



Planning Enforcement Charter

Development Management
Planning and Economy Division

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1. Introduction

Government policy, set out in the National Planning Policy Framework (NPPF), makes clear that enforcement action is discretionary and that local planning authorities should act proportionately in responding to suspected breaches of planning control.

Mid Sussex District Council considers that the integrity of the planning process is dependent upon an effective enforcement system and, in the context of the NPPF, has prepared this Enforcement Charter as a brief guide to the Council's powers and procedures to investigate alleged cases of unauthorised development and take action where appropriate.

The Council have also published a 'Planning Enforcement Policies and Procedures' document that should be read in conjunction with this charter.

2. The Process Explained

The Planning process can be complex and not all building work needs permission because it may be 'permitted development'. This may be because of its size, height or location. Similarly, when there is a change in use of premises, not every change of use requires permission. The same can be said about advertisements because some advertisements are allowed, and some are not. In addition, it should be noted that the start of building works, or a change of use of premises without planning permission, is not, in itself, an offence.

However, development which is not being implemented in accordance with the relevant permissions, including on a listed building, and work to trees with a 'Tree Preservation Order' which have not got permission would require investigation.

In Mid Sussex, all reports of possible breaches of planning control are taken seriously and investigated as quickly as possible. The Council's Planning Investigation Officers investigate some 650 cases each year. The majority of these cases are resolved by negotiation, which is the most effective option. However, when a resolution cannot be achieved by negotiation, it is sometimes necessary to remedy a breach of planning control by taking formal enforcement action.

Local Authorities have a wide range of options open to them in deciding the most appropriate action to deal with a breach of planning control, and each case is taken on its merits. The Council's priorities are to seek to enhance and protect amenity, safeguard the built and rural environment and to uphold the local planning policy in the most appropriate way.

3. The Enforcement Toolkit

There are a range of tools that the Council can use to deal with breach of planning control, and these include:

Planning Contravention Notice [PCN]

A PCN can be issued by the Council to gather information in respect of an alleged breach of Planning Control. If the person on whom the PCN is served does not supply the information, or knowingly makes a false statement, then they can be prosecuted.

Requisition Notice

This Notice warns that formal enforcement action is being considered and requires that specific information be given. Again, if the person on whom the Notice is served does not reply then they can be prosecuted.

Breach of Condition Notice [BCN]

When there has been a contravention of a specific Condition relating to the grant of planning permission a Breach of Condition Notice can be served on the person responsible. The Notice gives them a minimum of 28 days to comply with that Notice. If they don't comply then they can be prosecuted. There is no right of appeal against the issue of this Notice.

Enforcement Notice

This Notice can be issued when there has been a breach of a Condition attached to a grant of planning permission or when there has been some unauthorised development. The Notice must be served on anyone who has an interest in that land. The Notice comes into effect in a minimum of 28 days from the date of issue and will specify a period from that date for compliance. There is a right of appeal against an Enforcement Notice and any appeal stops the Notice taking effect until that appeal has been resolved.

Stop Notice

When there has been a serious breach of Planning Control, consideration will be given to the issue of a Stop Notice to reinforce an Enforcement Notice. The Stop Notice is used when it is necessary to stop activities during the time when the Enforcement Notice is taking effect or whilst the Enforcement Notice is under appeal.

Temporary Stop Notice

Where the Local Planning Authority consider that there has been a breach of planning control and it is necessary that the activity stop immediately to safeguard the amenity of the area, the Council can issue a Temporary Stop Notice. This is different from the ordinary Stop Notice as it only lasts for 28 days, but it does not need an Enforcement Notice to reinforce it.

Injunction

In an emergency, the Council can seek an Injunction through the High Court or the County Court. In addition, if an offender continues to commit offences even after a number of prosecutions at the Magistrates Court or Crown Court, the Council may seek an Injunction which could result in the offender being sent to prison.

Section 215 Notice

Where a complaint of untidy land or buildings has been received, the Council can serve a Notice under Section 215 of the Town and Country Planning Act 1990 requiring that the land or building be tidied. If the work to be undertaken is not done then the offender can be prosecuted.

Prosecution

If a Stop Notice, Breach of Condition Notice, Enforcement Notice or Section 215 Notice is not complied with, the Council has the option of referring the matter to the Court for prosecution.

The Council can also prosecute those who put up 'unlawful' adverts without permission, or damage trees subject of a Tree Preservation Order, or damage Listed Buildings.

If a prosecution is successful, the person responsible for the breach may be fined and the Council will also seek reimbursement of its costs from the guilty party.

Direct action

The Council does have the power to make sure an Enforcement Notice is complied with by entering on to the land and carrying out what is required in the Notice. If the Council has to do that then they can recover the cost from the owner of the land or by registering a charge on the land. This particular power will only be used in exceptional circumstances

Power to enter land

Key officers of the Council have the right to enter on to land in order to carry out investigations into alleged breaches of planning control. All such officers carry identification and specific authority from the Council.

4. Guiding Principles

Any decision to take action [or not to take action] shall be proportionate, rational and subject to scrutiny. For example, it would be inappropriate to take formal action against a trivial or technical breach of Planning Control which causes no harm.

The delivery of an enforcement service is based upon the principles of fairness, honesty and openness. In carrying out the Council's enforcement function, procedures, investigations and decisions we will have regard to the Police and Criminal Evidence Act 1984; Criminal Procedure and Investigations Act 1996; Human Rights Act 1998; the Regulation of Investigatory Powers Act 2000 and the Freedom of Information Act 2000.

5. Major Development Sites with Construction Management Plans

At any one time there will be a number of major development sites across the District that have a planning condition requiring a Construction Management Plan, typically 50 dwellings or more (although there may be smaller developments), which will set out controls, such as hours of works, the control of mud on the road and dust/noise suppression measures, that the developer will need to adhere to during the construction period. The purpose of such plans is to provide clarity about how the development process will be managed and help mitigate the impacts of the construction process on the amenities of local residents.

Where somebody is concerned about how the construction process of a site is being managed by the developer, they should, in the first instance, undertake the following;

- Look at the approved Construction Management Plan (they can be found using the link below)

<https://www.midsussex.gov.uk/planning-building/enforcement-of-planning-control/major-development-sites-with-construction-management-plans/>

- Contact the relevant developer appointee (details will be contained within the Construction Management Plan) to advise them of your concerns

The Council expects the developer to respond positively in such instances to resolve any issue that may have been raised without the need for the complainant to formally approach the Council.

In the event that the issue(s) persists then you should contact on the email below. Please include details of your contact with the developer, including any response from them.

planninginvestigations@midsussex.gov.uk

6. Compliance with Pre-Commencement Conditions

In accordance with government advice, the Council works pro-actively with applicants to reduce the need for planning conditions to be imposed on any permission that is granted. A pre-commencement condition cannot be imposed without the written agreement of applicant, except in circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018. In light of this pre-commencement conditions are generally limited to the main matters that go to the heart of any planning permission namely;

- Ecology
- Contaminated land
- Drainage
- Levels
- Construction Management

Given that these conditions, and their requirements, will have been agreed with the applicant prior to the granting of a planning permission, the Council will not accept the commencement of site works to implement a planning permission where these conditions have not been fully discharged. Where the Council become aware of a confirmed breach of this nature, developers will be requested to voluntary stop, until such time as all the pre-commencement

conditions are discharged. Should they choose to continue, then the Council will serve a Temporary Stop Notice, which lasts for 28 days, without the need to write formally regarding their intentions and without further discussion with the developer.

It is important for all applicants to fully discharge their pre-commencement conditions before undertaking any site works to implement a planning permission.

Before any formal action is taken, the Council will satisfy itself that it is in the public interest and expedient to do so.

7. Response to Alleged breaches of Planning Control

Priority Rating	Seriousness of alleged breach	Response time	Notes
HIGH	<p>Activities causing direct and potentially irreversible harm on, or within, high priority areas, including:-</p> <ul style="list-style-type: none"> - Nationally designated sites including SSSIs*, - Scheduled Ancient Monuments, Habitats of statutorily protected species, AONB**, - Listed Buildings, - Conservation Areas, - Article 4 Directions, - Human health and safety, - Damage to protected trees, - Historic parkscapes. 	As soon as possible (but at least within 3 working days)	<p>Typically includes;</p> <ul style="list-style-type: none"> - Demolition or alterations to listed buildings; - Unauthorised works to protected trees; - Known contraveners
MEDIUM	<p>Potential to cause harm to the environment</p> <p>Indirect impact on 'HIGH' Priority sites Impacts on other areas including :-</p> <ul style="list-style-type: none"> - Local Landscape Areas' - Sites of Nature Conservation Importance - Sites within consultation safeguarding zones (e.g. airport safeguarding zones, radar safeguarding, methane gas safeguarding and flood plains) <p>Development likely to cause significant harm or loss of amenity to a third party</p> <p>Unauthorised development</p> <p>Breaches of the Advertisement Regulations</p>	Normally within five working days of receipt of complaint	<p>Includes direct or indirect impact or disturbance from:</p> <p>Traffic Noise Visual impact Damage to or removal of landscape features</p> <p>Development without the benefit of planning permission</p> <p>Commencement of development prior to compliance with specific Conditions</p> <p>Failure to comply with relevant Conditions</p>

	Breach of Conditions resulting in, or likely to result in, anti-social behaviour		
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Priority Rating	Seriousness of alleged breach	Response time	Notes
LOW	Minor Breaches of Conditions on authorised development Minor disturbance to the environment or local amenity	Within 10 days of initial complaint	Minor changes to approved design Late submission of relevant schemes required as a Condition of the grant of planning permission

* SSSI - Site of Special Scientific Interest

** AONB - Area of Outstanding Natural Beauty

8. Service to All Customers

- All customers will be treated fairly, courteously and without discrimination; A response to all correspondence will be made within ten working days; Telephone calls will be answered promptly.
- Telephone calls not capable of immediate resolution will, generally, receive a return call within one day.
- Investigations into specific cases will take place outside normal hours whenever necessary.
- All Council officers carry identification to verify that they are on Council enquiries.

9. The Service We Offer Those Telling us of a Possible Breach of Planning Control

- The source of all information will be kept confidential; Anonymous complaints will may not be investigated.
- Acknowledgment of any complaint will be made within 3 working days.
- Some complaints will be more urgent than other, but we will visit all sites within ten working days.
- You will be provided with a contact name and telephone number/e-mail address.
- You will be informed of how an investigation is progressing.

- If a planning application is made to rectify the situation, you will be notified when a Planning Application is made so that you can make relevant comment.
- You will be told within five working days when formal enforcement action has been taken.
- If an appeal against the issue of an Enforcement Notice has been made, we will tell you how you can make representations in the appeal process.
- If we prosecute someone, we will tell you the result of any Court hearing.
- If it is not appropriate to take action, we will tell you and give the reasons for not taking action.
- If the complaint is not a specific breach of planning control, your complaint will be forwarded to the relevant Service of the Council, or other relevant Agency, that may be able to resolve the problem. We will let you know which Service, or Agency, that is.

10. The Service We Offer Those Who May be Responsible for a Breach of Planning Control

- We will not make assumptions. We will rely on the evidence available.
- We will not enter on to your property without your permission, unless we believe that it is necessary to establish whether a breach of planning control has occurred.
- If we believe that you are responsible for a breach of planning control you will be told;
- We will tell you what must be done to remedy a breach of planning control.
- You will be given sufficient time to resolve the breach of planning control.
- You will be told the consequences of a failure to remedy that breach of planning control.
- Where a breach of planning control has occurred but is, broadly, within the Council's policy guidelines, you will be given an opportunity to submit a planning application to remedy that breach of planning control.
- If a breach is so serious that it is unlikely to gain approval, you will be told.
- If the only option to remedy a breach of planning control is by taking enforcement action, or by prosecution, you will receive a written warning and told the steps that must be taken to prevent formal action being taken by the Council.
- If an Enforcement Notice is issued, you will be told what must be done to resolve the breach of planning control and given a date by which the Notice shall be complied.

- You will have the right to an appeal against the issue of an Enforcement Notice and we will tell you how to make that appeal.
- You will have the opportunity to speak informally with a Planning Officer at any time during the investigation.

11. What you can do to Help

- Remember, not all building work, or change of use of premises, is a breach of planning control.
- Don't get angry.
- Issues relating to boundary disputes, damage to unlisted properties and trespass are not breaches of planning control or matters over which the Council have any jurisdiction.
- If you are having a problem with your neighbour – speak with them first to try and resolve the problem.
- If you can't resolve the problem then contact the Planning Investigation Officer, either by telephone or in writing. The Investigation Officer will tell you whether it is a breach of planning control and if he is able to help.
- When registering your complaint, be specific. Don't guess or speculate.
- We want to know specific times/dates/locations, what has occurred, and how the problem has affected you.
- If you don't want to get involved directly, tell your local Councillor and they will act on your behalf.

12. Customer Satisfaction and the Council's Formal Complaints Procedure

- We want you to be satisfied with the service we provide. We welcome your views and suggestions about the service you expect or have received.
- If you are dissatisfied with our response, please write directly to The Head of Economic Promotion and Planning at Mid Sussex District Council.
- Complaints will be acknowledged within 3 working days and a full response given within 10 working days. If any complaint deserves further investigation, you will be advised within that period.

- If you are dissatisfied with that response, you should write to the Customer Services Manager at Mid Sussex District Council who will arrange for the complaint to be dealt with by an independent Head of Service.

Updated May 2021