



Planning Enforcement Operational Protocol

November 2022

Development
Management

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Document Responsibility		
Name	Document title	Service
Development Team Manager	Planning Enforcement Operational Protocol	Development Management

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Document Review and Approvals		
Name	Action	Date
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1 WHAT IS PLANNING ENFORCEMENT?

Many people are familiar with the need to obtain planning permission for building projects – ranging from an extension to a home, to large housing estates and industrial facilities. The planning system regulates development. “Development” is defined in the Town and Country Planning Act 1990 as:

“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

Planning enforcement is the process of managing development that has been undertaken without the appropriate permissions. The Town and Country Planning Act gives discretion to the Local Planning Authority in the exercise of its powers in controlling unauthorised development. Fundamentally, planning enforcement manages breaches in planning control.

A breach in planning control includes carrying out development without the required planning permission, listed building consent, or advertisement consent. It includes failing to comply with a permission or any condition or limitation attached to it, and certain changes of use in land or buildings. A breach in planning control would also occur where development is undertaken as “permitted development” but does not comply with the regulations. The planning enforcement system also manages unauthorised works to protected trees.

Effective planning enforcement is important to maintain public confidence in and ensure the credibility of the planning system. However, planning enforcement is a discretionary service and should only be used to remedy harmful effects of unauthorised development. The key aims of the council’s planning enforcement service are:

- to positively manage and resolve unauthorised development
- to take formal planning enforcement action when it is proportionate to do so and in the public interest
- to help deliver the strategic aims of the Local Plan
- to be fair, consistent, effective, and value for money.

2 HOW DO I MAKE A PLANNING ENFORCEMENT COMPLAINT?

Complaint should be made through the 'Report it' section of our website:

<https://www.stroud.gov.uk/report-it/planning-breach/>

Where internet access is unavailable, complaints can be made by telephone during our business hours on **01453 766321** or in person at our offices.

Please be advised that during the triage process, we may contact you for evidence. If there is insufficient evidence, we may not progress your complaint.

3 WILL YOU TREAT MY COMPLAINT IN CONFIDENCE?

We will not tell anyone we are investigating the source of the complaint.

We will endeavour to keep your details confidential. However, our planning enforcement service is subject to the same regulation as other public services. During an active or recent investigation, we will resist the release of information made under the Freedom of Information Act or Environmental Information Regulations. We will also apply our privacy and data retention policies to your complaint; these are available on our website. Under the General Data Protection Regulations, we are obliged to provide information when requested unless an exemption can be applied. In the event that we release information, we shall redact all personal information which would identify you as the complainant.

In the event that we prosecute following formal planning enforcement action we may ask you to appear as a witness in court or use your evidence. In doing so, we would no longer be able to keep your information or identity private. However, such cases are very rare.

4 WHAT CAN I MAKE A PLANNING ENFORCEMENT COMPLAINT ABOUT?

You can make a complaint about any development or change of use that does not have a planning permission. You can also make a complaint about any development which you do not think complies with a planning permission, including any conditions attached.

You can also make a complaint about works to a listed building that either do not have a consent or which you do not think complies with a consent.

You can also make a complaint about advertisements that either do not have a consent or which you do not think complies with a consent.

Planning enforcement will also investigate complaints about works to protected trees or works to trees within a conservation area where they do not have a consent or which you do not think complies with a consent.

You can complain about untidy land.

5 ARE THERE ISSUES THAT PLANNING ENFORCEMENT WILL NOT INVESTIGATE?

Yes. Planning enforcement is limited. While the council has a number of planning enforcement powers, they can only be applied where the works undertaken fall within the statutory definition of “development”. Where a complaint does not involve development, Stroud District Council as the Local Planning Authority is unable to intervene. In such circumstances, other regulatory regimes may be a more appropriate mechanism to resolve the issue. These may be other Stroud District Council services, such as Environmental Health, or services provided by our partner organisations. Where a complaint relates to a civil matter, you should seek your own legal advice.

There is also a time limit in which formal planning enforcement action must be taken. When action has not been taken against a breach of planning control within 4 years (in relation to building operations or the change of use of an existing building to a house) or 10 years (in relation any other breach) then it will become immune from

formal planning enforcement action. If, following our triage of your complaint, the development has become immune, we will not investigate further.

Planning enforcement is not an arbitration service. Planning enforcement is only concerned with breaches of planning control. Planning enforcement will generally not investigate (unless there is clear evidence of irreversible harm):

- anonymous complaints
- complaints not related to or involving “development” or other matters covered by the Town and Country Planning Acts
- malicious, vindictive, vexatious, or tit-for-tat complaints
- unreasonable or persistent complaints.

6 WHAT DO WE DO WITH YOUR PLANNING ENFORCEMENT COMPLAINT?

Once we have received a complaint, we will **triage** it. During the triage process we will apply three questions: has there been development? is it permitted development? if there has been development, is it immune from enforcement action?

Where there has been no development, or the development that has been undertaken is permitted development, we will close the case and give you our reasons for doing so. If we need further information to triage your complaint, we will ask you for it. If we do not receive the further information requested within 10 business days, we will close the case in writing. Where another service or organisation is better placed to investigate your issue, we will signpost you to them. If necessary, an officer will visit the site to check permitted development complies with the regulations.

If, having triaged your complaint, we identify a **breach of planning control** we will allocate your complaint to a Planning Enforcement Officer for investigation. An officer will now, impartially, gather the facts and merits of the case. Having established these, we will make a judgement – based on material planning considerations – as to whether the breach is harmful. If it is harmful, we will need to consider whether it is expedient and in the public interest to take formal planning enforcement action. Where the complaint relates to irreversible harm, we will prioritise the investigation.

Where the breach results in **little or no harm**, and (should an application be made) planning permission would be given, we will:

- advise the developer to obtain planning permission
- inform you of the outcome of our investigations
- write a closure note
- close the case.

Where the breach results in **moderate or significant harm**, or it is not clear cut that planning permission would be given, we will ask the developer to remove the unauthorised development. If, after the given period, the unauthorised development remains and is still causing harm, we write an expediency report. The report shall set out our analysis of the case, apply planning policy, consider any other material planning issues, and make a recommendation. That recommendation will either be to close the case, as it is not expedient and in the public interest to pursue, or to take formal planning enforcement action.

When the recommendation is that we do not take action, we will inform you of the outcome of our investigations and close the case.

When the recommendation is that we take formal planning enforcement action, we will prepare and issue an appropriate notice, commence prosecution proceedings, or seek an injunction.

7 WHEN WILL I HEAR FROM YOU?

We aim to:

- acknowledge your complaint, in writing, within 3 business days
- after this, triage your complaint within 5 business days (subject to any request for additional information).

If we are closing your case following triage we aim to:

- inform you of the outcome within 1 business day of the decision.

When we have identified a breach in planning control, we aim to:

- allocate to an Enforcement Officer within 1 business day of triage
- where a site visit is necessary, visit the site within 10 business days of allocation, unless the complaint relates to irreversible harm – in which case visit the site within 2 business days
- update you on our initial findings within 7 business days of the site visit
- keep you informed of progress by updates no longer than 30 business days apart.

If we are closing your case as there is little or no harm, because the unauthorised development has been removed, the development has been regularised by a planning permission, or the expediency report recommended no action is taken we aim to:

- inform you of the outcome within 1 business day of the decision.

If we are taking formal planning enforcement action, we aim to:

- inform you of our intention to issue a notice within 5 business days of the decision
- issue a notice within 15 business days
- inform you that a notice has been issued within 5 business days of issuing the notice.

8 HOW LONG DOES AN ENFORCEMENT INVESTIGATION TAKE?

There is no defined timescale for a planning enforcement investigation and each investigation will vary. Every case is unique and the more complex the case, the longer it will take to investigate. As we embed this policy, we will review the length of time it takes to bring an investigation to resolution and update the policy as necessary. For the meantime we aim to resolve 80% of complaints within 6 months of receipt.

9 WHAT CAN I DO IF I AM DISSATISFIED WITH THE OUTCOME OF A PLANNING ENFORCEMENT INVESTIGATION?

Planning enforcement is not punitive. It does not punish people for undertaking unauthorised development but seeks to address harmful impacts of development. Carrying out unauthorised development is not in itself an offence (the exception being carrying out unauthorised works to a listed building, protected tree, or tree within a conservation area). An offence is only committed when a notice is not complied with.

Planning enforcement is discretionary. There is no obligation on the council to take formal planning enforcement action, however, the council recognises the impact that unauthorised development has on our communities.

If you are unhappy with the outcome of a planning enforcement investigation, you should use the council's complaints procedure. Details of our complaints procedure can be found on our website. Having gone through the council's complaints procedure, if you are still dissatisfied you may complain to the Local Government and Social Care Ombudsman.

10 GLOSSARY

We know planning is littered with jargon and sometimes can be difficult to navigate. Here is a list of the main terms we use in planning enforcement and their meaning:

“Business day(s)” means a day when our staff are working. These are Monday to Friday. The planning enforcement team do not work on the weekends or bank holidays and there is no out-of-hours service. Complaints received over the weekend will be handled at the start of the next working week.

“Business hours” are the hours during the day when you can contact a member of staff. These are between 08:45 and 17:00 Monday to Thursday and 08:45 and 16:30 on a Friday.

“Development” has the same meaning as in Section 55 of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/1990/8/section/55>)

“Expediency” is not formally defined in planning legislation, but the term ‘expedient’ is used in the section 172(1)(b) of the Town and Country Planning Act 1990; this section requires the legal test of ‘expedient’ to be applied to any formal planning enforcement action. While the Act uses it generally, we use it to mean an assessment of what is appropriate or suitable. In assessing the expediency, officers will look at a range of matters including planning policy, the likelihood of planning permission being granted (had an application been made), the level of harm and impact on nearby residents, the level of harm and impact on protected places, and whether the action required to resolve the issue is proportionate to the harm it causes.

“Formal planning enforcement action” may also refer to the serving of a notice, undertaking prosecution proceedings, or seeking an injunction. There are several different types of notice. A notice is used to force a developer to do – or stop doing – certain things. The type of notice used will depend on the breach. The council must carefully write and issue a notice. Most notices have a right of appeal or legal challenge.

“Harm” is used to refer to the adverse impacts of development. For example, this could be an impact on the living conditions of a nearby occupier through overlooking, or a visual harm through poor design. Harm can also refer to matters of principle, for example building in areas of flood risk. When officers identify harm, they will use their professional judgement to measure the level of harm. Some impacts result in significant harm (and are therefore more likely to require formal planning enforcement action) while other impacts will have moderate, little, or no harm.

“Local Plan” refers to the council’s strategic planning policies. The Local Plan defines certain areas, such as villages and towns, and makes allocations for growth. It also provides the framework for managing the impacts of new development. In particular, it includes policies for protected areas such as the AONB, flood plains, conservation areas, and listed buildings.

“Material planning consideration” refers to matters that planning and enforcement officers will consider when making a recommendation. Material planning considerations include design and appearance, car parking, privacy,

overlooking, and overshadowing. The planning system cannot take into account other considerations, such as property value, views, business competition, or civil legal or restrictive covenants.

“Permitted development” is development which does not require planning permission. There are strict rules and limitations on permitted development. Central government sets what is permitted development. Some forms of permitted development need a prior ‘approval’ or ‘notification’ to the council.

“Public interest” means looking at the wider picture and common values. The planning system works in the best interests of the community as a whole. The planning system does not protect private interests or favour one particular party against another (unless it is in the public interest to do so, an example being to advance social justice). By considering the public interest in planning enforcement we ensure that any actions are proportionate to the breach and an appropriate use of public money.

11 FURTHER INFORMATION

Visit our website: www.stroud.gov.uk

Email us: planning.enforcement@stroud.gov.uk

Write to us: Planning Enforcement

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Flowchart: Planning enforcement investigation process

