

Introduction

This guide sets out Eastbourne Borough Council's procedure for the enforcement of planning control within the Borough.

The planning system operates to regulate the development and use of land in the public interest. The effective and proper enforcement of planning controls is essential to protect the local environment and interests of residents, visitors and businesses of the Borough from the harmful effects of unauthorised works.

The need for effective enforcement is very important as it helps to-

- Tackle breaches in planning control which would otherwise have an unacceptable impact on the amenity of the area
- Maintain the integrity of the decision-making process
- Ensure that the public acceptance of the decision making process is maintained

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 investigated very seriously and it is our policy to exercise these powers appropriately, proportionately and rigorously so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission.

Our General Approach to Enforcement

The decision to take enforcement action is discretionary and the Council will always act in an impartial manner.

In considering whether to pursue action, the Council takes into account:

- whether the breach of planning control unacceptably harms public amenity, or the authorised use of land and buildings merits protection in the public interest
- if any enforcement action is in proportion with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to cause no harm to amenity
- if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds
- statutory time limits for taking enforcement action
- relevant planning policies and other material considerations

Types of Planning Enforcement Problems

A variety of breaches can occur throughout the Borough. These could be any of the following:

- Unauthorised development
- Non-compliance with planning conditions
- Unauthorised changes of use
- Unauthorised advertisements
- Works to listed buildings
- Works to protected trees
- Untidy/unmaintained land/buildings/plots

Matters that are not breaches of planning control

If you are looking to contact us about any of the following issues, these are deemed not to be breaches of planning control and will not be investigated:

- Internal works to a non-listed building
- Works undertaken to a non-listed building over 4 years ago
- Obstruction of a highway or public right of way
- Parking of commercial vehicles on the highway or on grass verges
- Parking caravans on residential driveways or within the boundary of domestic properties as long as they are incidental to the enjoyment of the property
- Running a business from home where the residential use remains the primary use and there is no adverse impact on the residence
- Land ownership/boundary disputes or trespass issues
- Covenants imposed on property Deeds
- Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 as amended and or substituted
- Advertisements that are either exempt from deemed and express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- Dangerous structures or other health and safety concerns
- High hedge disputes – these are dealt with under Part 8 of the Anti-Social Behaviour Act 2003

What you can expect if you report a suspected breach of planning control

We will

- Investigate all suspected breaches of planning control reported to the council either by post, online, e-mail, telephone or in person
- Acknowledge your complaint, providing the name and contact details of the case worker investigating the matter
- Actively investigate your complaint to a satisfactory conclusion

- Keep you informed of the progress of the case and of any decision made with regard to whether to take action and likely timescales involved
- Aim to close most cases within 3 months of the initial report, though some cases may take longer
- We will notify you of the reason for not taking formal action and close the case, in cases where there may be a technical breach of planning control but the harm caused is insufficient to warrant formal action
- Negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice.

The identity of persons reporting suspected breaches of planning control will be treated as confidential unless the complainant is required to give evidence at a public hearing, inquiry or court case.

We do not investigate continuous, vexatious or malicious reports that do not have any substantive planning reasons.

How we will prioritise your report

All reports of suspected breaches of planning control will be investigated and progressed with a priority rating of 'A', 'B' or 'C' depending on the nature of the breach and the degree of harm caused. Individual cases maybe re-prioritised as the investigation progresses.

Category A

- Demolition or alterations to a Listed Building
- Demolition in a Conservation Area that is causing immediate and irreparable harm
- Works to trees with a Tree Preservation Order or within a Conservation Area
- Development that is causing serious danger to public safety

Category B

- Unsightly buildings or untidy land that is causing serious harm to the amenity of neighbours
- Development that causes serious harm to the amenities of neighbours or are contrary to significant policies in the Development Plan
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action will expire within the next six months
- Disrepair of a Listed Building

Category C

- Advertisements causing serious harm to amenity
- Businesses being operated from home
- Minor works i.e. gates, walls, fences, domestic outbuildings and satellite dishes
- Untidy land, except where it causes serious harm to the amenity of neighbours

Timescales

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 normally be undertaken by officers within the Neighbourhood First Team within the following timescales:

- Category A – within one working day
- Category B – within ten working days
- Category C – within fifteen working days

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

Possible outcomes of an investigation

Detailed below are the most common outcomes of an investigation:

- No further action is proposed 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 either verbally or in writing that no further action will be taken and an explanation provided of the Council's reason(s)
- Further investigation is required. The person reporting the suspected breach of control will be updated throughout the investigation as and when necessary
- A breach of planning 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. In most instances this will involve one of the three following options:
 - a) Attempt to negotiate a solution to any confirmed breach. By entering into negotiations a solution may be found which could involve the termination of any unauthorized change of use or building operations and/or the removal of any unauthorized building works or items constituting a material change of use
 - b) Invite the submission of retrospective application for planning permission where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national policies, or where a development may be made acceptable by way of the imposition of conditions
 - c) Consider formal enforcement action. The council has a range of formal powers under the Town and Country Planning act that it can use to remedy breaches of planning control

Formal Action

Where necessary the Council will pursue formal enforcement action, which could include the service of one or more of the notices below. Failure to comply with a notice could result in prosecution proceedings, a financial penalty and/or direct action being undertaken by the Council.

Breach of Condition Notice (BCN): (S187A of the T&CP Act 1990).

Where the breach of planning control relates to non-compliance with a condition on a planning permission or a limitation on a deemed planning permission has been exceeded, the Council will consider the suitability of serving a BCN.

Enforcement Notice: (S172 of the T&CP Act 1990)

The Council will consider the service of an Enforcement Notice where unauthorised operational development or change of use has taken place and it is considered suitable to do so.

Listed Building Enforcement Notice and Conservation Area Enforcement Notice: (S38-46 of the Planning (Listed Buildings and Conservation Areas) Act 1990)

If the breach of planning control relates to a Listed Building or the demolition of an unlisted building in a Conservation Area the Council will consider the suitability of serving a Listed Building Enforcement Notice.

Stop Notice: (S183 of the T&CP Act 1990)

Where a breach of planning control is causing very serious harm to public amenity and the environment, the Council will consider the suitability of serving a Stop Notice at the same time as the service of an Enforcement Notice, which will require unauthorised works or a use to cease immediately.

Temporary Stop Notice (S171E of the T&CP Act 1990)

A temporary Stop Notice can be served without the service of an Enforcement Notice to require unauthorised works or a use causing serious harm to public amenity and the environment to cease immediately.

Section 215 Notice: (S215 of the T&CP Act 1990)

In cases where the amenity of an area is adversely affected by the condition of land or buildings, the Council will consider serving a Section 215 Notice to require the tidying of the land or improvements to the appearance of a building.

Prosecution:

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 above Notices where the date for compliance has passed and the requirements have not been complied with.

The Council will also consider prosecuting in the Courts where

- a) Unauthorised works have been carried out to trees subject to a Tree Preservation Order, or in a designated Conservation Area
- b) 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
- c) Unauthorised works have been carried out to a Listed Building
- d) Unauthorised demolition has been carried out in a Conservation Area
- e) 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

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

What happens if an allegation is made against you

If a report is received in relation to your property or land then the first thing that will happen is the site in question will be visited by one of our Neighbourhood First Team.

This first visit allows us to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary, take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification. Contact details will be taken so that contact can be made after the site visit.

If no breach of planning control is identified you will be notified that no further action will be taken.

If a breach of planning control is identified you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach of planning control.

If compliance is not secured through amicable negotiations or by the submission of a retrospective planning application formal action may be instigated.

In investigating the alleged breach it may be appropriate to issue Requisition for Information Notices in order to gain more information in relation to the ownership of a property or the nature of a use/details of unauthorised development this could include one of the following;

- a) A Notice under Section 330 of the Town and Country Planning Act 1990 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, leasee or otherwise.
- b) A Planning Contravention Notice (PCN) under Section 171C of the Town and Country Planning Act 1990 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 and where a suspected breach of planning is believed to exist to gain further information in relation to the operation/development.

Once the breach of planning control has been rectified you will be notified that no further action will be taken and the case has been closed.