

## **ANNEX 1**

### **Planning Enforcement Plan: Direct Action Protocol**

#### **Contents:**

- 1 Introduction and Context
- 2 Aims and Scope
- 3 When will direct action be taken
- 4 Procedures for taking direct action
- 5 Process for recovery of costs
- 6 Equalities Duties

## **1. Introduction and Context:**

1.1 This Direct Action Protocol supplements the information published in the adopted Tonbridge and Malling Borough Council's 'Planning Enforcement Plan'. It has been prepared having regard to the Council's corporate policies and plans, and relevant planning policy and guidance. The National Planning Policy Framework (NPPF) 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".*

- 1.2 The Council has at its disposal a range of planning enforcement powers to ensure effective enforcement, including the power to take Direct Action.
- 1.3 Direct Action empowers the Council to take action in default to secure compliance with outstanding requirements of a planning enforcement notice. Where an owner or occupier of land has failed to comply with the requirements of a planning enforcement notice within the period for compliance specified in the notice, Section 178 of the Town and Country Planning Act 1990 (as amended) grants the Council additional powers to:
- enter the land and take the steps to satisfy the requirements of the notice; and;
  - recover from the person who is the owner of the land any expenses reasonably incurred by them doing so.
- 1.4 In light of the social, physical and financial issues surrounding the use of Direct Action, this protocol serves to provide details of the procedure/considerations for undertaking such action and the process by which the Council will recover costs of this action.

## **2. Aims and Scope**

2.1 The primary aims of this protocol are to:

- Acknowledge the principles of consistency, transparency and proportionality in the decision-making process and overall approach to the use of Direct Action;
- Promote awareness of the relevant policies and procedures, including those relating to the recovery of expenses incurred by the Council;
- Ensure compliance with the Council's statutory duties including its homelessness and equalities duties;

- Ensure compliance with the Council's procurement rules and corporate procedures;
- Maximise the recovery of the expenses incurred by the Council.

### **3. When will direct action be taken?**

- 3.1 Before deciding whether Direct Action should be taken an assessment will be undertaken as to the appropriateness and viability of taking such action.
- 3.2 Each case will be considered on its merits, having regard to the facts and circumstances of the case. Direct Action will be taken in circumstances where the Council considers it to be a necessary and proportionate response to the harm caused by the breach of planning control and where the Council is satisfied that taking Direct Action will not have a disproportionate impact upon affected individuals or communities. The main considerations in these assessments include the following:
- The level of harm caused by the breach of planning control and its impact on surrounding occupiers and communities;
  - The personal circumstances of any persons likely to be affected by taking Direct Action;
  - Whether Council's homelessness duties to persons affected by taking Direct Action are engaged;
  - An assessment of the overall cost of taking Direct Action and the prospects of recovering costs incurred;
  - Any risks to the health and safety of Council employees, contractors, the owner or occupier(s) of the property and/or any other party that may be affected by undertaking Direct Action;
  - Any other considerations including the Council's reputation, or its current priorities with regards to its authority to take Direct Action.

- 3.3 Direct action may be taken either in isolation of or in conjunction with other legal action.
- 3.4 In the event that requests to take such action are expressly made by elected Borough Councillors, the same process and procedures will be followed and a detailed evaluation will take place accordingly.

### **4. Procedures for taking Direct Action:**

- 4.1 Once the date to comply with the requirements of an enforcement notice expires, Council officers will visit the site to check compliance. If following this

site visit it is confirmed that the notice has not been complied with in full, and there are no awaited decisions of the Secretary of State through the Planning Inspectorate, the Council will assess whether it is expedient to take additional action, including prosecution, an injunction and/or direct action.

- 4.2 This will involve a report by the investigating officer to the Development Manager for consideration and endorsement in liaison as necessary with the Head of Planning.
- 4.3 In the event that a decision is taken to take such action, the Council will endeavour to notify interested parties of its intention to take Direct Action at least one month before the works are scheduled to take place. Interested parties will include landowners or any other party the Council identifies as having an interest in the land through a Land Registry search. The notification will specify details of the works to be undertaken and the costs to be incurred. However, in exceptional circumstances it may not be appropriate for the Council to give advanced notification of its intention to take Direct Action.
- 4.4 In the course of taking Direct Action, only those works necessary to fulfil the requirements of the Enforcement Notice will be undertaken.
- 4.5 In order to access the property, the Council may need to liaise with other services including the police, bailiffs and/or a locksmith.
- 4.6 It should be noted that any materials, debris or other items that are removed from a premises throughout the course of undertaking direct action will be stored securely for a minimum of 28 days. The Council will take steps to advise the owner(s) of these items and how to recover such possessions. After this time the Council may choose to dispose of this material or sell these on to recover the expenses of taking direct action.
- 4.7 The decision whether to take Direct Action will usually be taken under Delegated Authority, unless the facts and circumstances of any particular case warrant reporting the matter to Committee due to the financial, legal or reputational issues involved.

## **5. Process for Recovery of Costs**

- 5.1 In accordance with the provisions of Section 178 of The Town and Country Planning Act 1990 (as amended), the Council will undertake all reasonable endeavours to recover expenses incurred in undertaking direct action. The expenses recoverable will include such sums as the Council considers being reasonable in respect of its establishment charges (Local Government Act 1974, Section 36). An establishment charge is the reasonable charge that a Local Authority incurs for administering the direct action procedure

- 5.2 The Council will raise an invoice in accordance with its existing practice and procedure and there will be an expectation that the costs will be paid in full on or before the date specified on the invoice.
- 5.3 In the event that this does not happen, the Council will take all reasonable steps to recover the expenses as a debt.
- 5.4 A charge may be applied to the land; this charge is binding on successive owners of the land to which the original Enforcement Notices relates. This charge will take effect on the date that the Council undertakes direct action to comply with the Enforcement Notice.
- 5.5 As a matter of priority, the Council's Land Charges Service will be notified of the recoverable sums that will be entered as a record against the property in the register of local land charges. If the debt remains unpaid, the Council will take steps to register the charge at the Land Registry.

## **6. Equalities Duties:**

- 6.1 The Public Sector Equality Duty is set out at Section 149 of the Equalities Act 2010. It imposes a duty on all public authorities that they must, in the exercise of their functions, have due regard to the need to:
  - eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it
- 6.2 In making any decision as to whether or not to take direct action, the Council in undertaking its role as Local Planning Authority will have full regard to this duty.