



A STRATEGY AND SERVICE CHARTER FOR PLANNING ENFORCEMENT

October 2017

1. Introduction

- 1.1 Swale Borough is a diverse area with distinctive towns and villages set in downland, farmland and coast. There are significant areas of the natural and built environment that are protected. Within the built environment there are over 1,500 listed buildings and 50 conservation areas and numerous buildings of heritage value. Large areas of the Borough are designated as part of the High Weald Area of Outstanding Natural Beauty, and other areas are internationally recognised designations in relation to protecting wildlife/ecology.
- 1.2 There is increasing public concern about activities that harm the local environment and damage the quality of people's lives. The Council recognises that planning enforcement underpins the Council's corporate priorities, particularly in relation to being 'a Borough to be proud of' and the priority for protecting and improving the natural and built environments.
- 1.3 The Planning Enforcement Service must demonstrate at all times that it deals with cases in an equitable and consistent manner, and this Strategy has been prepared in the light of paragraph 207 of the National Planning Policy Framework 2012 which 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 which is appropriate for 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'.
- 1.4 Consideration has also been given to the requirements of the Equality Act 2010 and the Human Rights Act 1998. (See also 3.1)
- 1.5 The enforcement powers available to the Local Planning Authority are predominantly contained within the Town and Country Planning Act 1990 (as amended), the Planning and Compensation Act 1991, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Anti-Social Behaviour Act 2003 (in relation to high hedges), and the various and numerous subordinate legislation (i.e. Regulations and Orders) which are governed by those Acts. Policy advice is contained within Planning Practice Guidance entitled "Ensuring Effective Enforcement", and supports the National Planning Policy Framework (NPPF).
- 1.6 The strategy identifies the resources and matches these with local priorities for action, in order to tackle the most serious planning enforcement problems that arise in the area. To do this, the Council will follow government advice and concentrate its resources on clearly defined priorities for action and

promote a proactive regime where possible. Therefore, the aims of the Planning Enforcement Service are to:

- be effective in dealing with breaches of planning control giving rise to unacceptable harm on public amenity and/or causing harm to land or buildings;
- limit resources used in pursuing minor breaches causing no harm to amenity;
- resolve most complaints by persuasion and negotiation – however, when this is not possible then the Planning Enforcement Service has the power to commence enforcement actions;
- operate in an equitable, proportionate and consistent manner and follow the advice in the Good Practice Guide for Local Planning Authorities; and
- educate and inform stakeholders about the process, standards of service, procedures, and provide widely available information to all customers.

2. Prioritising and carrying out investigations into alleged breaches of planning control

- 2.1 Currently, the Planning Enforcement Service is managed by the Development Manager and comprises a small specialist team of 2.3 FTE officers, together with support from other teams within Planning Services including Development Management officers, Conservation/Design officers, and the Council's tree consultant. The Service also works closely with legal officers (at Mid Kent Legal Services) as required. A full review of the Service and its resourcing is being undertaken in parallel with consultation on this Strategy and Charter, with a particular focus to ensure that the long term resilience of the Service is maintained and to ensure the service has capacity to liaise and respond to ward councillor and Parish/Town Council issues.
- 2.2 The majority of complaints received relate to minor matters and often arise from neighbour disputes. Examples of these are small extensions and outbuildings erected under permitted development rights which do not require planning permission. Considerable officer time is taken up in investigating these, visiting the site and checking dimensions, and then reporting back to the parties involved.
- 2.3 Similarly, a large number of complaints concern unauthorised development that is acceptable and can be regularised by the submission of a retrospective planning application. A great deal of officer time is spent chasing such applications and any fees derived from the submission of an eventual planning application would not, in most cases, recover the enforcement costs involved. Therefore, whilst the Council has a duty to investigate all alleged breaches, the resources must be used wisely to allow officers to concentrate on serious breaches and to avoid the Local Planning Authority coming into disrepute through abuse of its enforcement powers, rather than pursuing enforcement action against minor breaches that cause no harm to public amenity.

- 2.4 The Council accepts that a rapid initiation of enforcement action is vital to prevent a serious breach of planning control from becoming well established and more difficult to remedy. It also recognises the need of establishing effective controls over unauthorised development. The Council will not condone wilful breaches of planning control, and will exercise its discretion to take enforcement action if it is expedient to do so.
- 2.5 The Council will investigate alleged breaches of planning control to determine whether a breach has occurred and if it has, to determine the most appropriate course of action by:
- paying due regard to Development Plan policies and to all other material considerations;
 - paying due regard to Government guidance and legislation;
 - not taking action against trivial or minor technical breaches of planning control which do not adversely affect public amenity or causes harm to land or buildings;
 - where action is necessary in the public interest, ensuring that appropriate actions are being taken in parallel with negotiations with the individual / organisations breaching planning control;
 - to ensure appropriate conditions are applied to new development;
 - not taking action solely to regularise development or obtain a fee; and
 - taking account of the Human Rights Act 1998.
- 2.6 All complaints will be acknowledged within 24 hours of receipt if sent directly to Planning Enforcement Team via the web site on line complaints form or directly via e-mail, phone or letter (contact details included at the end of the document).
- 2.7 The team will then investigate each complaint to ascertain whether a breach of planning control has occurred and to respond to the complainant within 21 days. If a breach has occurred the response will include a target date for the next stage of action to rectify the breach to be taken.
- 2.8 In order to deal effectively with the large number of allegations about breaches of planning control, it is proposed that cases are given priority based on the seriousness of the breach as set below. This is neither an exhaustive nor conclusive list. Matters will be dealt with and assessed on a case by cases basis, based on the information provided to the Council:

A – Major	
<ul style="list-style-type: none"> ▪ Works that are irreversible or irreplaceable and constitute a serious breach ▪ Demolition of listing building ▪ Breaches of Article 4 Direction ▪ Unauthorised development in conservation area, Special Protection Area, Area of Outstanding Natural Beauty, or other national landscape designations ▪ Injunction proceedings ▪ The felling of trees covered by a TPO or works to trees in conservation areas 	

▪ Siting of caravan or mobile home for residential purposes
B – Medium
<ul style="list-style-type: none"> ▪ Activities that cause harm to residential amenity ▪ Change of use ▪ Breach of condition (depends on seriousness of the breach) ▪ Non-compliance with plans ▪ Non-detrimental works to a listed building ▪ Non-compliance with enforcement/stop notice ▪ Unauthorised works to a listed building
C – Minor
<ul style="list-style-type: none"> ▪ A-boards on private land ▪ Sheds ▪ Means of enclosure ▪ Dropped kerbs ▪ Satellite dishes ▪ Minor operations ▪ Any low impact to residential amenity ▪ Unauthorised Adverts

- 2.9 The priority list provides an indication of the acknowledgement for expediency in reacting to a complaint and the level of focussed resource that will be required to handle the case – with major cases being dealt with as a priority and a certain level of immediacy whilst minor cases will be handled as and when workload and resources allow.
- 2.10 After the first site visit (and also during the investigation process) the investigating officer will consider whether it is necessary to re-consider the prioritisation of the complaint.
- 2.11 The Council will review whether there is an opportunity to introduce a planning conditions compliance service with regard to major planning permissions (for housing schemes of more than 10 dwellings or 1000m2 commercial) whereby the applicant would obligate to funding the cost of officer time for monitoring progress on compliance with planning approval conditions.

How the Council handles the information it receives

- 3.1 The information below sets out how the Planning Enforcement Service will aim to handle any complaints received:
- anonymous enquiries will not normally be investigated. Any investigation of such enquiries will be at the Council’s discretion;
 - if you are concerned about providing your name and address, you should contact your local councillor or Parish Council who may agree to act on your behalf; enquirers’ personal details are treated in confidence, but if formal action results you may be requested to help the Council’s case as a successful outcome may depend on your support;
 - acknowledge receipt of your enquiry and provide you with future contact details;

- deal with all enquiries in a fair and equitable manner, and treat all parties with dignity and respect;
- site visits will take place as far as possible in accordance with enforcement priorities;
- to advise you, where possible, what action the Council proposes to take;
- if a retrospective planning application is received, to notify you so that you have an opportunity to make comments;
- if, by 21 working days following receipt of your enquiry, investigations are not complete, you will be contacted and provided with an explanation why; and
- you are welcome to contact the Council at any time to ask for an update.

Resolving your complaint

3.2 The vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier, or by the submission of a retrospective application for consideration. Legislation and central government guidance require that all formal action must match the degree of risk or harm associated with the breach. Each case will be considered on its own specific circumstances, and the personal circumstances of the person responsible may also be relevant. Therefore formal action is not always appropriate.

3.3 Following the completion of investigations, the actions available to the Council are:

- establish that the matter is not a breach of planning control (e.g. not development or permitted development);
- establish that the breach has become lawful, e.g. works have been completed for more than four years, or there has been a change of use or breach of condition more than ten years ago which has been continuous);
- invite a retrospective planning application and negotiate a permission with certain conditions attached if appropriate;
- take immediate enforcement action; or
- take no further action.

3.4 There are a number of legal powers available including:

- Planning Contravention Notice (PCN) - often the first course of action is aimed at getting information to determine what action, if any, should be taken;
- Breach of Condition Notice (BCN) – this is used if a condition attached to a planning permission is not being complied with;
- Enforcement Notice – these order unauthorised development (or use) to be stopped, altered or removed, and may also order that land or buildings be put back to their original condition (NB the person who receives a notice has the right to appeal against the Enforcement Notice);
- Enforcement Order – appropriate where there has been a deliberate concealment of a breach of planning;

- Stop Notices and Temporary Stop Notices – these can be issued if the unauthorised development is causing very serious, immediate harm, with the latter being able to be served without an accompanying Enforcement Notice;
- Injunctions – these are court orders preventing unauthorised development taking place or preventing further development; and
- Prosecutions – these may be appropriate for offences when an effective notice has been breached (subject to the evidential and public interest tests in the Code for Crown Prosecutors being satisfied).

3.5 The Council will, however, take effective enforcement action when it is essential to protect the amenity of the area, the public, or highway safety, and to maintain the integrity of the planning process within Swale. If an injunction is sought, the Council must be able to justify its application to the Court, and proceedings may remain in abeyance until the appeal process relating to any planning application is completed. If an Enforcement or Stop Notice is issued, the Council must be able to justify its actions in the event of an appeal being made to the Planning Inspectorate. Appeals must be made before the Notice takes effect (as stated in the Notice). Appeals can be lodged on a number of grounds, and the person appealing (known as the Appellant) can request that his/her appeal is dealt with by a written procedure, or ask for an Informal Hearing or Public Inquiry.

When it becomes a Criminal Offence

3.6 A criminal offence occurs where, after the period for compliance, an owner/ occupier fails to comply with the relevant requirements of a valid Enforcement or Stop Notice. For the Council to be able to prosecute, it is necessary for the evidential and public interest tests in the Code for Crown Prosecutors to be satisfied. In the case of a persistent offence against an unauthorised activity, an injunction may eventually be sought as a last resort through the County or High Court.

3.7 When Court action is to be taken, there will be a period of time for investigation and collation of evidence. After proceedings are issued there will be periods of time when Court dates are awaited, which may be lengthy, particularly if there is to be a trial of a complex matter.

3.8 In exceptional circumstances, the Council will also consider taking direct or default action to resolve a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised works. The Council will seek to recover its costs in these cases, possibly in the form of a charge on the land that would be recoverable at the time of sale of the land or property.

4. Decision making

4.1 Where a breach has occurred and officers believe that enforcement action should **not** be taken, they will consult with ward members, the Cabinet Member for Planning, and the Planning Committee Chair. Should the officer

recommendation not be agreed, the matter will be referred to the Planning Committee for resolution. Any decision to proceed with enforcement action will normally be made by a 'designated officer' as agreed through the Council's adopted delegation arrangements set out in the Council's constitution. Appendix A sets out a flow chart for decision making, including the role of Councillors.

- 4.2 Where unauthorised development may only be acceptable by the imposition of appropriate planning conditions or legal agreements, a planning application will be sought. Where a valid application is not forthcoming within an agreed timescale (normally within 28 days), an Enforcement Notice will be served, together with a statement that the Council may be prepared to grant planning permission subject to specified conditions or with explicit or complete measures for mitigation depending on the circumstances of the case.

5. Performance monitoring and review

- 5.1 The performance of the Planning Enforcement Service is to be monitored corporately on the basis of responding to 85% of all complaints within the 21 day deadline.

- 5.2 Following the initial response within 21 days, each case will be reviewed on a case by case basis based on the target dates set for the next step of action to be completed e.g. submission date for a retrospective planning application, compliance period for an enforcement notice etc.

- 5.3 It is anticipated that the Strategy will be reviewed on an annual basis reporting through to the Planning Committee and the Cabinet Member for Planning every October, in advance of the drafting of service plans and budgetary cycle. The review will provide an overview of the workload undertaken, including:

- number of complaints and response times (Local performance Indicators);
- number of complaints where:
 - no breach is determined;
 - resolved breach without resorting to enforcement action;
 - enforcement action taken.
- number of Enforcement Notices / Stop Notices / PCNs / BCNs / Injunctions / prosecutions issued;
- number of successful and unsuccessful enforcement appeals with explanation and any lessons learnt;
- commentary on long term outstanding cases (more than six months) with current position statement; and if these are to be identified by site this element will need to be a confidential report;
- 21 day response performance indicator; and
- Case progress targets:
 - discuss and agree a course of action for 75% of all other cases within 8 working weeks and 95% within 12 working weeks of receipt of the initial complaint.

- bring 70% of cases to a target conclusion within 39 working weeks (9 months) of receipt of complaint. For the purposes of this strategy ‘target conclusion’ means case closure, submission of a retrospective planning application, enforcement action or summons to court.
 - notify complainants of case closure in 75% of cases within 2 working weeks, and 95% of cases within 4 working weeks of the Group Decision.
- 5.4 Additional to the annual review, reporting on all active cases which have exceeded six months will be reported to the Cabinet Member for Planning on a quarterly basis.
- 5.5 The status of this strategy is guidance, and if there is conflict between this strategy and national legislation or policy, then the national legislation or policy will prevail.

SWALE PLANNING ENFORCEMENT SERVICE

CUSTOMER CHARTER

Introduction

1. The Planning Enforcement Service is to be provided in accordance with the Government's Enforcement Concordat.

Standards	Publish standards and the Service's performance against them
Openness	Give advice and information in plain language
Helpfulness	Believe prevention is better than cure, so actively work to assist compliance, whilst providing a courteous and efficient service
Complaints	Have a well-publicised, effective and timely complaints procedure
Proportionality	Any action taken will be commensurate with the seriousness of the breach
Consistency	Carry out duties in a fair, equitable and consistent manner

How to make a complaint /raise a concern

2. Most investigations result from information from the public, Councillors, Parish and Town Councils, and other interested groups. All individuals and groups have a role to play in planning enforcement, as they are the local 'eyes and ears' of the Council in the community. Their contribution towards planning enforcement is greatly appreciated by the Council.
3. All Planning Enforcement Service contact should be undertaken by email to planningservices@midkent.gov.uk. If contact is needed in person, a meeting with the relevant officers can be requested. In all cases, you will need to provide confirmation in writing of what you wish to have investigated so the case can be substantiated in the future, including:
 - the precise location of the site or property to which the complaint relates;
 - the exact nature of the concern, i.e. the potential breach of planning control;
 - the date the unauthorised development, works or use began, and a note of whether and when they continue;
 - an indication of any harm caused; and
 - where it is known, details of the identity of the person or organisation responsible.
4. There is an online form you can complete and return to the Council, which can be found at:

<http://www.swale.gov.uk/planning-enforcement/>

5. All investigations are carried out on a strictly confidential basis and the details of the person who has complained will **not** be revealed by the Planning Enforcement Team, unless directed to do so by a Court or the Information Commissioner.