



Local Planning Enforcement Plan

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1. Introduction

1.1 The Canterbury City Council Local Enforcement Plan sets out our policy and procedure for enforcing planning control in the district. It identifies local priorities for enforcement action, so that the Council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local built and natural environment or the amenities of residents. The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material planning considerations. The effective and proper enforcement of planning control is essential to maintain public confidence in the planning system. It is essential that the local environment is protected, as are the interests of residents, visitors and businesses of the district from the harmful effects of unauthorised development.

1.2 This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government 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 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”.

1.3 The aim of this document is to clarify and set out our procedure for investigating alleged breaches of planning control, when we will take action, what enforcement powers we have and how we monitor the implementation of planning permissions. This document sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action and provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers.

1.4 The plan will therefore ensure that officers, councillors and the general public will be aware of the approach to planning enforcement and provides greater certainty for all parties engaged in the development process.

2. What is a breach of planning control?

2.1 A breach of planning control is defined at Section 171A of the Town and Country Planning Act as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.

2.2 Section 55 of the Town and Country Planning Act 1990 defines development as “the carrying out of building, mining, engineering or other operation in, on, under or over land, or the making of any material change in the use of any buildings or other land”.

2.3 The majority of planning enforcement investigations therefore involves one of the following alleged breaches:

- Operational development such as building or engineering works carried out without planning permission
- Material change of use of land or buildings to a totally different use carried out without planning permission
- Development has not been carried out in accordance with an approved planning permission
- Failure to comply with a condition or legal agreement attached to a planning permission.

If something is not 'development' as set out above it is not a breach of planning control and the Council have no power to take further action.

2.4 Other matters which also fall under the scope of planning control are:

- Demolition taking place in conservation areas, without conservation consent,
- Works carried out to a listed building which affect the historic character or setting, without listed building consent being granted
- Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given
- Advertisements, which require consent under the advertisement regulations, which are displayed without express consent
- Failure to comply with the requirements of a planning notice

2.5 **It is not an offence to carry out works without planning permission.** Whilst such development is unauthorised, councils must consider the expediency of taking formal action. This is important to remember as members of the public often refer to illegal development or works. This is incorrect as it is not a criminal offence to carry out most works without planning permission, with the exception of works to Listed Buildings and TPO trees, advertisements displayed without consent and non-compliance with formal enforcement notices. These offences can lead to a prosecution from the outset.

2.6 The Town and Country Planning Act enables people who have carried out unauthorised development to apply for 'retrospective planning permission' in an attempt to regularise matters. In dealing with such applications, the Authority must consider them in exactly the same way as any other application. The fact that the development has already been carried out is not something that can be taken into account in the determination of the application.

What is not a breach of planning control?

2.7 We often receive complaints regarding matters that are not breaches of planning control. Often this is where other legislation covers and controls the matter. The following are examples of what we cannot become involved in through our planning enforcement service:

- Neighbour nuisance/boundary and land ownership disputes – these are civil matters that the Council can not get involved in. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau
- Use of/or development on the highway, footway or verge that is covered by highway legislation – please contact Kent County Council on 03000 418181
- Dangerous structure – please contact our Building Control section on 01227 862 513
- Fly tipping
- Any matter covered by other substantive legislation such as noise and smells

- 2.8 It should be noted that the General Permitted Development Order (as amended) sets out development that can be carried out without requiring planning permission. Many enforcement complaints relate to permitted development, which is not a breach of planning control.

3. Principles of Good Enforcement

Expediency

- 3.1 Planning enforcement remains a discretionary power. In deciding whether it is appropriate to take enforcement action the degree of harm the unauthorised development is causing, or is likely to cause, will be carefully considered.

- 3.2 Harm can arise through a range or combination of factors:

- Adverse impact on visual amenity due to poor design or inappropriate materials
- Inappropriate and conspicuous development that is harmful to the landscape or the setting of a heritage asset
- Failure to comply with a condition of a planning permission leading to an adverse impact
- Danger and disturbance due to significantly increased traffic flows
- Loss of privacy or overshadowing and loss of natural light
- Loss of protected trees or loss or damage to listed buildings and demolition of buildings in a Conservation Area
- Development that contravenes the purpose and credibility of adopted national and local planning policies
- Untidy land and run down or derelict buildings that present a very poor quality environment and/or prejudice community safety.

Harm (for planning purposes) however does not include:

- Competition caused to another business
- Loss of an individual's view or trespass onto their land (including ownership disputes)
- Loss of value to a property.

Proportionality

- 3.3 In considering any enforcement action, the decisive issue for the Council is whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should always be proportionate to the seriousness of the harm being caused. It should not be taken solely to 'regularise' development which is otherwise acceptable on its planning merits but for which planning permission has not been sought.
- 3.4 Officers will consider the full range of powers when conducting investigations (this includes appropriate negotiations and retrospective planning applications) and where appropriate take action.

3.5 We will carry out our duties in a fair, equitable and consistent manner. We will consider each individual matter on its merits. There will be a consistent approach to enforcement action against breaches of similar nature and circumstance. This does not imply uniformity but a full consideration of all the circumstances of a case guided by our adopted Local Plan, Supplementary Planning Documents and Design Statements to establish what reasonable and adequate requirements there are to remedy the breach. We will achieve this by:

- Following advice contained within the Government guidance contained within the National Planning Policy Framework, Planning Practice Guidance, planning policy and best practice
- Adhering to the planning policies within our adopted Local Plan and Supplementary Planning Documents in the interests of protecting our Conservation Areas, Listed Buildings as well as other designated land and features
- Keeping up to date with Government guidance, case law and court judgements/authorities.

Negotiation

3.6 In all but the most serious cases, we will seek to negotiate compliance rather than pursue formal enforcement action, providing that an appropriate resolution can be achieved in a timely manner. The negotiations aim to achieve one or more of the following outcomes:

- To undertake work to comply with the planning permission granted
- To apply for planning permission for the works undertaken or a variation to the works that are more likely to secure permission
- To remove an unauthorised development
- To cease an unauthorised use.

3.7 However, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable in planning terms, or to compel it to stop.

Standards

3.8 We will draw up clear standards, setting out the level of service and performance that customers can expect to receive. We will review performance regularly and publish results on a quarterly basis.

3.9 The enforcement plan will be subject to review at least every three years, but the plan may be reviewed on a more regular basis if circumstances dictate. The standards will be available on our web site.

Openness

3.10 Information and advice will be provided in plain language on the rules that we apply and we will publish this as widely as possible. We will discuss general issues, specific compliance failures or other problems with anyone with an interest with our service, subject to it not being covered by privacy and protection policies.

Helpfulness

- 3.11 We believe that prevention is better than cure and that we should work with customers to advise and assist with compliance.
- 3.12 Officers will provide a courteous, prompt and efficient service and letters will provide a contact point and telephone number for customers to contact when seeking advice and information.
- 3.13 We will ensure that services are effectively co-ordinated to minimise unnecessary overlaps and time delays.
- 3.14 Officers will not tolerate abusive language or behaviour either in person or in correspondence.
- 3.15 Complaints about the service – We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

4. Priorities

- 4.1 To make the most effective use of resources, all reports of alleged breaches of planning control will be investigated and progressed in accordance with the priority rating below. Resources will be focussed on the most serious breaches of planning control. Formal enforcement action is less likely to be taken in low priority cases. Individual cases may be re-prioritised as the investigation progresses and as new evidence comes to light. This is not an exhaustive list.

High priority

- Any unauthorised development or non-compliance with a planning condition or legal agreement which is causing immediate and irreparable harm to the environment or public safety
- Any breach of planning control causing serious loss of residential amenity
- Ongoing unauthorised works to a listed building
- Demolition in a conservation area that is causing immediate and irreparable harm
- Ongoing unauthorised works to trees subject to a tree preservation order
- Unauthorised development that has gone undetected and the statutory time limit for taking enforcement action will expire within the next six months

Medium priority

- Unauthorised development within the AONB, SSSI or SLA
- Activities resulting in some disturbance and loss of amenity to third parties.
- Activities that are likely to be adversely affecting the environment, but not irreparably.
- Unauthorised works to listed buildings or protected trees where those works have ceased.
- Breaches that are contrary to well established planning policies

- Development that causes harm to the amenities of neighbours
- Development not in accordance with the plans during the build process

Low Priority

- Minor breaches of condition.
- Activities causing minimal disturbance to third parties, if any.
- Unauthorised advertisements.
- Untidy land issues.
- High hedge complaints

5. Investigation of alleged breaches of planning control

- 5.1 All alleged breaches of planning control should be reported to the Enforcement Team. We rely upon the help of the public to bring breaches of planning control to our attention and provide us with evidence as to when the breach started. The details of the complainant will remain confidential.
- 5.2 To start a planning enforcement investigation, complaints from the community should normally be made in the following ways:
- by email to **planning.enforcement@canterbury.gov.uk**
 - filling out the form on our website **<https://www.canterbury.gov.uk/planningbreach>**
 - by letter to Planning Enforcement, Development Management, Canterbury City Council, Military Road, Canterbury CT1 1YW
 - or you can drop a letter into our main reception which is open from 8.30 to 17.00 Monday to Friday.
- 5.3 When a complaint is received it is recorded on our database so it is important that we have the following information:
- name and contact details of complainant
 - full address of the alleged breach of planning control
 - nature of the breach and the harm it may be causing
- 5.4 All enforcement complaints are logged onto our computer system with a unique reference number so that each complaint can be monitored and the complainant updated on progress.
- 5.5 To avoid the unnecessary use of resources, anonymous reports of suspected breaches of planning control will not normally be investigated. The Authority can only use its enforcement powers effectively if there is sufficient evidence available to demonstrate clearly that a breach of planning control has occurred.
- 5.6 Confidentiality of a complaint's identity will be safeguarded unless it is necessary for the complainant to give evidence at an appeal or legal proceedings.

How we investigate

5.7 The first stage of any investigation is to determine whether or not there has, in fact, been a breach of control. If there is no breach of planning control, the investigation can be concluded with no further action being necessary. However, if there is a breach of control, further considerations need to be made.

5.8 When complaints are received the following targets apply:

Within 5 working days your complaint will be acknowledged

Within 15 working days a site visit will be carried out if necessary

Within 60 working days a decision will be made or whether to close the case or progress further

When there is no breach of planning control the complainant will be notified within 5 days of the site visit.

When the case is closed we will notify the complainant within 5 working days

When the decision to take enforcement action has been made we will notify the complainant within 5 working days

If no breach of planning control is established

5.9 A significant number of investigations are closed as there is no breach of planning control established. In these cases no formal action can be taken and the case will be closed. This can occur for a number of reasons, for example:

- There is no evidence of the allegation
- Development has taken place but planning permission is not required, usually as it benefits from planning permission granted under the Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- The development already benefits from planning permission granted by the Council

Where there is a breach of planning control

5.10 Where a breach of planning control is established, the first step is to consider whether it would be expedient to take formal enforcement action. Expediency is a test of whether the unauthorised activities are causing serious harm having regard to the Development Plan policies and other material planning considerations. The outcome of this consideration will generally inform the course of the investigation. Taking formal enforcement action is only one option with other courses open to the Council. Most planning enforcement investigations will involve one of the following courses of action.

Inviting a retrospective planning application

5.11 Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm being caused, a retrospective planning application will be requested for the development.

5.12 In determining retrospective planning applications the Council cannot refuse an application simply because the development has already been carried out. Many breaches of planning

control occur because the applicant simply did not realise permission was required. A retrospective planning application enables the Council to regularise acceptable development without arbitrarily penalising the applicant.

5.13 Generally we will not seek a retrospective planning application if we feel the development is unacceptable. However, there are cases where it is initially unclear as to whether a development is acceptable in planning terms. An example is where a development is in the early stages of construction. In these cases an application may be necessary to obtain full details of the intended development. Once this information is received it would allow for a full assessment of the planning merits.

5.14 The Localism Act 2011 has introduced an additional power to the Council in respect of retrospective planning applications where an enforcement notice has already been issued. Section 70C to the Town and Country Planning Act (as amended) now specifies:

“a local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.”

5.15 We will use these powers where appropriate to prevent delays in cases where enforcement action is being taken. However, we will also have regard to each specific case and consider whether granting permission for part of the development would result in an acceptable resolution.

Not expedient to pursue formal action

5.16 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances the Council will seek to persuade an owner or occupier to seek permission. However, it would be regarded as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control.

5.17 We also investigate many minor or technical breaches of planning control. Common examples of these include the construction of a fence or the construction of an out building in a residential curtilage slightly higher than allowed under permitted development regulations. In these cases it would clearly not be proportionate to require the removal of an entire building or fence where a slightly lower structure could be constructed without permission. As such the expediency test for taking action would not be met. We will work with owners to regularise or remedy the works but ultimately it is highly unlikely that formal action could be warranted in the case of a technical breach of planning control.

5.18 Where this is considered to be the case the officer will produce a closure report to clearly set out that no planning harm is caused by the development. Where officers conclude that it is not expedient to take action the case will be closed in accordance with the scheme of delegated powers as set out in the Council’s Constitution.

Negotiation

- 5.19 Where it is considered that the breach of planning control is unacceptable, officers will initially attempt to negotiate a solution without recourse to formal enforcement action, unless the breach is causing irreparable harm to amenity. Negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development. In carrying out negotiations officers will have regard to the specific circumstances of the individual case.
- 5.20 Where initial attempts at negotiation fail, formal action will be considered to prevent a protracted process. Where we are unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, we will proceed with formal enforcement action where it is expedient to do so

Taking formal enforcement action

- 5.21 We will consider the full range of powers available to ensure the most proportionate and expedient resolution. We will also consider whether any other public authority is better able to take remedial action. The full range of powers available to officers when taking formal action is explored in detail below, the use of these can vary depending on the nature of the breach and the level of harm caused.

Time limits for taking enforcement action

- 5.22 Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council cannot serve a notice after four years where the breach of planning control involves building operations, for example extensions to dwellings, new buildings and laying hardstandings; or the change of use of any building to a single dwellinghouse, from the commencement of the breach. Other unauthorised changes of use and breaches of conditions are subject to a 10 year time limit.
- 5.23 After these periods the Council cannot take action and the use becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period and if the evidence is clear regularise the situation.
- 5.24 Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Therefore where the Council feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a lawful development situation.
- 5.25 The Localism Act has introduced a new enforcement power in relation to time limits. This allows councils the possibility to take action against concealed breaches of planning control even after the usual time limit for enforcement has expired.
- 5.26 The Council can, within six months of a breach coming to their attention, apply to the magistrate's court for a planning enforcement order. A planning enforcement order would give us one year to then take enforcement action. In agreeing to a planning enforcement order, the court need only be satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons.

6. Enforcement powers

6.1 Listed below is a brief description of the various enforcement powers available to the Council. This is not intended to set out in full all the detailed legal considerations, but simply to try to explain the general nature of the available enforcement powers. In all cases, the Council will seek to use the most effective power available to remedy a breach of planning control.

Enforcement Notices can be served on unauthorised development and uses where the development can be remedied by alteration, complete demolition or the ceasing of the unauthorised use. For these Notices there is a right of appeal to the Planning Inspectorate.

Listed Building Enforcement Notices are served where unauthorised works to listed buildings have taken place and requirements are made to remove those works or improve upon their impact. For these Notices there is a right of appeal to the Planning Inspectorate.

Breach of Condition Notices are served to require compliance with a condition attached to a planning permission. These Notices are suitable for specific breaches of planning control that need to be corrected within a specified deadline. There is no right of appeal for these Notices.

Stop Notices would normally be served in cases where the unauthorised development or use is considered to be so harmful that the outcome of the enforcement process could not be waited for. These will be served together with an Enforcement Notice. There is no right of appeal for these Notices.

Temporary Stop Notices are served where a harmful unauthorised development or use has occurred and needs to be stopped immediately (for up to 28 days). This allows time for negotiation between us and offending parties. There is no right of appeal for these Notices.

Section 215 Notices can be served on any interested party where land or buildings have become untidy and are considered by us to adversely affect the amenity of the area. There is a right of appeal to the magistrates court for this Notice.

Planning Contravention Notices can be served on any known interested party where it is suspected that a breach of planning control has occurred. They contain a number of relevant questions relating to the alleged breach of planning control. Failure to respond within a specified timescale is a criminal offence which can result in a prosecution in the magistrates court.

Section 330 Notices require information from any occupier of land asking what his interest is in it. Failure to respond within a specified timescale is a criminal offence which can result in a prosecution in the magistrates court.

Section 225 Notices enable us to issue Notices on any interested parties against unauthorised advertisement displays on buildings and on other surfaces. Subject to these provisions, we will invoice the recipient of any such action in order to recover the costs that have been reasonably incurred in taking the action.

What happens after a Notice is served?

- 6.2 The recipient of a Notice will either:
- Comply with the Notice (in which case the matter is then closed)
 - Contest the Notice by way of an Appeal to the Planning Inspectorate or challenge in a Court of Law- where this is appropriate.
 - Fail to comply with the Notice
- 6.3 Hearing a case on appeal will take time and can often delay proceedings particularly if a Public Inquiry has to be arranged. If the appeal against the Notice does not succeed the formal Notice comes into effect. If the appeal is successful and/ or planning permission is granted, then this is normally the end of the matter. If the Notice is upheld or there is no appeal but it is still not complied with, we will then take steps to prosecute the offender in Court.

Court and Direct Action

- 6.4 Prosecutions will be undertaken by us in incidences such as unauthorised works to listed buildings and protected trees, demolition in conservation areas, the display of advertisements and the failure to comply with the other Notices listed in this plan.
- 6.5 Injunctive Action is used where a breach of planning control is severe, or there is a threat of it becoming severe, and which can be halted by the successful application to the High Court (or County Court) for an Injunction. It will also be used in longstanding cases where the offender has failed to comply with an Enforcement Notice and the harm is ongoing and now needs to be brought to an end. We will always look to recover our costs from the offender when placed in the position of taking such action even if this results in placing a charge on the land to aid future recovery.
- 6.6 Direct Action will be used so we can ensure remedial works are undertaken to secure satisfactory compliance with an Enforcement Notice. In cases such as this it may also be necessary to apply for an Injunction to prohibit parties from entering the land during the period when direct action is taken. We will always look to recover our costs from the offender when placed in the position of taking such action even if this results in placing a charge on the land to aid future recovery.

7. Monitor the Implementation of Planning Permissions

- 7.1 Once planning permission is granted, you may need to get formal approval of any details required by conditions. It is therefore imperative that land owners carefully read their permission once it is received ensuring that works do not commence on site in breach of planning conditions.
- 7.2 The onus is on the land owner or developer to make sure that all the necessary consents are in place before work starts, and to make sure that all the conditions are complied with. The Development Management department will not write to you reminding you of your responsibility to discharge conditions.

- 7.3 There is currently no requirement to inform the Development Management Team when work will start on site, however, you will have to notify our Building Control Service that you are going to start building works.
- 7.4 Commencement Lists are produced weekly by the Council's Building Control Department setting out what developments are scheduled to commence that week. Copies of these lists are checked by the Planning Enforcement Team against planning application decisions ensuring that;
- All pre commencement conditions have been discharged and;
 - All financial contributions that formed part of a section 106 agreement required prior to commencement of development have been received by the Council.

8. Review of the Local Enforcement Plan

- 8.1 The Council will review this plan from time to time and at least every three years, in response to changes in legislation, relevant enforcement guidance and the Council's procedures.

9. Document List

- Town and Country Planning Act 1990 (as amended)
- The Planning and Compensation Act 1991
- Planning and Compulsory Purchase Act 2004
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Localism Act 2011
- National Planning Policy Framework (NPPF)
- The Town and Country Planning (Development Management Procedure) (England) Order 2010
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- The Town and Country Planning (Use Classes) Order 1995 (as amended)
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984