



PLANNING ENFORCEMENT PLAN

SOUTH HOLLAND DISTRICT COUNCIL

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1. INTRODUCTION

South Holland District Council aims to deliver effective enforcement of planning controls. Effective planning enforcement is necessary in order to deliver high quality, sustainable development and to protect the integrity of the planning system. Ensuring that development proceeds in accordance with approved plans or permitted development rights is necessary to maintain this integrity.

The National Planning Policy Framework states that councils should consider publishing their own local enforcement plan to manage how and when they use their enforcement powers. It also states that councils should act proportionately when dealing with suspected breaches in planning control. This document sets out South Holland District Council's aims and objectives in delivering a planning enforcement service which is in line with national policy and Government guidance.

The Council investigates alleged breaches of planning control through planning enforcement investigations. This planning enforcement plan explains the planning enforcement service and what you can expect from it. Specifically it covers:

- * What is a breach of planning control;
- * How you can request an investigation;
- * How we prioritise investigations;
- * How we will carry out an investigation; and
- * The enforcement actions we can consider.

The Council's aim is to ensure effective compliance with planning and other associated legislation; the regulation of development and the use of land is in the interests of the public and promotes and protects the character and appearance of South Holland. The Council seeks to not only act expediently, appropriately and proportionately in pursuing enforcement, but also to negotiate, educate and reach acceptable conclusions in order to avoid formal enforcement action.

This document provides the guidance by which Council officers will act in enforcement matters and explains to the public how planning enforcement is carried out, how the Council makes decisions and the powers it may use to ensure compliance with planning control. The plan should also be read in conjunction with Breckland Council and South Holland Council Corporate Enforcement Policy.

2. WHAT IS PLANNING ENFORCEMENT

- 2.1 The Council when looking at enforcement matters will look at the main legislation contained within The Town & Country Planning Act 1990 which contains comprehensive enforcement powers. Other primary legislative consideration also includes the provisions of the General Permitted

Development Order 2015 and the Control of Advertisement Regulations 1992, however The Human Rights Act 1998 is an overarching piece of legislation which must be taken account of at all stages of the process.

2.2 The aim of the Council's Enforcement Plan is to ensure effective compliance with The Town and Country Planning Act 1990 and other associated legislation, the aim of which is to regulate the development and use of land in the interests of the public. Any development of land should conform to the provisions of the Council's Local Plan and the National Planning Policy Framework (NPPF).

2.3 The Council will investigate breaches of planning control and in cases where it is reasonable and proportionate, take formal enforcement action.

A breach of planning control may include the following:

- * Building works that do not have planning permission
- * Failure to comply with any condition or limitation
- * Unauthorised changes of use
- * Unauthorised works
- * Displaying adverts without consent Listed Buildings
- * Demolition work within conservation areas
- * Works to a protected tree or tree in a conservation area
- * Leaving land/property untidy to the extent that it causes harm to amenity
- * High hedges/ removal of hedgerows

2.4 In most case the breaches of planning control investigated by the Council can be remedied by obtaining planning permission or other consent. However there are some breaches that constitute an immediate offence that can carry a criminal sanction. These can include the following offences:

- * Works to a Listed Building
- * Works to protected trees or trees within a conservation area
- * Removal of some hedgerows
- * The display of adverts

2.5 There are limits to what the Council can investigate under the planning legislation and there are some matters that the Council cannot look into as it is beyond the remit of the Council's powers. Such matters include:

- boundary disputes between neighbours;

- property and land ownership issues which are not planning related;
- breaches of covenants between landowners;
- competition between businesses;
- trespass on land.

2.6 The Council may also make a judgment on whether to investigate previously investigated and resolved complaints and in particular whether the complaints are vexatious or malicious in nature.

3.0 ASSESSMENT AND INVESTIGATION

3.1 Planning check

Once an allegation is received the Council's will check all planning and building control records to establish the planning history of the site and any planning constraints. This check may show that a planning permission has been granted or that a use is constrained by a planning condition, which may resolve any issue. The officer investigating the breach will assess the information received and may make further enquiries to determine whether a complaint requires investigation. Further evidence or information may be required at this stage to establish a line of investigation, this may be a requirement for a diary of events to be compiled or additional photographs of the alleged breach to establish an evidential investigation.

3.2 Site visits

Some cases will warrant a site visit and the investigating officer will then visit the site to establish whether a breach of planning control has happened. The investigating officer will visit the site and make attempts to contact the land owner to discuss the investigation. If the owner cannot be contacted then a calling card will be left at the site with the contact details of the investigating officer. The Planning Acts grant rights of entry onto land to authorised planning personnel, for the purposes of investigating an alleged breach of planning control. Wilful obstruction of this right of entry is an offence and we can seek a warrant may be sought authorising entry. It will sometimes be necessary for the Council to carry out more than one visit to establish whether there has been a breach.

3.3 Planning Contravention Notice

In some cases the information gathered during a site visit may be unclear, insufficient or even contradictory. In these instances officers might serve a Planning Contravention Notice on the owners or occupiers of the land to obtain further information. This is a formal notice that includes questions relating to the alleged breach. It is an offence to fail to comply with a Planning

Contravention notice and the Council may decide to prosecute for not returning the notice in certain circumstances.

3.4 Initial Assessment

Following a review of the Council's planning records, the information gathered during the site visit(s) and any other evidence, the officers will come to an initial view about:

- whether a breach has occurred or not
- whether the time limits for taking enforcement action have expired;
- whether it is expedient to enforce and whether it is in the interests of the public i.e. what harm, if any it is causing; and
- what course of action should be taken.

The investigation may result in consultation with other Council departments and Agencies where it is felt they may have an interest in the allegation. Such departments may include:

- Building Control
- Community Safety and Enforcement Team
- Environmental Health
- Housing Services
- Lincolnshire County Council (www.lincolnshire.gov.uk)
- Highway's Agency (www.highways.gov.uk)
- Environment Agency (www.environment-agency.gov.uk)

These departments/agencies may have powers to deal with the matter which may prove more effectively deal with the harm than planning controls. In such cases, the Enforcement team will liaise with these departments/agencies to agree the most suitable course of action.

When the Council receives a complaint, we will endeavour to acknowledge that complaint as soon as reasonably possible. The Council aims to adhere to the following response times:

Aimed response times you can expect from the team are as follows:

- **Normally within 3 working days of receipt of the complaint (LEVEL 1 – HIGH PRIORITY):**
 - Unauthorised demolition of buildings o Unauthorised works to Listed Buildings

- Unauthorised works to trees subject of a Tree Preservation Order (TPO), or trees within a designated Conservation Area
 - Breaches of conditions that control the construction hours of development
 - Unauthorised works which are considered to pose imminent danger to life
- **Normally within 25 working days of receipt of complaint (LEVELS 2 & 3 – MEDIUM & LOW LEVEL COMPLAINTS):**
 - Development causing noise and disturbance to residential occupiers during unsociable hours
 - The display of advertisements
 - Telecommunication apparatus on residential premises
 - Non-compliance with planning conditions or advertisement consents
 - All other complaints alleging a breach of planning control (e.g. unauthorised building works or engineering operations).

3.5 **Expediency**

Enforcement action by the Council will only be deemed appropriate when it is considered to be an expedient course of action. The expediency of enforcement action is a key concept to both the planning legislation and the Council's enforcement plan. It will not normally be expedient to take enforcement action where a breach of planning control occurs but the breach is not contrary to local and national planning policy; or as for another example, the breach is likely to granted planning permission.

In considering the expediency of enforcement one of the main issues is whether there is significant or immediate harm to the amenity or safety of residents or to the environment or other interests of acknowledged importance. If the breach of planning control unacceptably affects public amenity or has a detrimental impact of the character and appearance of the area then it may be considered in the interests of the public to enforce. Enforcement action should always be commensurate with the breach of planning control to which it relates and the Council will seek to act proportionately on all enforcement matters.

4. ENFORCEMENT POWERS- OPTIONS AND ACTION

The Council's first option will always be to negotiate and offer advice and assistance in planning enforcement situations. However, in cases where it becomes apparent that a person causing a breach of planning control is unwilling to take officers advice to resolve the issue, or to comply with the terms of an existing permission or to cease an unauthorised use or building works, the Council will consider using the enforcement actions available to secure compliance.

The Council has a number of formal options available to assist in resolving a breach of planning control. Legal advice may be taken from the Council's Legal Department on the merits of each option as not all options will be suitable in each case, and any option used will be dependent on the facts on the case.

Some of the options available may result in the issue of a Formal Notice which will appear as a Land Charge on the Land Charges Register. This register is available for public viewing and will be revealed on any search of that register.

Summary of some key powers available to the Council:

4.1 No Further Action

Following the investigations, officers will take no further action if:

- There is no evidence that a breach has taken place; or
- it is likely that the Council would grant planning permission for the works or use – in this case the owner / occupier will be advised to apply for planning permission.
- A breach has taken place but its impact is so minimal (*de minimis*) that it warrants no further action.

If officers plan to take no further action, they will inform the complainant of this decision and the reasons for it.

4.2 Requisitions for information

Officers may require certain pieces of information from owners/developers in order to issue formal notices or further an investigation. Notices to request such information may be issued in the form of:

- Planning Contravention Notice
- Notice under Section 330 of the Town and Country Planning Act 1990

- Notice under Section 16 of the Local Government (Miscellaneous Provisions Act 1976 (as amended)

It is an offence not to respond to any such notice within a prescribed timescale and offenders may be prosecuted for failure to do so.

4.3 **Enforcement Notice**

Enforcement notices is the main device available to the Council and are used where there has been a breach in planning control which is causing significant harm or where negotiation has failed. Such a notice may be served when the Council are satisfied that there has been a breach of planning control and that it is expedient to take action.

The Council cannot serve an enforcement notice against breaches that have taken place more than 4 years previously (for building and engineering works or change of use to a house) or 10 years previously (for all other breaches) unless the person responsible for the breach has deliberately concealed it.

The recipient(s) of an Enforcement Notice have a right of appeal against the notice on a number of grounds. Any appeal is determined by the Planning Inspectorate. Any appeal suspends the effect of a notice until the appeal is determined. If the recipient(s) lodge an appeal, we will communicate with all appropriate third parties and neighbours of the appeal and how they can make representations to the Planning Inspectorate.

Ultimately the failure to comply with the steps required by an effective Enforcement Notice is a criminal offence and currently attracts a maximum fine on conviction of £20,000.

4.4 **BREACH OF CONDITION NOTICE**

A Breach of Condition Notice (BCN) can be served on a developer or occupier when they do not comply with planning conditions imposed on a planning permission.

The breach of condition enforcement notice must state what steps need to be taken to comply with the condition and give a deadline for complying with these steps (this cannot be less than 28 days). There is no right of appeal to the Planning Inspectorate against a breach of condition notice.

The Council cannot serve a breach of condition notice against breaches that have taken place more than 10 years previously unless the person responsible for the breach has deliberately concealed it.

It is a criminal offence to fail to comply with a BCN within the period for compliance specified.

4.5 LISTED BUILDING ENFORCEMENT NOTICE

A Listed Building Enforcement Notice may be issued where works affecting the character of a listed building are being, or have been, carried out in the absence of listed building consent. In order to qualify for listed status a building must have some special architectural or historic interest.

Listed building consent is required for any works involving:

- The demolition of a listed building; or
- The alteration or extension of a listed building that would affect its special architectural or historic interest e.g. replacing timber windows with UPVC ones.

Listed building enforcement notices are similar to planning enforcement notices. The notice must clearly explain the breach, what needs to be done to address the breach and provide a timescale for complying with the notices requirements. There is no time limit for the Council taking enforcement action against a breach of listed building consent.

Where works have been done to a listed building without the Council's consent or where a building has been demolished in a Conservation Area without consent, it also has the option of bringing a prosecution against the breach. The Council will decide whether to prosecute on a case by case basis. The Council can prosecute the building owner and / or the person who carried out the work (if they not the same). The Council is likely to bring a prosecution where:

- the breach has destroyed the historic fabric of a listed building which cannot be replaced;
- a particularly important listed building has been damaged through unauthorised building work; or
- the building makes a positive contribution to the character and appearance of a Conservation Area.

4.6 Temporary Stop Notices and Stop Notices

A temporary stop notice requires a particular activity, relating to all or part of an alleged breach, to cease immediately. The notice lasts for a maximum of 28 days and acts as a method of halting activity so that the appropriate enforcement action can be considered.

A Stop Notice is served either with or after an Enforcement Notice if it is considered that continuing with unauthorised operations will cause irreparable

and immediate significant harm. The scale of harm must be significant to warrant recourse to such a notice.

Due to the serious nature of these Notices, the Council will only consider serving in exceptional circumstances, where it is thought that an activity should cease immediately to safeguard the amenity of an area because of either:

- risk of harm to public safety;
- significant harm to amenity; or
- serious / irreversible harm to the environment.

The requirements of both notices must be reasonable and proportionate and only restrict the activity, or part of the activity, that is necessary to safeguard against the harm. Attempts will be made to negotiate an acceptable compromise and suggest alternatives prior to serving either a stop or temporary stop notice.

There is no right of appeal against a Stop Notice and failure to comply with the notice is a criminal offence. There are compensation liabilities on the Council if the Enforcement Notice is quashed.

4.7 Court Injunction

The Council can apply to the Courts for an injunction to restrain an alleged breach where officers consider it necessary. These powers are used only in exceptional circumstances and the following points are key considerations for the Council:

- there is clear evidence that a breach (this can be a breach of planning, listed building or tree control) has or is likely to occur;
- the breach is or will give rise to harm to public safety, significant harm to amenity or serious / irreversible harm to the environment; and
- the injunction is the most proportionate type of remedy in the particular circumstances.

Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

4.8 Section 215 Notice

This notice can be served on the owner and occupier of the land if the Council considers that harm to the amenity of part of its administrative area is adversely affected by the condition of the land.

The notice specifies steps to remedy the condition of the land but it cannot take effect until 28 days after it is issued.

Then the notice must give a compliance period for when the works specified in the notice should be complied with.

4.9 **DEFAULT POWERS AND PROSECUTIONS**

In the event of non-compliance with the terms of a formal notice, the Council has 'default' powers to enter land and take direct action to carry out the necessary works. Direct action will be taken where the breach is considered to be causing significant harm or causing harm to a wider area. The Council will recover its costs for taking direct action and if unable to recover the cost from the landowner, it may put a charge on the land.

The Council may consider it appropriate to bring a prosecution against offenders if it feels that it is in the public interest and all other powers have been exhausted in attempting to resolve the matter. Examples of where this course of action may be considered are when a notice is not complied with in the given timescales or irreparable damage is caused to a listed building or protected tree. However, a prosecution will only be considered where the Council is satisfied that it has sufficient evidence to provide a realistic prospect of conviction against the defendant(s).

4.10 **Article 4 Directions and Discontinuance**

In certain circumstances the Council will consider an Article 4 Direction which removes what is ordinarily allowed by permitted development rights. Any Article 4 Direction will be made in accordance with the Council's development plan policies, other material planning consideration and will require consideration by the Planning Committee members.

A further option, which is rarely exercised by Councils except in exceptional circumstances, is a Discontinuance Notice. This notice can stop an existing use or require the removal of a building that has previously been granted planning permission by the Council or allowed by permitted development rights. Such an action would need to be justified in planning terms taking into account the harm caused by the use or structure.

5. **OTHER MATTERS THE COUNCIL WILL INVESTIGATE**

In addition to the powers conferred by the notices and statutory powers mentioned above, the Council has powers to investigate the following:

Tree Preservation Order

The Council has powers to make Tree Preservation Orders under the Town and Country Planning legislation to protect trees that are considered important.

Any unauthorised works to such protected trees is a criminal offence. Trees in Conservation Areas are also afforded a degree of protection under the planning legislation. Unauthorised work to and/or removal of trees in a Conservation Area also constitutes a criminal offence.

The Council has powers to prosecute offenders in the Magistrates Court which may lead to a fine and a requirement to replace the trees harmed.

Unauthorised Advertisements

The display of advertisements is controlled under The Town and Country Planning (Control of Advertisements) Regulations 2007.

The regulations set out height, size and illumination requirements and can be complex. Depending on the size and illumination and in accordance with the regulations an advertisement may either require planning consent or have a deemed consent under the legislation.

It is an offence to display an advertisement without the consent required and it is open to the Council to pursue prosecution in the Magistrates Court for an offence under the Advertisement Regulations.

The Council has the power to take direct action to remove placards and posters, provided it takes reasonable steps to notify the person who displayed the placard/poster before removing it. The Council will use this power against people who decide to persistently display posters and placards without advertisement consent in locations which cause harm to amenity or public safety.

APPENDICES

Type of enforcement action	Purpose
Planning Contravention Notice (PCN)	Requires persons to submit information in respect of land and activities. This is often undertaken to determine if there is a breach of control and to inform the appropriate course of action
Breach of Condition Notice (BCN)	To secure compliance with conditions specified within a planning permission.
Enforcement Notice	To require steps to be taken to remedy the breach of planning control.
Stop Notice/Temporary Stop Notice	To require the unauthorised activities to cease.
Section 215 Notice	To secure the proper maintenance of land and buildings.
Injunctions	To prevent unauthorised development and only used in a very limited number of specific circumstances.
Prosecutions	It is an offence not to comply with an enforcement notice, once the period for compliance has elapsed and there is no outstanding appeal. A successful prosecution in the Magistrates Court or Crown Court can result in a fine.

Council Contacts:

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