

Tonbridge and Malling Borough Council

Planning Enforcement Plan

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PART 1: BACKGROUND CONTEXT

A breach of planning control is defined in Section 171A of the Town and Country Planning Act 1990 as: the carrying out of development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted.

1. Introduction and Context:

- 1.1 This document sets out the approach the Council will take in relation to breaches of planning control in the Borough. Where breaches take place planning law lays down strict requirements which must be followed before the Council can enforce against them. These requirements seek to balance the concerns of local people and the rights of owners against the need to secure proper planning control in the borough.
- 1.2 The Council understands that breaches of planning control impact on peoples' lives. Consequently, the delivery of effective planning enforcement is an important issue.
- 1.3 With this in mind, this Plan sets out how the Council's planning enforcement service will seek to address breaches of planning control and prioritise its work. It describes the range of powers available to the Council, how the Council will decide whether or not to pursue enforcement action and the process of enforcement.
- 1.4 The Council's objectives in producing a Planning Enforcement Plan are consistent with the National Planning Policy Framework 2018 (NPPF). The Framework states:

"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so."

- 1.5 Planning enforcement covers the areas of planning permission, advertisement consent, listed building consent, and conservation area consent and tree preservation orders. National legislation allows some minor and small-scale works

to be undertaken without the need for any further consent or approval. These works are known as “permitted development”. Any works carried out as permitted development cannot be subject to enforcement action.

- 1.6 This Plan is in accordance with the objectives and approaches contained within the Council’s Corporate Enforcement Plan and should be read in conjunction with that document.
- 1.7 In dealing with any enforcement issues the Council must take into account the Council’s adopted frameworks and strategies as well as the guidance contained within the National Planning Policy Framework (NPPF) and the associated Planning Practice Guidance (PPG).

2. The Scope of Planning Enforcement:

- 2.1 There are two key principles which underpin the planning enforcement system:

*A breach of planning control is **not** a criminal offence, **except for** unauthorised works to listed buildings, illegal advertisements, demolition without consent and unauthorised works to trees with Tree Preservation Orders or within Conservation Areas.*

Other than in these cases, a criminal offence only arises when an Enforcement Notice or other formal notice has been served and has not been complied with upon the expiry of a specified time limit.

- 2.2 There is a common misconception that breaches of planning control are a criminal offence and should automatically attract formal enforcement action. In fact, enforcement action is a discretionary power. It is for each local planning authority to decide the amount of resource to put into enforcement, how to determine when action is necessary and the type of action that is appropriate. In making these decisions the authority should be mindful of maintaining public confidence in the planning system but it should be recognised that in the majority of cases, formal enforcement action should be seen as a last resort.

It is at the Council’s discretion whether action will be taken – any action proposed must be proportionate to the alleged breach.

- 2.3 In investigating alleged breaches of planning control formally reported to it, the Council will make a reasoned decision whether the alleged breach merits further action. However, formal enforcement action will only be taken where it is fair and reasonable to do so. In making this judgement, we will assess all of the circumstances of the case and make reference to our adopted planning policies. In

addition we must also consider central government enforcement policy and guidance which is currently set out in the National Planning Policy Framework (NPPF) and the Planning Practice Guidance (PPG) which specifically references when Authorities should take enforcement action.

2.4 Importantly, the NPPF sets out that ***'local planning authorities should act proportionately in responding to suspected breaches of planning control'***.

2.5 Formal enforcement action may only be taken in cases where

(i) there is a breach of planning control **and**;

(ii) it is expedient to take such action.

What does expedient mean?

In general terms, this means where an unauthorised development is causing serious harm, rather than it being a minor or technical breach in control.

The matter of "expediency" covers a range of matters upon which a judgement needs to be based, a key issue is whether the breach would unacceptably affect public amenity or use of land that should be protected in the public interest.

Any enforcement action should be proportionate to the breach, so for example, it would be inappropriate to take formal action against a trivial or technical breach.

There will be cases where there is a breach of planning legislation but the breach or harm is so minor that action cannot be justified i.e. it is not expedient or in the public interest to pursue the case.

2.6 Examples of harm resulting from a breach of planning control *could* concern:

- Harm to amenity;
- Highway safety issues for example danger from increased traffic flows;
- Noise nuisance or;
- Loss of daylight or privacy.

2.7 This is not an exhaustive list of 'harm' but indicates that there must be recognisable planning harm.

2.8 Such harm would **not** include, for example:

- Loss of value to a neighbouring property;

- Competition to another business;
- An extension to a building that is slightly larger than permitted development rights allow but does not create any comparative harm;
- Private rights to a view.

2.9 As such, the planning enforcement team will **not** investigate the following:

- Neighbour disputes or other civil issues including boundary disputes or enforcement of covenants. In these matters, complainants need to contact their solicitor or local Citizens Advice office.
- The use of or development on adopted highways, pavements or highway grass verges. These matters should be addressed to Kent County Council as the Highways Authority;
- Dangerous structures. These matters should be addressed to the Council's Building Control team;
- Fly-tipping, litter and fly posting. These should be addressed to the Council's Waste and Street Scene Service.

3. The general approach to Enforcement – guiding principles:

3.1 Government guidance on enforcement focuses not just on the impact of any breach on the complainant but on the rights of the owner or occupier where the alleged breach is occurring. With this in mind, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement plan as part of this commitment. When exercising its enforcement functions the Council will act in a way that is:

- **Consistent and fair**
 - We will look at past cases and try to take a similar approach, for consistency, where this seems fair and reasonable. Cases will be investigated in accordance with the priorities set out within the plan.
- **Transparent and accountable**
 - Members, residents, existing and potential local businesses, complainants, alleged offenders and council staff should understand how we provide the service and the principles that guide it. We will provide an easy-to-access service, where the procedures, level of service provided and the rights of appeal for the alleged offenders are clearly explained and easy to understand.
- **Proportionate and targeted**

- Any proposed action is in keeping with the scale of the alleged breach and the amount of harm caused. In each case we will decide on the most appropriate course of action to follow. Under the law we are only allowed to take enforcement action if it is expedient to do so having taken into account government guidance, our own development plan policies and the specific circumstances of the case.

PART 2: INVOLVEMENT IN THE PROCESS

4. Advising the Council of possible breaches:

- 4.1 Reports of possible breaches of planning control should, whenever possible, be made in writing. This enables the Council to have a written record of the need for initiating investigation and possible action. Reports of suspected breaches can be made by:
 - Completing an online enforcement investigations form which can be found on the Council's website at <http://www.tmbc.gov.uk/services/planning-and-development/planning/planning-enforcement>;
 - Emailing planning.enforcement@tmbc.gov.uk or;
 - Sending a letter to the Planning Enforcement Team at the Council's Kings Hill Offices
- 4.2 When this is not possible reports should be made in person, for example, by telephone to enable Council officers to make a detailed written record.
- 4.3 Anonymous reports will **not** be investigated unless they concern a statutory listed building or a protected tree.
- 4.4 Vexatious or repeated complaints will **not** be investigated. The Development Control Manager and Senior Enforcement Officer will determine these on a case by case basis.
- 4.5 The name and address of those making complaints will not be repeated to the person or organisation involved in the alleged breach.
- 4.6 In the event that a request is made to the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004, personal information of individual complainants will not be disclosed in accordance with the principles of relevant data protection law.

5. Investigating alleged breaches:

- 5.1 When the Enforcement Team receives an allegation that a breach of planning control may be occurring, the Senior Enforcement Officer assigns this case to a member of the Enforcement Team. An initial assessment of the nature of the

breach is then carried out and the case is categorised according to what level of priority it should be accorded.

- 5.2 All allegations of planning control breaches will be prioritised and investigated thoroughly and accurately. Below are the priorities we have assigned to different types of alleged breaches, and the target times we have set to carry out an initial site visit.

PLEASE BE AWARE: These are target timescales for the undertaking of an initial site inspection and will be adhered to as far as reasonably practicable in the prevailing circumstances. Following the initial inspection, a subsequent investigation will take place the length of which will be dependent on the complexities of the individual case.

Priority ranking	Case characteristics	Target for initial site inspection	Comments
Top Priority	1. Work to Listed Buildings. 2. Work to protected trees. 3. Development likely to have a serious impact on health or public safety. 4. Breaches of planning control in respect of development subject to Environmental Impact Assessment.	1 working day	In effect the approach would be as soon as possible to prevent irrevocable damage.
High Priority	1. Development causing significant harm the quality of life of a significant number of local residents. 2. Development with some (less serious or immediately threatening) impact on health or public safety. 3. Development causing potential harm to a Conservation Area or Site of Special Scientific Interest.	5 working days	Cases with these characteristics are inevitably themselves subject to assessment and judgement during triage – may require engagement with outside specialist bodies which may have more

	4. Development potentially causing significant harm to the landscape.		appropriate powers of control or enforcement (e.g. Environment Agency, Health and Safety Executive)
Medium Priority	1. Development which causes limited harm to individuals and/or local communities. 2. Development other than of a wholly minor nature not falling within any other category.	10 working days	
Other Priority	1. Minor developments such as sheds, fences. 2. Most advertisements. 3. Other minor breaches of planning conditions. 4. Minor departures from approved plans. 5. Most cases of untidy sites other than those which have particular characteristics which fall within a higher priority	As soon as resources allow, bearing in mind other priorities	

- 5.3 This prioritisation reflects the perceived urgency and level of harm arising to amenity or to areas or features that benefit from special protection.
- 5.4 At this stage the complainant is informed of the case officer's name and contact details. The named Officer will act as the main point of contact and will advise all parties on the outcome of the case.
- 5.5 Additionally, Borough Council Members are informed of the receipt of allegations on a weekly basis.
- 5.6 The enforcement case officer will inspect the site within the given timescale to determine if a breach of planning control is occurring. This is an essential part of almost every case to establish the actual circumstances on the ground and will also involve research into the site planning history.
- 5.7 If there is no evidence of a breach occurring at this stage, a brief report is produced by the case officer and passed to the Development Manager for endorsement.

- 5.8 Should the first inspection prove inconclusive, the enforcement case officer will contact the site owner requesting a meeting on the site, or request further information as might be necessary, so that further investigations can be undertaken.
- 5.9 Whatever the assessment, the complainant will be informed and advised of the next course of action.

If a breach is identified

- 5.10 If a breach of planning control *is* found an assessment has to be made, on a case by case basis, as to whether:
- it is or is not appropriate to take any further action at all,
 - to proceed to try to resolve the breach informally through negotiation;
 - to seek to invite a retrospective planning application; we will only do this if there is some prospect of permission being granted, or
 - to proceed directly towards formal action such as the service of an enforcement notice.
- 5.11 The assessments are made by the Enforcement Officer in conjunction with the Development Manager, who also endorses any recommendations made.

No formal action:

- 5.12 It is not automatically the case that the Local Planning Authority will take any action (whether formal or informal) in the event that a breach is discovered to seek to rectify matters. A judgement must be made in each and every case as to whether any action is expedient. This judgement will involve consideration of the seriousness of the breach, the level and nature of any harm that is being caused, and the proportionality of any contemplated remedial action. If the breach is relatively minor, inconsequential or of a purely technical nature, there will be some instances where no further action is appropriate.

Negotiation:

- 5.13 In some cases it may be possible to bring about a satisfactory resolution through informal action such as negotiations with those responsible. This may, for example, bring about the cessation of the unlawful activity, or reduce any harmful impacts so that they are within acceptable bounds.
- 5.14 Government guidance makes it clear that in all but the most serious cases we should initially seek to have planning breaches remedied through negotiation. In these events, the person carrying out the breach will be sent a letter confirming

that the breach should be remedied in a specific timescale, or information should be provided to justify to us that no further action should be taken.

Retrospective planning applications:

- 5.15 A local planning authority can invite a retrospective application. In circumstances where they consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application (Section 73A of the Town and Country Planning Act 1990) without delay.
- 5.16 We will only do this where it is considered that there is a reasonable prospect of permission being granted. The invitation to submit an application is not, however, meant to imply that permission will necessarily be granted. But it does provide a formal process for consideration of the merits of the case including, importantly, public consultation. In many cases where we follow this course of action, we may eventually conclude that it is appropriate to grant permission subject to conditions that exercise control over the most significant and potentially harmful impacts.

When might it be appropriate to serve an Enforcement Notice?

- 5.17 Wherever possible, we will try to resolve harmful activities through informal action or the planning application process. However, where it is felt that the breach is significantly harmful and is unlikely to be rectified by way of the submission of a planning application we will request that the breach is ceased/remedied within a specified timescale; this is determined on a case-by-case basis and will depend upon the seriousness of the breach and the nature of harm that is being caused. Should the owners fail to meet this request then enforcement action is required.
- 5.18 Enforcement Notices are our main enforcement tool. Government guidance sets out that the power to issue an enforcement notice is discretionary (Section 172 of the Town and Country Planning Act 1990). An enforcement notice should only be issued where we are satisfied that it appears that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations.
- 5.19 Enforcement notices are formal legal documents that will require the owner or occupier to take specific steps to remedy the planning breach in a specified time. If the notice is not complied with the planning breach will become a criminal offence which can be prosecuted in the Courts. However, the notice may be appealed to an independent, government- appointed Planning Inspector. In such cases the effect of the Enforcement Notice is suspended whilst the appeal is ongoing. Inspectors can decide to uphold the notice, amend it or have it quashed.
- 5.20 Alternatively, if the breach consists of a breach of conditions on an existing permission, a Breach of Conditions Notice can be issued. In this case, a

continuing breach could lead to prosecution in the Magistrates' Court. There is no right of appeal against a Breach of Condition Notice.

5.21 Where a planning application is invited but none is submitted within a reasonable period, consideration is given to taking further action. Where formal action is contemplated, we will take legal advice before commencing such action.

5.22 In addition, the Council will, in exercising its duties under Regulation 35 of the Environmental Impact Assessment Regulations 2017, have particular regard to any breaches which have implications for features of developments intended to avoid, prevent, reduce or offset significant adverse effects on the environment that have been approved within the context of an Environmental Statement.

Other possible types of formal action:

- Planning Contravention Notice (PCN)

5.23 This is a legal notice which allows us to bring the breach to the attention of the owner or occupier and requires the alleged offender to provide certain information. A planning contravention notice may be issued under Section 171C of the Town and Country Planning Act 1990 and can be used to do the following:

1. allow us to require any information for enforcement purposes about any operations being carried out, any use of or activities being carried out on the land, and;
2. can be used to invite its recipient to respond constructively to us about how any suspected breach of planning control may be satisfactorily remedied.

5.24 The issuing of a PCN is discretionary. We need not serve one before considering whether it is expedient to issue an enforcement notice or to take any other appropriate enforcement action.

5.25 It is a criminal offence to give false or misleading information in response to a PCN and in the event the Council becomes aware of such an occurrence consideration will be given as to whether prosecution of the offence would be in the public interest.

- Section 215 notices

5.26 A Local Planning Authority has the power to issue a notice under s215 if the amenity of part of its area is adversely affected by the condition of a piece of land. The notice requires such steps as may be specified for remedying the condition of the land (includes buildings) and provides a minimum of 28 days before it takes effect. There is no right of appeal to a planning inspector, although before the notice takes effect an appeal may be made to the Magistrates Court by those served with the notice or any other person having an interest in the land. The

Council will consider serving such a notice where clear and demonstrable harm is arising to public amenity as a direct result of the condition of a piece of land.

- Stop Notices, Temporary Stop Notices and Court Injunctions

5.27 These can be used to bring a quick stop to development where a breach is causing serious or irreparable harm and immediate action is justified. They will therefore generally only be used in the most serious cases. The use of injunctions will be considered in appropriate cases, such as where a listed building is undergoing alterations without consent that affects its special historic and architectural interest or where the Council has evidence that a site will be developed without planning permission and in doing so will cause serious harm to particular planning interests.

- Prosecution

5.28 In most cases the Council cannot prosecute until we have taken formal enforcement action through the service of a formal notice, such as an Enforcement Notice or Breach of Conditions Notice, and any period specified in that notice has expired.

Prosecution does not bring about the remedying of a breach; rather it can be seen as the Courts “punishing” the person responsible, usually through a fine. Even though a successful prosecution may not remedy a planning breach on its own it can have an important deterrent effect.

We will not take a prosecution forward without first taking legal advice. As part of that advice, an assessment will be made as to whether there is sufficient evidence to take a prosecution forward and whether it is, in all the circumstances, in the public interest to take a prosecution, in accordance with the Code for Crown Prosecutors.

- Additional prosecutions in response to ongoing non-compliance

Further to prosecution action as set out above, the breach of a notice may continue. In such circumstances, the Council will consider whether further prosecutions are appropriate and in the public interest in addition to the following possible courses of action.

- Proceeds of Crime Act 2002 (POCA)

Confiscation orders under the Proceeds of Crime Act 2002 (POCA) provides power to local authorities to obtain confiscation orders against people who commit planning crimes, to deprive them of the financial benefit they have gained as a result of committing planning crimes.

With a few exceptions, breaching planning control is generally not a criminal offence, but such activities can become criminal where they continue to occur in breach of a valid, effective enforcement notice.

Obtaining a confiscation order under POCA in these circumstances punishes the offender by forfeiting the profits attributable to the planning breaches, and in such circumstances the local authority receives a share of those profits. Using careful judgement and thorough investigation, local authorities can use this tool to target known repeat offenders, creating a real deterrent against breaches of planning law, while at the same time recovering sums to cover costs of any necessary remedial action.

In considering cases of ongoing breaches of effective enforcement notices, the Council will consider whether such action is appropriate and proportionate.

- Injunctions

The Council will, when it is considered to be expedient for any actual or apprehended breach of planning control to be restrained, apply to the High Court or County Court for an injunction to restrain a breach of planning control (section 187B of the Town and Country Planning Act 1990).

- Direct Action

The Council has the power in certain circumstances to make sure an enforcement notice is complied with by carrying out the required steps directly. It can also make the decision to take direct action to remedy a breach of planning control rather than serve a formal notice in the first instance.

In such circumstances, the Council can recover all the costs incurred from the owner. Deciding whether or not to pursue direct action will only be done following an detailed review all the relevant circumstances of an individual case and the balancing of all determinative factors. Such action will only be taken if the Council is confident that it is proportionate and necessary to do so

6. Unauthorised Traveller Encampments:

- 6.1 The full range of the Borough Council's planning enforcement powers may be considered in relation to more long-term encampments (in the event of a breach of planning control), particularly where the land in question may be owned by the travellers themselves. It is unlikely that planning enforcement powers could be used to address short term encampments by virtue of their very nature. Separate powers exist to address unauthorised encampments on Council owned land in any event.
- 6.2 There is rarely an opportunity or a justification for action to be taken out of hours whilst balancing all the relevant elements including European Convention on

Human Rights (ECHR) considerations, and as such the Council does not operate an out of hours planning enforcement service.

7. Communication:

7.1 If you draw our attention to a possible planning enforcement issue we will:

- not consider anonymous enquiries or vexatious or repeated complaints;
- write to acknowledge your complaint within the prescribed time period;
- write to let you know the priority it has been given and who is investigating it;
- contact you if we need further information;
- keep you informed on progress at key stages of our investigation;
- let you know the final outcome of your complaint;
- treat your complaint confidentially.

7.2 If we have been informed that you may be responsible for a planning breach we will:

- provide identification whenever we visit;
- provide the name of the officer carrying out the investigation;
- investigate the complaint thoroughly before making any decision on what action to take;
- write to you explaining our conclusions;
- explain what you need to do to put matters right, how long you have to do this and what the consequences might be if this does not happen;
- inform you if we decide to issue an Enforcement Notice, intend to take any direct action or start legal action.

It is important to understand that live enforcement investigations are confidential because of the possibility of future legal action and in accordance with relevant data protection legislation. This means that the amount of information that can be divulged about any particular case will be limited.

7.3 If you feel that there has been an error in the way in which an enforcement investigation is being carried out, or you are dissatisfied with the outcome of the

Council's investigations, you should use the Council's formal complaints procedure which can be found on the Council's website at

<http://www.tmbc.gov.uk/services/council-and-democracy/complaints/complaints-procedure>

8. Parish and Town Council involvement:

- 8.1 Effective community engagement is a key part of delivering a responsive and accountable planning enforcement service. Decisions on whether or not to take enforcement action are governed largely by the law and clearly defined material planning considerations and as a result cannot be unduly influenced merely by local perception. However it is important that the service is fully receptive to concerns raised by individual communities in addition to service improvement ideas that are generated from a community level.
- 8.2 The Council recognises that parish and town council members have an important role to play in this. Town and Parish Councils have a great deal of local knowledge and awareness of what is happening in their areas. Town and parish councils can inform the planning enforcement process and as such the Council encourages them to engage with officers over planning enforcement issues.

9. Scheme of delegation:

- 9.1 The Director of Planning, Housing and Environmental Health has delegated authority to issue all planning enforcement notices
- 9.2 Prosecution proceedings are delegated to the Director of Central Services.

