

Planning Enforcement Policy for Southampton City Council

(October 2014)

1.0 Introduction

1.1 This policy statement on Southampton City Council's ("the Council") Planning Enforcement Service describes what the service does and how we deliver the service to the community. It is not a legal document and does not seek to provide legal advice or to comment on individual cases, which will be judged on their individual circumstances.

1.2 The policy sets out:-

- The purpose of planning enforcement (section 2)
- What is, and is not, a breach of planning control (section 3)
- How the Council decides whether to take enforcement action and possible outcomes (section 4)
- How the planning enforcement team will deliver the service (section 5)
- Clarification on how the Council prioritises complaints and timescales (section 6)
- What happens if someone complains about you (section 7)
- Customer care (section 8)

1.3 It is important to remember that planning consent may not be the only consent required from the City Council. For example, Building Regulations approval, alcohol licence etc. may be required in addition to planning consent. This policy only covers matters relating to planning control. Property owners should satisfy themselves that all other necessary consents needed are in place to carry out the work or activity they are contemplating. Securing such consents can be a time consuming process and persons are encouraged to engage with the relevant regulatory bodies at the earliest opportunity to avoid frustrating delays at a later date.

1.4 Enforcement decisions and actions are taken in accordance with Government guidelines and Council Policy. The Department for Business Innovation & Skills published the Regulators Code in April 2014 and it sets out some principles for regulators when preparing enforcement policies:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views
3. Regulators should base their regulatory activities on risk
4. Regulators should share information about compliance and risk
5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply
6. Regulators should ensure that their approach to their regulatory activities is transparent

This policy endorses all of these principles.

1.5 The ability to take enforcement action is currently delegated to the Planning & Development Manager under section 3.6.2 of the Officer Scheme of Delegation under the Council Constitution.

1.6 The Council has powers of enforcement in relation to other services, such as highways, environmental health, listed buildings, conservation and trees. These services are co-ordinated so that investigations are carried out under the appropriate legislation, but the Council seeks to ensure that any action taken is co-ordinated so that only one point of contact is required, wherever possible.

1.7 Co-operation with other external bodies (for example the Fire, Police Services and the Environment Agency) are an integral part of enforcement and these working relationships will continue to be developed in the future in order to make the most effective use of available resources and to ensure one point of contact, if possible.

2.0 The purpose of planning enforcement

2.1 The integrity of the planning service depends on the Council taking timely and effective 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 in explaining to the public why the development is considered to be appropriate and to encourage a planning application to be submitted so it can be fully assessed, public comments considered, and appropriate conditions attached, if necessary.

2.2 The Council realises that whether something requires planning permission is not always clear, particularly to members of the public, and so a free duty planning officer service is available for advice, via the Gateway service. If a definitive answer is required, then an applicant can submit a certificate of proposed lawful development to gain a legal decision from the Council. The Council also offers a paid-for pre-application advice service to improve the quality of an application for planning permission.

3.0 What is, and is not, a breach of planning control?

3.1 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:

- Works to a listed building
- Works to trees protected by a tree preservation order
- Stationing of a caravan or mobile home for use as a primary place of residence
- Breach of conditions attached to planning consents
- If someone does not build in accordance with the approved plans of their planning permission
- Failure to properly maintain land so that it affects the amenity of the area
- Unauthorised engineering works – even raising ground levels in the garden can require planning permission
- Failure to comply with terms within a Town and Country Planning Act 1990 Section 106 agreement

- The unauthorised display of advertisements

What is not a breach of planning control:

3.2 Many issues can require consent to be given by a landowner or a third party but do not require planning permission. Unfortunately, the Council is not able to get involved in issues that are between two private parties, as these are considered to be civil matters. Other matters may be of genuine concern, 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 (Building Regulations may be required)
- Competition from another business
- 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 of land of overgrowth, bushes and trees (provided they are not subject to a Tree Preservation Order or owned by the Council)
- Operating a business from home where the residential use remains the primary use
- 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
- 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 (check the original planning consent via a Gateway file request)
- Where development is 'permitted development' under the Town and Country Planning (General Permitted Development) Order 1995 (as amended)

4.0 How the Council decides whether to take enforcement action and possible outcomes

4.1 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 refuses to talk to the Council, or to resolve an unacceptable matter, will the Council take enforcement action.

4.2 Enforcement action is, however, discretionary. The Council has discretion as to whether to take enforcement action or not, and it is not a mandatory duty so to do. **Because something is a breach of planning control this is not, in itself, 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.

4.3 A breach of planning control is not normally a criminal offence in the first instance. Even if the Council is aware that someone is going to carry out works that require planning permission, it does not follow that it will be stopped. There would have to be considerable harm for the Council to seek an injunction 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 as laid down. The Council reserves the right to take into account what benefits someone has created through carrying out unauthorised development. Any breach of the requirements of a formal Notice 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.

4.4 The Council starts from a position of trying to resolve all breaches of the planning system through dialogue and normally formal action is a last resort. The Council is usually expected to give those responsible the chance to put matters right before serving a formal notice. However, when the breach of planning control is causing unacceptable serious harm or nuisance to public amenity, formal action will not be delayed by protracted negotiation or attempts to delay the process. Enforcement action will therefore always be commensurate with the seriousness of the breach of planning control.

4.5 It follows that any enquiry can result in many different outcomes, from the Council concluding that there is no breach of planning control, through to serving an injunction to stop a breach with immediate effect. Some possible options are summarised below, but if you make an enquiry, whatever the outcome, you will be fully advised about what the Council is doing and why.

- No breach established - after a site visit there is found to be no breach of planning control: for example the development is permitted development or is not within the control of planning legislation. No further action will be taken and all parties will be advised.
- There is a breach but it is not considered to be expedient to pursue the matter. If a 'technical' breach has taken place, for example a new garden fence has been erected that is only marginally over permitted development limits, then it is not normally worthwhile taking lengthy and expensive enforcement action over something that causes minimal public harm. The owner would normally be advised to submit a planning application to regularise the development but if they do not do so the case would be closed and the complainant advised. It is usually in the best interests of the property owner to regularise the problem, or they may run into problems when the property is sold.
- There is a breach and part of it is considered to be harmful. The Council may "under enforce" by serving a notice to secure a remedy to the most harmful part of the development, whilst leaving the lesser parts of the development untouched. For example, most garden fences can be 2m in height and it may be erected to 2.1m for the length and then one panel perhaps goes to 3m next to a neighbour's window. The Council may seek the removal of the 3m panel, but not to reduce the rest of the fence by 0.1m.
- There is a breach but it is 'immune' from action. It is possible that there has been a breach of planning control for some time but the Council has not been aware of it. If the building was substantially completed more than 4 years before, or a use commenced 10 years before, then the development can be considered to be immune from enforcement action. There are many caveats to these rules (for example, the period for residential use of a building is 4 years) and so more information will be required. The landowner would normally be advised to apply for a Certificate of Lawful Development to prove its immunity.
- If negotiation does not secure compliance with what the Council considers to be an acceptable solution, then it has the power to take formal action against

any breach. The nature of the breach will dictate which route the Council chooses to pursue. Depending upon what action is taken, the person responsible may get a criminal record. The Council will make in clear in correspondence (to the property owner or the person in control of the land) what options are open to them to remedy the breach of planning control, and the timescales within which to carry those out.

4.6 The Council is very keen to promote businesses in the city to ensure a healthy economy, which is seen as a central part of delivering sustainable communities. With this in mind, the Government has considerable concern that small businesses in particular should not be unduly jeopardised by hasty enforcement action. Therefore, the Council will always seek to ensure there is a good dialogue with a business that has carried out development without planning permission and, if a solution cannot be found, then consideration will be given to ensure any action that is taken is carried out to minimise the impact on the business if reasonable and possible. This may result in longer compliance periods being given to regularise development. However, this desire to work with businesses will not be at the expense of tolerating any unacceptable impact on neighbours. The Council will have to weigh up and balance the impact on the business and the harm caused to others.

Types of formal action

4.7 The Council has a range of formal powers under the Town and Country Planning Act, 1990 (as amended) that it can use to remedy breaches of planning control.

- 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
- Breach of Condition Notice – planning permission is usually granted with conditions and this Notice is served to require compliance with conditions. There is no right of appeal against this type of notice so it can be very quick at resolving problems.
- Enforcement Notice – this is the most frequently used formal notice and sets out steps required to remedy the breach. This notice can also be served in conjunction with a Stop Notice (see below). There is a right of appeal to the Planning Inspectorate against an Enforcement Notice, which can lengthen the process, and the notice will not take effect until the appeal has been determined. The period set for compliance with the Notice commences from the date of the appeal decision letter.
- Stop Notice / Temporary Stop Notice – these notices require unauthorised activities to cease either at three days notice or immediately.
- Section 215 Notice – provides the power to secure the proper maintenance of land and buildings where there is an adverse effect on the amenity of the area.
- Injunction - this may be obtained either from the High Court or the County Court and is usually served to take effect at short notice and can be served in anticipation of a breach that will occur, but the harm must be considerable to warrant such a step. Failure to comply with a Court Order may lead to imprisonment

- Prosecution – should any of the above notices not be complied with by the required date for compliance, then usually the first step in seeking compliance is to formally write reminding them of their responsibility to comply with the Notice. Failure to act on such correspondence will normally lead to prosecution. Fines are within the bracket of ‘up to £20,000’, but this limit can be lifted and sometimes urgent action will be taken.
- Direct Action – in extreme circumstances the Council can enter the land and carry out the required works itself and then place a charge on the land for the re-payment of costs incurred. The council may then seek re-payment of those cost and, if not paid, convert the Charge on the property to a Charging Order and potentially an Order for Sale

5.0 How the planning enforcement team will deliver the service:

5.1 The Planning Enforcement Service will:

- Investigate all alleged breaches of planning control which are reported in writing, by e-mail or by telephone, and where sufficient information is given to identify the site, i.e. an exact address and details of what harm (if any) is being caused as a result of the breach. Complainants should leave their details so we can keep them informed and check information with them.
- The Council reserves the right not to investigate anonymous complaints, especially if they are considered to be vexatious or when workloads are high, as such complaints are more difficult to follow up.
- Complainants details are treated confidentially and the Council will always seek to protect the identity of those making complaints but, 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 or Ward Councillor, as they may be prepared to make the complaint on your behalf.
- We will promptly register every case and acknowledge receipt within 5 working days. You will be given the name of the Enforcement Officer dealing with your complaint so you know whom to contact. We will then carry out some initial checks (usually including a site visit) and ensure the complainant is updated by phone, email, visit, or formally in correspondence within a further 5 working days of our initial findings, and be given the opportunity to comment on our initial findings.
- When cases take a long time i.e. on-going monitoring is required, we will ensure complainants are updated at least every 3 weeks, unless other timescales are agreed on an individual case.
- 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).

6.0 Clarification on how the Council prioritises complaints and timescales

6.1 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 (and this is not an exhaustive list of examples) is shown below:

1. Serious threat to health and/or safety. Permanent serious damage to the environment or amenity

Serious traffic hazard; contamination / pollution being created;
Loss of protected tree; works affecting the preservation or character of a Listed Building; certain types of demolition in a Conservation Area.
These are usually visited within 24 hours of the case being reported.

2. Less immediate but harmful with potential to escalate

Building works just commenced without permission; severe nuisance being created (noise, smells, congestion etc where there is also a breach of planning control). Non compliance with certain planning conditions (particularly pre commencement conditions).
These are usually visited within 48 hours.

3. Other breaches likely to remain stable

Development that has not been completed in full accordance with the approved plans, particulars or undertakings; an untidy site; non-compliance with other planning conditions.
These are usually visited within 5 working days, unless workloads are high and then they can take longer.

4 Other issues

Satellite dishes; unauthorised display of adverts; new fences (adverts and fences may go up in priority if there are highway safety issue).
These are usually visited within 10 working days, unless workloads are high and then they can take longer.

7 What happens if someone complains about you?

7.1 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, and so we do not just believe an enquiry but will always seek to work with you to understand the facts of the case.

7.2 Initially a member within the Enforcement 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. Enforcement 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 Enforcement 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.

7.3 If the allegation refers to land or buildings in which you have no interest or involvement no action will be taken against you. If you are involved, the Planning Enforcement Service will advise you of the details of the breach and how it can be rectified. You may be served with a Planning Contravention Notice, which requires information concerning the alleged development. This notice is used to establish the facts of what has occurred and the details of those with an interest in the land, so that

the Council can determine whether a breach has taken place and who is responsible. It is a criminal offence not to complete and return such a notice within the specified timescale.

7.4 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.

7.5 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, where it can be shown that the breach is immune from enforcement action and therefore lawful.

7.6 If compliance is not secured through negotiations or the relevant retrospective application / Certificate of Lawfulness is refused, formal action may be instigated (see types of formal action above).

8 Customer care

8.1 The City Council is committed to offering a fair and transparent enforcement service to the community of Southampton.

8.2 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.

8.3 In exercising this policy, the City Council will offer all of its customers, whether they are complainants or those who may be in breach of relevant controls, adequate opportunities to fully state their case, to ensure that the correct decisions are taken to safeguard the built and natural environment of Southampton.

8.4 If persons are aggrieved with the Planning Enforcement Service offered to them, there is a complaints procedure, where complaints can be investigated. Stage One complaints will usually be investigated by the relevant Manager, and Stage Two complaints are handled by the Corporate complaints team. More details are available on the Council website.

8.5 If both stages of the procedure have been exhausted and a customer is still not satisfied, the matter can be investigated by the Local Government Ombudsman. They will make an independent investigation of whether maladministration has occurred by the City Council and if it has, recommend what remedy ought to take place. This may include the payment of compensation.