



Planning Enforcement Protocol
2024

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Introduction

- 1.1 Effective planning enforcement is necessary to ensure that new development accords with national and local planning policies and it also helps to meet the Council's Strategic Objectives.
- 1.2 However, government guidance is clear that enforcement action is discretionary and local planning authorities should act proportionately and pragmatically in responding to suspected breaches of planning control
- 1.3 This protocol will explain when the Council can and cannot take action; how it will deal with unauthorised works that require permission or consent under the planning acts; and how it will prioritise dealing with suspected breaches of planning control.
- 1.4 The District Council's Corporate Plan 2021 – 2030 sets out the Council's vision for the district in 4 Service Ambitions:
 - Positive Community Leadership
 - A Thriving Environment
 - A Vibrant Economy
 - Quality Homes and Infrastructure
- 1.5 The Council's objectives in pursuing its planning enforcement duties reflect its strategic objectives and also take account of national and local planning policies:
 - Respond to complaints and keep interested parties informed;
 - Protect the amenity of the district and its residents;
 - Have regard to the needs of the business community;
 - Be cost effective.

Legislation

- 2.1 The primary planning legislation is set out in the [Town and Country Planning Act 1990 \(as amended\)](#). This is aimed at controlling the development and use of land and buildings in the public interest. It is not legislation for protecting the private interests of one person against the activities of another.
- 2.2 The Planning Act enables the Council to pursue formal enforcement action where it appears that there has been a breach of planning control, and importantly, where it is expedient to do so, having regard to the provisions of the local development plan and to any other material considerations.
- 2.3 Not all development requires planning permission from the Council and there is much development, including some alterations to dwellings and some changes of use of land and buildings, which is permitted development. This is set out in the [Town and Country \(General Permitted Development\) \(England\) Order 2015 \(as amended\)](#).
- 2.4 The following are other pieces of planning legislation that are relevant to planning enforcement:
 - The Town and Country Planning (Use Classes) Order 1987 (as amended)
 - Planning (Listed Buildings and Conservation Areas) Act 1990
 - Town and Country Planning (Tree Preservation) (England) Regulations 2012
 - The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
 - Localism Act 2011
 - Levelling Up and Regeneration Act 2023

Planning Policies

3.1 Both national and local planning policies are relevant when making decisions on whether or not to take enforcement action. These are set out in the following documents:

- [National Planning Policy Framework \(NPPF\)](#)
- [National Planning Practice Guidance](#)
- [The adopted Development Plan – the Core Strategy Review 2022, the Places and Policies Local Plan 2020 and the St Mary in the Marsh Neighbourhood Plan](#)
- [Supplementary Planning Documents, including the Sandgate Village Design Statement, the Kent Downs AONB Management Plan and the Kent Design Guide](#)

Background to Planning Enforcement

- 4.1 Government guidance on planning enforcement is set out in paragraph 60 of the National Planning Policy Framework, which states that ‘Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control.
- 4.2 Only development requires planning permission and not all works constitute development. Development is defined under Section 55 of the Town and Country Planning Act 1990 (as amended) as ‘the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of a material change in the use of any buildings or land.’
- 4.3 The definition does not include:
- Internal alterations
 - Building operations which do not materially affect the external appearance of building
 - Changes of use of premises within the same use class
 - Use for the purposes of agriculture
- 4.4 Internal works to listed buildings may need listed building consent but will not need planning permission. Enforcement action can be taken against unauthorised works to listed buildings and this is explained further below.
- 4.5 As set out above, some works and changes of use are permitted development and do not require a planning application to be submitted. More information on this can be found at www.planningportal.gov.uk
- 4.6 Similarly, some advertisements benefit from deemed consent under the Advertisement Regulations and do not require the submission of an application for advertisement consent. More information on this can be found at www.planningportal.gov.uk or in [national guidance](#).
- 4.7 It is not a criminal offence to carry out works without planning permission and the Council cannot take action simply because development is carried out without the necessary planning permission. It is though a criminal offence to fail to comply with the requirements of an enforcement notice.
- 4.8 However, the carrying out of unauthorised works to listed buildings and protected trees and the unauthorised display of advertisements are criminal offences.
- 4.9 When appropriate, officers work with outside agencies and other departments within the Council to resolve enforcement issues.

What FHDC Planning Enforcement Can and Cannot Investigate

- 5.1 All Council Planning Enforcement Teams can only investigate and take action against works and development that are the subject of the various Planning Acts, as set out in section 2.0 of this document.
- 5.2 Some examples of matters which can be investigated are:
- The change of use of land/buildings
 - Works to listed buildings
 - Works to protected trees or trees in conservation areas
 - Building/engineering works
 - Breaches of conditions imposed on planning permissions, listed building consents and advertisement consents
 - Advertisements (including flyposting)
 - Land and buildings the condition of which adversely affects the amenity of the area
- 5.3 Matters which fall outside the scope of planning control cannot be taken forward as enforcement complaints. Planning enforcement cannot investigate private legal matters, or issues relating to non-planning legislation (for example – Environmental Health or Licencing).
- 5.4 Some examples of matters which we cannot investigate are:
- Boundary wall disputes and other land ownership issues
 - Legal covenants
 - Devaluation of property
 - Obstructions or parking/traffic on the highway
 - Graffiti and anti social behaviour*
 - Unsafe Structures*
 - Breaches of Health and Safety legislation
 - Burning of waste
 - Matters relating to minerals and waste – these are dealt with by Kent County Council
- *The Council may be able to deal with non-planning enforcement matters using other powers, including those to tackle Anti Social Behaviour and Building Regulations Legislation.
- 5.5 Unlike breaches of planning control, unauthorised works to listed buildings are a criminal offence and there is no period of immunity for such works. Listed building enforcement notices can be served and subsequent owners can be prosecuted for works carried out by previous owners. Convictions can result in a fine or imprisonment or both.

- 5.6 It is a criminal offence to carry out unauthorised works to trees in conservation areas or covered by Tree Preservation Orders. If trees are felled the Council can require suitable replacements to be planted. Convictions can result in fines.
- 5.7 Some advertisements can be displayed under deemed consent and do not need the consent of the Council. The display of other advertisements is illegal without the consent of the Council. The Council takes fly posting (the display of advertisements without the landowner's consent) seriously and will take action to remove such advertisements. The Council has powers to remove unauthorised advertisements both on highway land and private land and uses these powers when necessary.

Enforcement Priorities

- 6.1 In order to avoid public resources being spent on frivolous or vexatious complaints, anonymous complaints will not normally be investigated.
- 6.2 To enable a cost-effective service, the Council must target its resources towards those breaches of planning control which have a significant impact on the District, its residents and the environment
- 6.3 The Council does not have unlimited resources and as such will not investigate all breaches of planning control and will prioritise the breaches that have the potential to cause significant harm. Other than as set out below, or in exceptional circumstances, the Council will not investigate:
- Satellite dishes;
 - Replacement windows;
 - Fences, walls and other means of enclosure;
 - The erection of garden sheds and outbuildings
- 6.4 Where the Council has already investigated a complaint previously and it has been closed, a new complaint will not be investigated unless there is new evidence relating to the possible breach of planning control.
- 6.5 Breaches of planning control will generally be prioritised as follows:

Major Priority	<u>Site to be visited within 2 working days of receipt of complaint</u>
	<ul style="list-style-type: none">• Development or breach of condition which causes very significant and immediate or irreversible harm in the locality;• Development or breach of condition which results in very significant harm to the amenity of residents through noise, dust or odour;• Works to listed buildings and scheduled ancient monuments, on sites with significant archaeological importance or on land known to be contaminated;• Works to trees within conservation areas or protected by Tree Preservation Orders;• Development that could give rise to serious risk to human life/health and/or public safety.

Medium Priority Site to be visited within 10 working days of receipt of complaint

- Development within or adjacent to conservation areas that adversely impacts on the character and appearance of that area;
- Development or works that adversely impact on the setting of a listed building or scheduled ancient monument;
- Development in areas designated for landscape or ecological reasons;
- Development in areas at extreme and significant risk of flooding;
- Where formal action is necessary to safeguard strategic development sites;
- Development in the countryside and outside settlement boundaries as shown on the local plan policy maps;
- Extensions to buildings that may adversely affect the amenity of neighbouring residents;
- Changes of use that may adversely affect the amenity of neighbouring residents or businesses;
- Development which would seriously affect the implementation of the development plan or which conflicts with the aims and objectives of national planning policy.

Minor Priority Site to be visited within 15 working days of receipt of complaint

- Land/buildings that have a significant detrimental impact on the appearance of the area;
- Satellite dishes in conservation areas or on/within the setting of a listed building;
- New windows/rooflights;
- Replacement windows to properties in conservation areas;
- Porches;

- **Fences/walls/gates forming the means of enclosure to a listed building or fronting a public area (for example front boundary fences or walls);**
- **Balconies;**
- **Hardstanding;**
- **New accesses;**
- **Adverts and signs;**
- **Telecommunications works;**
- **Temporary development.**

How We Will Deal With Enforcement Complaints

- 7.1 The Council's Planning Enforcement Team responds to complaints of alleged breaches of planning control as well as being proactive, wherever possible. However, the Council (like all others) is very much reliant on the public and Town/Parish Councils reporting alleged breaches.
- 7.2 In order to proceed with complaints the Council will require the following details to be submitted in full via the online form on the [Council's website](#) or by email to planning@folkestone-hythe.gov.uk
- Complainant's name, address and a contact phone number
 - Name and address of the person responsible for the breach, if known
 - The address of the site that the complaint is about
 - What the alleged breach is
 - What harm is being caused by the alleged breach
 - How long the alleged breach has been taking place
 - Any factual evidence of the alleged breach
- 7.3 Without this information, submitted via either of the two routes above, the complaint will not be progressed. Complainants' details will be kept confidential, unless the matter goes to court, in which case the complainant may be asked to act as a witness.
- 7.4 If a complaint is not be progressed due to insufficient information or because it is not a planning matter the complainant will be advised of this.
- 7.5 Complaints will be registered and acknowledged within 5 working days of receipt by letter or email and will be triaged into one of the categories of priority listed above. The complainant will be advised of how the Council intends to deal with the matter within 20 working days of the complaint being registered. This communication will confirm whether we intend to investigate or not. The complainant will be further notified in writing of the decision to take formal action. If the Council decides not to take action, the reason for this will be explained. Officers will endeavour to keep complainants informed of any key decisions throughout the process. Due to volumes of work officers are not able to provide complainants with a running commentary on how the investigation is progressing.
- 7.6 An officer will first establish if there has been a breach of planning control. A site visit is not necessary in every case. A decision will then be made on the most appropriate course of action. In the first instance this will usually be by giving the person responsible for the breach the opportunity to rectify it or submit a planning application within a specified time period. The consequences of not rectifying the breach will be explained.

Rights of entry

- 8.1 Under the provisions of Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 (as amended) local planning authority officers can enter land specifically for enforcement purposes. This right is limited to what is regarded as essential for effective enforcement control. There must be reasonable grounds for entering land for the purposes in question and the Act specifies the purposes for which entry may be authorised, namely:
- to ascertain whether there is or has been any breach of planning control on the land or any other land;
 - to determine whether any of the local planning authority's enforcement powers should be exercised in relation to the land, or any other land;
 - to determine how any such power should be exercised;
 - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.
- 8.2 Neighbouring land can also be entered if necessary.
- 8.3 There are a number of restrictions, including that 24 hours notice has to be given for entry to a dwellinghouse.

Will enforcement action be taken?

- 9.1 After set periods of time unauthorised development can become lawful and immune from enforcement action. In such circumstances, the Council can no longer take action. These time periods are set out in Section 171B of the Town and Country Planning Act 1990 and are:
- Ten years for the change of use of any part of any building to use as a residential dwelling (four years where the breach occurred prior to 25th April 2024);
 - Ten years for building and engineering works (four years where the breach of control was substantially complete prior to 25th April 2024);
 - Ten years for the erection and use of dwellings
 - Ten years for other changes of use of land and buildings;
 - Ten years for breaches of conditions imposed on planning permissions
- 9.2 The Council will seek to identify breaches of planning control at the earliest opportunity and to regularise unauthorised developments either by the submission of a planning application or, as a last resort, by taking enforcement action. The aim is to resolve breaches of planning control without having to resort to formal action, in accordance with the government's Planning Practice Guidance. However, the Council will take formal action where it is considered necessary and expedient to do so.
- 9.3 This approach reduces the number of formal notices that need to be issued and prosecutions brought, and is often the quickest and most effective way of achieving a satisfactory solution.
- 9.4 The decision about whether to take formal action is at the discretion of the Council. Enforcement action cannot be taken against unauthorised development simply because it has been carried out without planning permission nor if it would be likely to be granted planning permission. When assessing this, account cannot normally be taken of the fact that the development has already been carried out.
- 9.5 If it is considered that planning permission would be likely to be granted for the development a planning application will be invited in order to regularise the development. If an application is not received the Council will not normally be able to take any further action.
- 9.6 Before taking any enforcement action the Council will give consideration to Article 1 of the First Protocol, Article 8 and Article 14 of the European Convention on Human Rights and Section 149 of the Equality Act.
- 9.7 In accordance with paragraph 003 of the NPPG relating to Enforcement, the Council must also be satisfied that it is expedient and in the public interest to take formal action. In assessing this, consideration will be given to the harm that is being caused, national and local planning policies, the Council's strategic

objectives and its objectives in its enforcement duties. The decision whether or not to take enforcement action and the reasons for that decision will be recorded.

Who decides whether to take action?

- 10.1 In cases of urgency or where the breach relates to householder development or development that has already been refused planning permission the Chief Planning Officer has delegated authority to issue enforcement notices and other formal notices. This is set out in the [Council's Constitution](#). This authority is also delegated to the Development and Enforcement Manager and the CIL and Enforcement Team Leader.
- 10.2 In all other cases the Council's Planning and Licensing Committee will decide whether or not to take enforcement action.
- 10.3 The Chief Planning Officer has delegated powers to instigate prosecution if enforcement and related notices are not complied with.

What Formal Action Can the Council Take?

11.1 If the Council decides that formal action is appropriate there are a number of courses of action open to it to resolve breaches of planning control. It will use the course of action considered most appropriate to the circumstances of the case in order to secure the resolution of the breach in the most effective manner.

11.2 The formal notices available to the Council are as follows:

Planning Contravention Notice (PCN) - often the first course of action, this is a means of securing information to determine whether a breach of planning control is occurring and what action, if any, should be taken;

Section 215 Notice – these can be issued where the condition of land or buildings is so bad that it is adversely affecting the amenity of the area. The notice will set out the steps that are required to bring the site back to an acceptable condition and can include repairs, demolition or the provision of fencing around a site;

Tree Replacement Notice - Section 207 of the Town and Country Planning Act 1990 (as amended) allows the Council to enforce the replacement of protected trees or trees in conservation areas where the duty to replace has not been complied with.

Breach of Condition Notice (BCN) – this is used if a condition attached to a planning permission is not being complied with;

Enforcement Warning Notice – A formal notice inviting an application for retrospective planning permission. Should an application not be submitted, the Council will consider whether further formal action is warranted;

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 control;

Stop Notices and Temporary Stop Notices – these can be issued if the unauthorised development is causing very serious, immediate harm. Stop notices must be served concurrently with enforcement notices. Temporary stop notices can be served at short notice, without an accompanying Enforcement Notice. As the name suggests, they are effective for a temporary period only;

Injunctions – these are court orders preventing unauthorised development taking place or preventing further development. They are reserved for the most harmful and flagrant breaches of planning control.

Compliance/non-compliance with the requirements of a notice

12.1 Where the requirements of any formal action taken are complied with, this will be recorded and the case will be closed. It is unlikely that any notices served will be withdrawn in such circumstances.

12.2 In the event that any formal action taken is not complied with, further action can be taken as follows:

- **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), or where a PCN has not been complied with, or where unauthorised works to listed buildings or trees have taken place
- **Direct Action** - 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.

Injunctions – These are court orders which are used to require unauthorised uses to cease and development to be removed. They are reserved for the most harmful and flagrant breaches of planning control.