necessary, make it clear as to why the Local Planning Authority intends to take, or has taken, enforcement action. Conversely, where it is decided that it is not expedient to take enforcement action any complainants will be informed of the reasons for this decision.

- 3.2 Each individual matter will be considered on its merits. There will be a consistent approach to enforcement action in similar circumstances.
- 3.3 Where immediate action is considered necessary, an explanation of the reasons will be given at the time, and confirmed in writing together with a timescale for implementation.
- 3.4 Where formal action is taken by the Council issuing a statutory enforcement notice, all parties served with a copy of the notice will be informed of the appeal procedure and advised in writing of the consequences of non-compliance with such a notice.
- 3.5 The Council will consider prosecuting individuals or organisations who do not comply with any formal notice served on them and, in exceptional cases, will take direct action to remedy a breach of planning control, where this is necessary having regard to the degree of harm and public safety.

4. General Approach to Enforcement

- 4.1 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.
- 4.2 In considering enforcement, 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 compel 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.
- 4.3 The identity of persons reporting suspected breaches of planning control will be treated as confidential unless the complainant authorises otherwise, or the complainant is required to give evidence at a public hearing, inquiry or court case.
- 4.4 The right to privacy under the Human Rights Act 1998 enhances and strengthens the Councils policy on the protection of complainants. The more recent implementation of the Freedom of Information Act 2000 does not apply in these circumstances and the identity of complainants will not be revealed to third parties, unless any of the circumstances above apply.
- 4.5 However, where success of an appeal or prosecution is dependant on evidence being provided by the person who reported the breach of planning control, the Council will discuss with the complainant whether they are willing to relinquish their confidentiality and provide the required evidence before proceeding with formal action or a prosecution.
- 4.6 When the development has become 'established' the Council should make known the provisions for the application of a Certificate of Lawfulness. (Section 192 of the Town & Country Planning Act 1990 as amended by Section 10 of the Planning & Compensation Act 1991).

5. Type and Incidence of Enforcement Problems

Responding to Complaints (Reactive)

- 5.1 The Council typically receives between 400 and 500 planning enforcement complaints annually. Many of these are dealt with within a relevantly short period of time, as there is either no breach of planning control taking place, or the enquiry relates to minor technical breaches of planning control that can be resolved without formal action. Others lead to formal enforcement action being taken to resolve the breach.
- 5.2 A variety of breaches occur throughout the District from unauthorised development, non-compliance with planning conditions and unauthorised changes of use, to unlawful advertisements, works to listed building and to protected trees.

Taking the Initiative (Proactive)

- 5.3 There are a number of areas where the Council instigates positive action to remedy breaches of planning control, or to remedy harm to the environment. These include:
- 5.4 Development carried out without the necessary planning permission, listed building consent, conservation area consent, scheduled ancient monument consent, or other consents necessary under planning legislation
- 5.5 Action under Section 215 of the Town & Country Planning Act 1990 to remedy the environment harm caused by unsightly land and or buildings
- 5.6 Monitoring of planning conditions to ensure that development is carried out in accordance with the approval issued
- 5.7 Action against unlawful advertisements situated around the district
- 5.8 Action against any unauthorised felling, or other works, to protected trees

6. Investigation of Suspected Breaches of Planning Control

Service Standards

- 6.1 Reports of suspected breaches of planning control will be acknowledged within three working days of receipt. When reports are received by telephone or in person, the acknowledgement will be provided verbally at the time. All other acknowledgements will be provided by letter or email. The acknowledgment will provide the name of the officer investigating the matter and details of how they can be contacted. To avoid the unnecessary use of resources, anonymous reports of suspected breaches of planning control will not normally be pursued unless evidence suggests that a breach of planning control has occurred or it is obvious that the breach is causing serious harm to the environment or the amenities of residents.

Recording Alleged Breaches of Planning Control

- 6.2 Where a breach of planning control is suspected, this should be reported in writing, email or by telephone to Planning Services. We will:
 - ✓ Give all complaints a reference number and inform the complainant of name and contact details of the case officer.

- ✓ It is important for the Council to receive as much information as possible regarding the alleged breach to enable the investigating officer to investigate fully.
- ✓ Allocate each complaint a priority code according to the assessed level of harm.
- ✓ Investigate all complaints made in writing or by telephone. Anonymous calls and letters will not normally be dealt with, although this is at the discretion of the Enforcement Officer.
- ✓ Complaints lodged with the Council will be handled in confidence.
- ✓ Where possible, acknowledge all complaints within three working days.
- ✓ Aim to inform complainants of progress in writing or by telephone within 15 working days of the alleged breach being reported. Complainants will be updated as appropriate and informed of the proposed action, within 10 working days of a decision on the case being made.
- ✓ Aim to keep all parties informed of progress where complex investigations are becoming protracted.

Priorities

- 6.3 To ensure that our resources are used and targeted effectively, we will allocate each case a code according to the alleged or potential level of harm caused and the urgency of the case.

The following priority coding system will be used:

Level 1

- Demolition or alterations to a Listed Building
- Demolition in a Conservation Area that is causing immediate and irreparable harm
- Works to trees subject to a Tree Preservation Order or within a Conservation Area
- Development that is causing serious harm or danger to the public, such as affecting traffic safety
- Unauthorised works affecting protected sites such as Sites of Special Scientific Interest, National and Local Nature Reserves, sites of archaeological interest etc
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action is imminent

Level 2

- Development/uses that cause serious harm to the amenities of neighbours or to the character and appearance of an area or are otherwise contrary to significant policies in the Development Plan
- Advertisements causing serious harm to amenity or public safety
- Disrepair of a Listed Building
- Unsightly buildings or untidy land that is causing serious harm to the amenity of neighbours

Level 3

- Other advertisements
- Businesses being operated from home, except where they cause serious harm to the amenity of neighbours
- Minor works i.e. gates, walls, fences, domestic outbuildings and satellite dishes
- Untidy land and/or buildings

6.4 In most cases, a site visit will be required to establish whether or not a breach of planning control has occurred. The initial site visit will be conducted within the following timescales:

- Level 1 cases – within one working day
- Level 2 cases – within five working days
- Level 3 cases – within seven working days

6.5 On completion of the initial site visit, the findings will be assessed and a view taken as to how the investigation will proceed.

6.6 The code given to a case only reflects our initial assessment. Once investigations commence, it may be found that the harm caused is greater or less than originally anticipated. The initial coding is therefore undertaken without prejudice to any subsequent enforcement action.

6.7 All level 1 & 2 cases that fall within the South Downs National Park will involve close liaison with the SDNPA. Consultation with the SDNPA on level 3 cases will be discretionary.

Where no further action is proposed:

6.8 When it is proposed to take no further action, either because no breach has occurred, a minor or insignificant breach has occurred, or there is insufficient evidence to pursue the matter, the person reporting the suspected breach of control will be notified preferably in writing within 15 working days of the initial site visit that no further action will be taken and an explanation provided of the Council's reason (s).

Where further investigation is required:

- 6.9 Where it is not possible to determine from the initial site visit whether or not a breach of planning control has occurred, the person reporting the suspected breach of control will be notified either verbally or in writing within 15 working days of the initial site visit that further investigation is required. Further investigation may involve additional site visits, documentary research, seeking advice from other services or agencies, seeking information from the person reporting the suspected breach of control, or the owner or other person responsible for the land or building.
- 6.10 In some cases, the Council may request the person reporting the suspected breach of planning control to assist with the investigation by providing a written log detailing the dates, times, duration and nature of the suspected breach. If the person reporting the suspected breach of planning control is unwilling to assist, they will be advised that this may hinder the Council's investigation, due to the difficulty of gathering sufficient evidence.
- 6.11 Where it appears to the Council that a breach of planning control may have occurred, it will consider serving a Planning Contravention Notice to obtain information relating to the suspected breach.
- 6.12 In cases where further investigation is required, the person reporting the suspected breach of planning control will be notified either verbally or in writing within 15 working days of the Council determining whether or not a breach of planning control has occurred, and if so, what course of action the Council intends to take.

Where a breach of planning control is established:

- 6.13 Where a breach of control is established, the person reporting the suspected breach will be notified which course of action the Council intends to take to secure regularisation of the breach of planning control. In most instances this will involve one of the three following options:
- Attempt to negotiate a solution
 - Invite the submission of retrospective application for planning permission to allow the Council to consider whether planning permission should be granted and the development regularised.
 - Consider formal enforcement action

7. Consideration of Enforcement Action

- 7.1 Where it is established that a breach of planning control has occurred, the Council will determine whether or not to take formal enforcement action and the nature of such action. In determining this, the Council will have regard to the level of harm resulting from the breach. In assessing the level of harm, the Council will have regard to current planning policies, and other material considerations.

Negotiating a solution:

- 7.2 Where a breach of planning control has occurred, the Council will normally try to negotiate a solution to regularise the breach of planning control without recourse to formal enforcement action. Such negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of the unauthorised operational development. However, these negotiations will not be allowed to hamper or delay the consideration of enforcement action where the breach of control causes serious harm to amenity. Where the Council is unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, the Council will proceed with formal enforcement action where it is expedient to do so.

Retrospective application for planning permission:

- 7.3 Where a breach of planning control has occurred, but no harm is being caused, or any harm caused might be removed or alleviated by the imposition of conditions on a planning permission, the person(s) responsible will be invited to submit a retrospective planning application within a specified timescale. In such circumstances it will be made clear that the invitation to submit a retrospective application is made without prejudice to any final decision the Council may take in the matter. If such an application is not submitted, the Council will consider whether or not it is expedient to take formal enforcement action.

8. Powers available to the Local Planning Authority

- 8.1 Where it has been established that a breach of planning control has occurred, the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers is discretionary, but they will always be used when it is considered expedient to do so.
- 8.2 The decision to take enforcement action or commence prosecution will be taken in accordance with the delegation arrangement detailed

in the Council's Constitution and will be fully documented on the case file, prior to any decision being made by an authorised officer. All such decisions to take formal action shall only be taken by the Council after authority has been given by the Council's Cabinet or Planning Applications Committee, or the Director of Planning & Environmental Services or other Senior Officers of Planning Services in accordance with the Councils Scheme of Delegation.

Requisition for Information Notices:

- 8.3 Under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976, the Council can require the receipt of a requisition for information notice to supply in writing details of their interest in the property. A reply must be supplied within 14 days. A person who fails to comply with the requirements of a notice, or makes a false statement in a reply, is guilty of an offence punishable by a fine of up to £5,000.
- 8.4 Under Section 330 of the Town & Country Planning Act 1990, the Council can require the recipient to state in writing the nature of their interest in a property and to state in writing the name and address of any other person known to them as having an interest in the property, as a freeholder, mortgagee, lessee or otherwise. Failure to return the form, or to provide a misstatement, is an offence punishable of up to £1,000.

Planning Contravention Notice (PCN):

- 8.5 A PCN can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine being £1,000. To knowingly provide false information on a PCN can result in a fine of up to £5,000.

Police & Criminal Evidence (PACE) Act 1984:

- 8.6 A PACE interview may or may not be appropriate. This depends on the evidence already gathered by the Enforcement Officer. Occasionally in serious cases where an offence may have been committed, it may be necessary to conduct an interview under caution, as required by the Police and Criminal Evidence Act 1984.

Breach of Condition Notice (BCN):

- 8.7 In cases of a breach of planning conditions it may be appropriate to serve a Breach of Condition Notice (BCN). Consideration should be

given to the type of condition and the steps required remedying the breach. Once issued and served the Notice does not take effect for 28 days although there is no appeal against a BCN. The failure to comply with the notice is dealt with by a prosecution in the Magistrates Court. The maximum fine is £1,000. This may not be a sufficient deterrent in the more serious cases. The BCN is ideal for matters where the steps to be taken are relatively straightforward and can be readily achieved.

- 8.8 Where the breach of planning control relates to non-compliance with a condition on a planning permission, or a limitation on a deemed permission has been exceeded, the Council will consider the expediency of serving a BCN.
- 8.9 The Breach of Condition Notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time period for compliance.

Enforcement Notice:

- 8.10 The Council will consider the service of an Enforcement Notice where unauthorised operations or development, or changes of use, have taken place and it is considered expedient to do so. Where a breach of planning control exists and any harm caused would be removed or alleviated by the impositions of conditions on a planning permission, but the invitation to submit a retrospective planning application or rectify the breach voluntarily has been declined, the Council will consider the expediency of serving an Enforcement Notice.
- 8.11 If the breach of planning control relates to a Listed Building, or unauthorised demolition within a Conservation Area, the Council will consider the expediency of serving a Listed Building Enforcement Notice or a Conservation Area Enforcement Notice and where appropriate, commencing a prosecution in the courts.
- 8.12 The Enforcement Notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time period for compliance.
- 8.13 Service of an Enforcement Notice will be made on any person with an interest on the land. The Notice will come into effect after a minimum period of 28 days. There is a mechanism for an appeal against the Notice. Once the Planning Inspectorate holds an appeal valid, the Enforcement Notice has no effect until the appeal has been heard and a decision published.

Stop Notice:

- 8.14 Where a breach of planning control is causing very serious harm to public amenity and the environment, and this harm could not be

removed or alleviated by the imposition of conditions on a planning permission, the Council will consider the expediency of serving a Stop Notice (at the same time or after the service of an Enforcement Notice) in cases where urgent action is necessary to bring about a cessation of a relevant activity before the expiry period for compliance with the related Enforcement Notice.

- 8.15 The Stop Notice will refer to the Enforcement Notice to which it relates specify the activity or activities that are required to cease and the date that it takes effect. Failure to comply with the notice is an offence. The maximum fine on summary conviction is £20,000.

Temporary Stop Notice:

- 8.16 A Temporary Stop Notice can also be served, however, this can be served without the service of an Enforcement Notice and becomes effective immediately and will stay in effect for 28 days.

Section 215 Notice:

- 8.17 In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider serving a Notice under Section 215 of the Town & Country Planning Act 1990.
- 8.18 The Notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time period within which the steps must be taken and the date that it take effect. The Council will firstly write to the owner of the land or building requesting improvements to be made before considering the service of a formal notice.

Prosecution:

- 8.19 The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following Notices where the date for compliance has passed and the requirements have not been complied with.
- Enforcement Notice
 - Listed Building Enforcement Notice
 - Conservation Area Enforcement Notice
 - Breach of Condition Notice
 - Section 215 Notice
 - Stop Notice
 - Temporary Stop Notice
- 8.20 The Council will also consider commencing a prosecution in the Courts where:

- Unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area
- An advertisement is being displayed without the necessary consent and the Council's request to remove it within a specified timescale has been declined or ignored
- Unauthorised works have been carried out to a Listed Building
- Unauthorised demolition has been carried out in a Conservation Area
- The recipient of a Planning Contravention Notice has failed to provide a response within the prescribed time period or has supplied false or misleading information

8.21 Before commencing any legal proceedings the Council must be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

Injunction:

8.22 Where an Enforcement Notice has not been complied with and a prosecution is not considered expedient or previous prosecution(s) have failed to remedy the breach of planning control, the Council will consider applying to the Court for an injunction. Such action will only normally be considered if the breach is particularly serious and is causing, or likely to cause, exceptional harm.

Direct Action:

8.23 Where any steps required by an Enforcement Notice or S215 Notice have not been taken within the compliance period (other than the discontinuance of the use of land), the Council will consider whether it is expedient to exercise its power under Section 178 of the Town & Country Planning Act 1990 (as amended) to:-

- a) Enter the land and take the steps to remedy the harm: and
- b) Recover from the person who is then the owner of the land any expenses reasonably incurred by them doing so.
- c) A charge against the land will be imposed where direct works are undertaken and the expenses are not recovered.

Monitoring of Conditions:

8.24 The Council actively monitors conditions to ensure that development is carried out in accordance with a planning permission. Failure to comply with a planning condition will be viewed seriously and appropriate action taken in accordance with the powers outlined above.

Trees & Landscape:

- 8.25 When alleged cases of unauthorised works on a tree come to the attention of the Council, an initial investigation will be carried out as soon as possible (normally within 24 Hours). The initial investigation will consist of a check to establish whether the tree is protected, whether any consent has been granted, and, in most cases, a site visit. In cases where it appears that protected trees are being removed and in other instances where there may be a significant impact on public amenity, a site visit will be undertaken as a matter of urgency. The legislation confers a right to enter land to carry out such investigations.

High Hedges:

- 8.26 From the 1 June 2005 Local Authorities have the power, under Part 8 of the Anti Social Behaviour Act 2003, to adjudicate on disputes over high hedges. In cases where the Council finds in favour of the complainant the Council will ensure, through enforcement action if necessary, that any specified schedule of remedial works is carried out.

9. How to Contact the Enforcement Team:

- 9.1 For further information about the Planning Enforcement Team or to report an alleged breach of planning control please call the either the Senior Enforcement Officer on 01273 484482 or the Planning Enforcement Officer on 01273 484444. Alternatively email planning@lewes.gov.uk
- 9.2 For further information about trees or high hedges please call the Tree & Landscape Officer on 01273 484438. Alternatively email planning@lewes.gov.uk

10. Making Complaints:

- 10.1 If you have any complaints about the way in which an enforcement complaint has been handled which cannot be resolved with the case officer, these should be taken up in the first instance with the Assistant Director of Planning Services. The Council's complaints procedures are detailed on our website under 'Making a Complaint'.

11. Appeals

- 11.1 If you are served with an Enforcement Notice, there is a right of appeal. Details of the appeal procedures are explained in the enforcement notice.