

Appendix C

Planning

Supplementary Enforcement Policy

January 2018

Planning Enforcement Policy and Procedure

1. Introduction

The National Planning Policy Framework (NPPF) states in paragraph 207:

“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”.

This document therefore sets out the council’s policy and procedure to ensure that both environmental and public amenity is safeguarded and public confidence is therefore maintained.

Before setting out the policy and procedure it is important to remember that:

- With the exception of unauthorised works to a listed building, non-compliance with a tree preservation order and putting up an advertisement in contravention of advertisement regulations, the carrying out of development without planning consent is not a criminal offence. However, failure to comply with an enforcement notice, breach of condition notice, stop notice, temporary stop notice, Section 215 notice and failure to return a planning contravention notice are criminal offences.

Development Management

The definition of development is given in section 55 of the Town and Country Planning Act 1990

“Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(1) *For the purposes of this Act “building operations” includes—*

- (a) *demolition of buildings;*
- (b) *rebuilding;*
- (c) *structural alterations of or additions to buildings; and*
- (d) *other operations normally undertaken by a person carrying on business as a builder.*

(2) *The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—*

- (a) *the carrying out for the maintenance, improvement or other alteration of any building of works which —*
- (i) *affect only the interior of the building, or*
- (ii) *do not materially affect the external appearance of the building”,*

This is not the full list. For all details see section 55, as referred to above.

- Local authorities are encouraged not to take enforcement action in cases where consent would have been granted, had a planning application been submitted. In such cases, those responsible for the development are encouraged to apply for retrospective planning permission. Although the retrospective nature of applications is now a material consideration, this is recent government advice at the time of drafting this guidance and therefore the implications are yet to be clarified by either further guidance or case law.
- Planning authorities have extensive enforcement powers, but their use is discretionary with enforcement action only being taken where it is appropriate to do so. Therefore planning enforcement is a matter of expediency.

Natural & Built (Historic) Environment

Local authorities have a range of enforcement provisions in relation to listed buildings, conservation areas, archaeological assets, protected trees and hedgerows. These are detailed in section 2.

2. Powers Available

Development Management

The key powers come from the Town and Country Planning Act 1990, as amended:

- ‘*Planning contravention notices*’ (section 171(c)) can be served where it appears that there may have been a breach of planning control and the council requires information about activities on the land or nature of the occupier's interest in the land, in order to determine whether or not a breach has occurred.
- ‘*Requisition for information notices*’ can be served to gather information on ownership of land or buildings prior to serving one of the notices listed below.
- ‘*Breach of condition notices*’ (section 187(a)) can be served where there is a failure to comply with any condition or limitation imposed on the grant of planning permission.
- ‘*Enforcement notices*’ (section 172) can be served to remedy an actual breach of planning control by requiring an unauthorised use to cease, building works to be

removed or improved, or engineering works to be ceased. A notice can also be served to restrict or condition a particular operation, which is otherwise unacceptable. There is a right of appeal against the notice.

- *'Proper maintenance of land and building notices'* (section 215 - often referred to as an 'untidy land notice' or simply a 'section 215 notice'), can be served to require work to be undertaken to improve the appearance of land or a building.
- *'Stop notices'* (section 183) have to be served in conjunction with an enforcement notice to require unauthorised activities to cease before the enforcement notice comes into effect. A recipient can claim compensation from the Local Planning Authority.
- *'Temporary stop notices'* (section 171(e)) can be served to require unauthorised activities to cease for 28 days; they are not required to be served with an enforcement notice.
- *'Injunctions'*. These can be sought in the County Court or High Court to restrain any actual, or anticipated, breach of planning control.

Additional powers were introduced by the Localism Act 2011. Notably:

- Section 70(c) Power to decline to determine retrospective applications where enforcement notices already exist.
- Section 171(BB) Enforcement orders relating to concealed development.
- Section 225(A) Power to remove structures used for unauthorised display, this relates to advertisements.
- Section 225(F) Power to remedy defacement of premises.

Recent powers were also introduced by the Anti-Social Behaviour, Crime and Policing Act 2014. Notably:

- *'Community Protection Notices'*, which can be used for planning enforcement, following the service of a formal warning letter (Section 43).

Powers also exist to regulate advertisements:

- Many advertisements can be displayed without the need to obtain advertisement consent from a local planning authority. These advertisements are classified as having deemed consent, and details of which type of advertisements that do not require an application are listed in the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended).
- However, there are times when, in the interests of public safety or public amenity, the council may wish to withdraw deemed consent for the display of such an advertisement. In such cases a 'discontinuance notice' can be issued in order to rescind deemed consent for the display of the advertisement.

- Where it is thought that an advertisement with deemed consent is harmful to public safety or amenity, and attempts at negotiation to either remove or improve the advertisement have failed, a 'discontinuance notice' can be served if it is considered expedient to do so. This can include advertisements in shop windows.
- More information on fly posting and the use of fixed penalty notices for advertisements is given in the 'Environmental Enforcement: Fixed Penalty Notices Operational Policy', which is appended to the overarching enforcement and prosecution policy as Appendix F.

Natural & Built (Historic) Environment

Listed Buildings

If a person plans to alter, extend or demolish a listed building in a way that affects its character as a building of special interest, there is a requirement to apply for listed building consent. This includes works to both the interior and exterior of a building plus works to curtilage listed outbuildings and boundary walls.

The key powers come from the Planning (Listed Buildings and Conservation Areas) Act 1990:

- '*Urgent Works Notice*' (Section 54) – a power that allows a local authority to directly carry out works that are required urgently to make an unoccupied or partly unoccupied listed building weather tight, or to provide temporary support, and thus prevent further deterioration. The works may only be undertaken once the owner has been given at least 7 days' notice in writing.
- '*Repairs Notice*' (Section 48) – a power that allows a local authority to specify to the owner works it considers reasonably necessary to secure the preservation of a listed building. If the repairs are not carried out by the owner, the LPA does not have the power to carry out the specified works but the power can lead to compulsory purchase of the building.
- '*Compulsory Purchase Order*' (Section 47) – when all other measures fail, the local authority's last resort can be to compulsorily acquire a listed building in order either to repair the property itself or more usually to sell it on to be restored by a buildings preservation trust or other new owner. The process is discretionary and cannot be started until a Section 48 Repairs Notice has been served on the owner at least two months previously.
- '*Listed Building Enforcement Notice*' (Section 38) - this is served where it appears that works have been or are being carried out without consent or in breach of a condition on a listed building consent.
- There are other powers that can be used to secure works to historic buildings including the Planning Act 1990, Section 215 notices and powers under the

Housing, Building, Local Government (Miscellaneous Provisions), Environmental and Community Protection Acts.

- '*Section 7: Prosecution*' – this requires that works to listed buildings be authorised. If a person contravenes this section they are guilty of an offence. The local planning authority (LPA) may bring a prosecution and the maximum penalty upon conviction may be a term of imprisonment (up to a maximum of 2 years) and/or an unlimited fine.
- '*Section 59: Prosecution*' – any relevant person who deliberately does or permits the doing of any act which causes or is likely to cause damage to a listed building will be guilty of an offence. The penalty would be a fine, upon conviction, not exceeding Level 3 on the standard scale.

Buildings in conservation areas

There is a requirement to obtain consent for the demolition of most buildings. Permitted development rights (the various categories of development that are normally allowed without the need to apply for planning permission) are more restricted within a conservation area.

Enforcement provisions include:

- '*Urgent Works (Section 54) Notice*' – Under Section 76, the Secretary of State can direct that an unlisted building in a conservation area be treated as though it were listed. This allows the owner to be served with a Section 54 Notice and for the associated consequences to apply.

Archaeological Assets

The key powers in relation to '*designated assets*' come from the Ancient Monuments and Archaeological Areas Act 1979. Part 1 of this Act relates to scheduled monuments, and Historic England (not the local planning authority) would undertake any such enforcement, where a Scheduled Ancient Monument (SAM) is directly affected.

Part 2 relates to formally government designated 'Archaeological Areas', of which we have one – The Hereford Area of Archaeological Importance (Hereford AAI). As regards the AAI, it is an offence to undertake any ground disturbing tipping and flooding works within its boundaries without first having served formal prior notification to the local planning authority.

Enforcement of AAI requirements may include the following options at our discretion (in increasing scale of case seriousness):

- i. Insisting that a notification is made retrospectively,
- ii. Occupying the site to make records and/or
- iii. Prosecution.

As regards '*undesigned assets*' there is no particular provision beyond normal planning provision and it would be anticipated that this route would be followed. It should be emphasised, however, that archaeology, in contrast to some things, cannot be 'replaced' or 'put back' once it is destroyed. The difficulty of mitigating de facto damage adds to the seriousness of such damage, and the challenge of dealing with it.

Trees

A Tree Preservation Order (TPO) prohibits works to a protected tree, including cutting it down without the local planning authority's written consent.

For trees in a conservation area, there is a requirement for people to notify the local planning authority six weeks before carrying out certain work on trees within conservation areas, unless a statutory exception applies. This notice period gives the authority an opportunity to consider whether to make an order on the tree. If no notice is given then the local planning authority may consider prosecution proceedings dependent on the works to the tree and if it would have been a tree that a TPO would have been made upon.

The key enforcement powers which apply to unauthorised works to both TPO trees and trees in a conservation area come from Part VIII of the Town and Country Planning Act 1990 as amended and in the Town and Country Planning (Tree Preservation)(England) Regulations 2012. These include:

- i. Serving a tree replacement notice
- ii. Prosecution

Hedgerows

The Hedgerows Regulations 1997 control the removal of countryside hedgerows, including uprooting. There is a requirement for people to notify the local planning authority six weeks before removing a countryside hedgerow, unless an exception applies. This notice period gives the authority an opportunity to consider whether to serve a Hedgerow Retention Notice, thereby protecting the hedgerow.

For breaches of the Hedgerow Regulations, enforcement options include:

- i. Serving a Hedgerow Replacement Notice and/or
- ii. Prosecution

3. Principles of Enforcement

These are set out in the 'Herefordshire Council Single Overarching Enforcement and Prosecution Policy', last revised on 10 January 2018 which can be accessed from the council's webpages.

In the approved guidance document "*Enforcing Planning Control: Good Practice Guide for Local Planning Authorities*" a list of "dos and don'ts" was included, which are reiterated below.

Amongst the “don’ts” were:

Don’t

- Enforce solely to regularise acceptable development,
- Enforce solely to obtain a fee and
- Seek to restore land to a better condition than it was before the breach took place.

Do’s included:

- Do have enforcement policies,
- Do be prepared to give reasons for taking action, or inviting applications or ignoring breaches of planning control,
- Do set priorities for action and
- Do have regard to the council’s obligations under other legislation.

These are not exhaustive but are included to illustrate some of the considerations to be taken into account.

Particular advice within the now superseded Planning Policy Guidance Note 18: Enforcement, dealt with breaches by businesses. Even in 1991 the tone was conciliatory with action only deemed appropriate if the business activity is causing irreparable harm. In such instances ‘*harm*’ means the impact upon adjacent uses or occupiers, for example noise, smell and highway safety. Mindful of the above Herefordshire Council will adopt the following approach to planning enforcement.

The Council’s Approach to Planning Enforcement

The public expects their complaints to be addressed with reasonable speed. However, amongst the complaints received there will be those that are not in fact planning matters and others that are more appropriately dealt with by other authorities or other services of the council.

It is recognised that complaints need to be investigated, and acted upon, quickly and efficiently. Existing enforcement workload often precludes immediate action on all complaints received and therefore the council has adopted a system of prioritising investigation of complaints based on the effect of the breach of planning control.

Once a site visit has identified the nature of the breach and the degree of harm caused by the breach, the complaint may be re-prioritised based on the harm caused to those aspects of acknowledged planning importance.

What is a breach?

Some examples are given in the table below, although this is not an exhaustive list:

Breach of planning control	Not a breach of planning control
<ul style="list-style-type: none">• Unauthorised works to Listed Buildings,• Unauthorised demolition within Conservation Areas,• Unauthorised works to trees subject of a tree preservation order (TPO) or in a Conservation Area,• Unauthorised removal of countryside hedgerow,• Unauthorised advertisements,• Breaches of conditions attached to planning permissions,• Not building in accordance with the approved plans of planning permissions,• Untidy land where it adversely affects the amenity of the area,• Unauthorised engineering operations, such as raising of ground levels or earth bunds,• Unauthorised stationing of a caravan or mobile home for use as an independent dwelling,• Unauthorised material changes of use of land or buildings, and• Unauthorised building.	<ul style="list-style-type: none">• Internal works to a non-listed building,• Removal of garden hedges,• Obstruction of a highway public right of way) (or a private right of way,• Parking caravans on residential drive-ways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property and permitted development rights have not been removed,• Land ownership or boundary disputes or trespass issues e.g. scaffolding erected on neighbouring property (these are private matters),• Covenants imposed on property deeds (these are private matters),• Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 as amended, and• Advertisements that are excepted from deemed and express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 as amended.

The term '*harm*' as it relates to planning enforcement, is expanded upon in the table below:

Harm can arise through a range of factors, such as:	Harm does not include:
<ul style="list-style-type: none"> Noise nuisance or disturbance from a business operation, Danger and disturbance due to significantly increased traffic flows, Loss of privacy, Adverse impact upon visual amenity, Loss or damage to protected buildings or trees, including lack of regard for such buildings and conservation areas, Development that undermines adopted planning policies, and/or Untidy land or rundown buildings 	<ul style="list-style-type: none"> Competition to business, Loss of an individual's view, and/or Loss of value of property

Though the council may seek retrospective applications where a development can be made acceptable through the imposition of conditions, it cannot insist that such an application is made.

The council's priorities and targets are set out below

Level 1 – High priority where there is a serious and urgent risk that the breach will result in irreversible damage to material planning interests or pose a serious highway safety risk. A site visit and investigations will normally be commenced within 1 working day for:

- Breaches of listed building control where demolition or alterations are taking place which are known to detract severely from the special architectural and historic interest of the listed building,
- Breaches of planning control in Conservation Areas or AONBs where there is clear evidence that immediate, irreparable and significant damage would be caused to the character or appearance of the Conservation Area, or the special landscape character of an AONB,
- Removal of hedgerows, works to trees protected by a Tree Preservation Order (TPO) and works to trees in Conservation Areas, where these hedges or trees

make a major contribution to the County's natural heritage and are under immediate threat,

- Breaches of control or conditions causing significant irreversible damage to the environment,
- Breaches of planning control which are resulting in serious damage to the biodiversity of a site in an area subject to special protection such as an SSSI, SAC or SWS, and
- Breaches of planning control which are resulting in permanent and serious damage to the archaeological interest of a site, especially where it is a Scheduled Ancient Monument (SAM).

Where appropriate, the above will be undertaken in conjunction with relevant technical officers of the Council.

Level 2 - Medium priority for breaches involving building operations. A site visit and investigations will usually be commenced within 5 working days for:

- Breaches of planning control involving building work or change of use and
- Breaches of planning control of conditions which could result in serious harm or loss of amenity or nuisance to a neighbourhood.

Level 3 – Low priority where investigations and, if necessary, a site visit will be commenced within 10 working days for:

- Development involving small domestic structures such as sheds or fences where the discrepancy from permitted development is major and the complainant has serious concerns regarding the effect on the amenity of their property,
- Breaches of control where the use is likely to be temporary and capable of being resolved without formal action,
- Breaches not included in levels 1 and 2 above, and
- Breaches of advertisement control.

4. What we will do?

The planning enforcement service will:

- Investigate alleged breaches of planning control which are reported by writing, by email or telephone. Anonymous complaints in category level 1 and 2 will be investigated.
- Promptly register such cases and acknowledge their receipt.
- Let complainants know what action (if any) we decide to take.
- Advise the local ward member of the matter and thereafter update them at appropriate stages of the investigation.
- Actively pursue, when considered appropriate to do so, those breaches of planning control which cause demonstrable harm.

- Those breaches relating to specialist areas of planning e.g. listed buildings, hedges/trees etc. may initially be investigated by the enforcement team, however subsequent visits/action may need to be in conjunction with those officers who cover such specialist work. In such instances the enforcement officer will lead, but rely on the specialist reports.
- Promptly close, without further action, those cases where there may have been a technical breach of planning control but where any public harm is insufficient to justify further action.

5. How we will do it?

- Prioritising cases in accordance with published priorities and investigating promptly those cases which are identified as serious.
- Allocate a named officer to each complaint.
- Retaining confidentiality regarding the identities of complainants.
- Undertake a site visit to assess the matter, to assess whether or not a breach has occurred and if so what harm is caused by it.
- Where there is no breach found, the complainant will be notified that no action is proposed.
- Negotiating with transgressors, giving them the opportunity to resolve breaches before formal action is taken, unless the breach is so serious it warrants immediate formal action or negotiation becomes protracted and / or is deemed unlikely to yield an acceptable outcome. In cases where planning permission or other related consents are required a timetable for receipt of such application will be set. Once that deadline has been reached a report on the appropriateness of action will be prepared, if the application has not been received. That deadline will depend upon the complexity of the case.
- Producing written appraisals for all established breaches. These appraisals will include consideration of relevant planning policies and any other material considerations and conclude with what action, if any, is deemed appropriate.
- If the LPA does not consider that formal enforcement action is expedient/appropriate, then the complainant will be notified of the reason(s) why the council is not taking any further action.

Formal enforcement action will not be initiated where it is not appropriate to do so. This can be, for example, where a minor or technical breach of planning control (including minor contraventions of General Planning Development Order limitations) has occurred which causes no harm (or will cause no potential harm) to public amenity in the locality of the site and where it is not in the public interest to do so. The council will not take action to solely regularise an acceptable development or obtain a planning application fee.

Appropriateness of action includes an assessment of the harm, as previously defined, compliance or otherwise with planning policy and other material considerations.

The principles of the council's planning enforcement policy are itemised below in the following five bullet pointed paragraphs:

- All complaints received by the council's enforcement team will be considered and, where appropriate, an initial site visit to verify the breach will be made and thereafter any initial priority rating may be amended to reflect the harm. The council's enforcement resources will be concentrated on those breaches causing the most harm or having the potential to cause major harm.
- Where development has been carried out without planning permission and unconditional planning permission would be likely to be granted, the owner/occupier will be informed of the implication of having done so and will be invited to submit an application to regularise the development. Where the owner or occupier fails to submit a planning application, a report on the appropriateness of action will be prepared. In such instances, formal enforcement proceedings will not normally be justified.
- Where development has been carried out without planning permission and it is considered that permission could be granted subject to conditions but the owner or occupier refuses to submit a planning application, an enforcement notice may be served. The effect of the notice would be to grant planning permission, provided the requirements of the notice have been carried out.
- Where unauthorised development has been carried out and is unacceptable and the owner/occupy fails to carry out satisfactory remedial action, an enforcement notice may be issued which allows for a realistic period of compliance for the building works to be demolished/improved or the activity to cease, be relocated, or its scale to be acceptably reduced.
- Where it is evident to the local planning authority, that serious attempts are being made to comply with the requirements of an enforcement notice, consideration will be given to waive or relax any requirement in that notice, including the compliance period.

6. Outcomes

In most cases formal action is not required and an investigation can be closed for a number of reasons, as set out below. These categories are used for monitoring purposes.

- No apparent breach (not development),
- No apparent breach (permitted development),
- Immune from action (4 or 10 year rule),
- Not appropriate to take action (no significant harm),
- Resolved through negotiation or compliance,

- Resolved by planning permission being approved, and/or
- Passed onto other service area.

7. Proactive Compliance

Resource permitting, when we are notified of commencement of development, most often by our building control team, we will check first to see if the development has/or requires planning permission. If it has permission, we will check that any pre commencements have been complied with. In the event that it has not, the matter will be investigated in accordance with the policy and procedure set out above.

Similarly, notification of licensing applications are checked in a similar manner. New planning permissions which are subject to time limit conditions will be monitored prior to expiry of the relevant condition to ensure that any resubmission, or compliance requirement is advised to the applicant in good time.

8. Start Notices

Herefordshire Council uses 'start notices'.

A pro forma sheet is sent out with the planning permission, or other relevant decision notice, which developers/applicant return prior to commencement of development. This will enable a timely check to ensure that any conditions have been dealt with and/or remind developers/applicants of the need to address conditions. There is no legislative requirement for this, they are purely voluntary in nature.

Developers should be aware that failure to comply with pre-commencement conditions could mean the development is unauthorised and is not capable of being made lawful by retrospective submission of those details. In such cases the application will need to be re submitted