

## **CABINET**

**26 SEPTEMBER 2017**

### **PLANNING ENFORCEMENT POLICY 2017**

Portfolio Holder: Councillor Jane Chitty, Planning, Economic Growth and Regulation

Report from: Richard Hicks, Director of Regeneration, Culture, Environment and Transformation

Authors: Carly Stoddart, Planning Manager: East  
Alison Munck, Enforcement Officer

#### **Summary**

This report introduces a Planning Enforcement Policy. The Cabinet is asked to note the comments of the Planning Committee and recommend approval of the Policy to Full Council.

#### **1. Budget and Policy Framework**

- 1.1 The Planning Enforcement Policy sets out the Council's approach to dealing with suspected breaches of planning control and is consistent with the budget and policy framework.
- 1.2 Approval of the Planning Enforcement Policy is a matter for Full Council.

#### **2. Background**

- 2.1 The Council has adopted its Council Plan for the period of 2016/17 to 2020/21. The Planning Enforcement Policy seeks to update the existing Planning Enforcement Policy dated 2007 and provide an explanation of the planning enforcement process in accordance with the commitments set out in the Council Plan. It provides guidance on what types of breaches are covered by planning legislation and the different forms of action available to the Planning Service and when it is appropriate to implement these actions.

### 3. Options

- 3.1 The options available to the Council are to update the Planning Enforcement Policy or not.
- 3.2 The Council's Planning Enforcement Policy must be updated to reflect current and established practice and legislation. Not updating the Policy could lead to the Council being in a weaker position with regard to their defence against complaints.

### 4. Advice and Analysis

- 4.1 The Policy would replace the existing Planning Enforcement Policy 2007 providing up-to-date information as to the processes applied by the Planning Service and advice as to the enforcement options available with regards to taking formal action. The Planning Committee is asked to note the Policy as set out in Appendix A and to recommend to Full Council to agree the updated Planning Enforcement Policy 2017.
- 4.2 A Diversity Impact Assessment has been completed and is attached at Appendix B.

### 5. Risk Management

- 5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of the services it provides to the community.

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>	<b>Risk Rating</b>
Out of date information in the Council's Enforcement Policy	The existing Planning Enforcement Policy is out of date and there is a risk that the Council could be asked why it is operating different arrangements.	An updated Planning Enforcement Policy has been produced for approval by this Committee and full Council.	N/A

### 6. Consultation

- 6.1 As a policy relating to service delivery and processes in accordance with Planning Legislation, no public consultation has been carried out.
- 6.2 The policy was submitted to and agreed by Planning Committee on 30 August 2017. The policy is due to be submitted to Full Council on 12 October 2017 for final consideration and approval.

- 6.3 The Planning Committee was reminded that the Council had adopted its Council Plan for the period 2016/17 to 2020/21 and received a report setting out proposals to update the existing Planning Enforcement Policy dated 2007.
- 6.4 The Planning Committee noted the Planning Enforcement Policy 2017 as set out at Appendix A to the report and that Council be recommended to approve the Policy.

## **7. Financial Implications**

- 7.1 There are no financial implications arising from this report.

## **8. Legal Implications**

- 8.1 The updated Planning Enforcement Policy 2017 will clearly set out the processes followed by the Planning Service for the Council's customers in the context of up-to-date planning legislation and policy.
- 8.2 The updated Planning Enforcement Policy 2017 will also help the Council defend its position with regards to complaints.

## **9. Recommendations**

- 9.1 The Cabinet is asked to note the comments of the Planning Committee as set out in section 6 of the report.
- 9.2 The Cabinet is asked to recommend approval of the updated Planning Enforcement Policy 2017 as set out in Appendix A to the report.

## **10. Suggested reasons for decision**

- 10.1 The updated Planning Enforcement Policy 2017 sets out updated service standards in accordance with up-to-date, relevant legislation, which in turn will improve the Council's position in dealing with complaints and enforcement investigations.

### **Lead officer contact**

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### **Appendices**

Appendix A – Planning Enforcement Policy  
Appendix B – Diversity Impact Assessment

### **Background Papers:**

Council Plan 2016/17 - 2020/21

<http://www.medway.gov.uk/pdf/Council%20Plan%202017-18%20v3%20web%20version.pdf>



## MEDWAY COUNCIL

### PLANNING ENFORCEMENT POLICY

#### TOWN & COUNTRY PLANNING

##### Introduction

The purpose of this policy is to set out Medway Council's approach to dealing with suspected breaches of planning control. Enforcement against breaches of planning legislation is only taken when it is considered to be in the public interest. Planning enforcement can be an emotive subject as it often affects individuals, neighbourhood amenities and businesses.

##### National Guidance & Legislation

There is a wide range of planning policy and legislation concerning Planning Enforcement; however the most common legislation and policy documents which officers will use are:

- The Town & Country Planning Act 1990 (as amended)
- The Town & Country Planning (Use Classes) Order 1987 (as amended)
- Planning (Listed Buildings & Conservation Area) Act 1990
- Planning & Compensation Act 1991
- Planning & Compulsory Purchase Act 2004
- Localism Act 2011
- National Planning Policy Framework (March 2010)
- National Planning Practice Guidance (March 2014)
- Medway Council Local Plan 2003

The Council is also obliged to consider the Police & Criminal Evidence Act 1984 (PACE), Regulation of Investigatory Powers Act 2000 (RIPA) and The Human Rights Act 1998.

This policy has been written in line with the Medway Council Plan and two of the three stated priorities:

- Medway: A place to be proud of
- Maximising regeneration and economic growth

Planning enforcement is not statutory and is a discretionary power of Local Planning Authorities. It is not illegal to build something without the benefit of planning permission and as such the Council will assess each development individually. If the development is assessed to be unacceptable the Council will take enforcement action, however any action taken has to be proportionate to the offence and not all breaches of planning control will result in formal action being taken, as outlined in the National Planning Policy Framework (NPPF).

It is acknowledged that the enforcement system is considered to be a long and drawn out process, however the Council is committed to investigating each case thoroughly and there will be some cases that are lengthier than others due to their complexity.

Medway Council's approach to planning enforcement is laid out in these guidelines and makes it clear what the public can expect from the service.

### **Medway Council Objectives**

- When an enforcement request is made in accordance with this policy, the Council will check that any development within Medway is carried out properly and in accordance with planning policies.
- Any action taken is in the wider public interest
- That formal action is proportionate to the breach of planning control
- That any action taken is because it is expedient to do so. Action will not be taken against minor or trivial breaches, which cause little or no harm to the amenity of the surrounding area.
- If a breach of planning control could be made acceptable through the application of attaching conditions, a retrospective application will be invited for formal determination.
- To negotiate to resolve breaches of planning control where appropriate, however this will not stop/delay taking formal action.
- To retain the integrity of listed buildings and conservation areas.

### **The Enforcement Service**

If a complaint about a possible planning enforcement issue is made:

- The Council will endeavour to keep all complainants details confidential and will not release any details without informing the complainant.
- The complaint needs to be made in writing, specific to a site and must include your name and address.
- The Council will not accept or investigate anonymous or vexatious complaints.
- The Council will not investigate non-specific or vague allegations regarding business uses or developments.
- The Council cannot use planning legislation to enforce against business uses taking place on the public highway.

## Appendix A

- The Council will acknowledge complaints via, phone, email or letter, informing the complainant of who the investigating officer is.
- The Council will make an initial site visit within 20 working days (as laid out in the Council's priorities)
- The Council will endeavour to make contact with the person responsible for the breach of planning control and advise the way to rectify the matter and a timescale.
- The Council will advise the complainant once a site visit has been made and what the outcome of the investigation is.
- The Council will invite a retrospective application where appropriate and advise the complainant of such.
- The Council will negotiate a resolution without the need for formal action where appropriate and advise complainant of such.
- The Council will request further detailed information if the investigation relates to unauthorised business uses, or permitted uses being exceeded (e.g. boot fairs). This information is essential should the case proceed to Court.
- The Council will advise complainants and offenders if formal action is to be pursued and probable timescales for such action.
- Where proven necessary, the Council will issue formal notices as soon as the legal formalities permit us to do so.
- The Council will advise complainants if an appeal is lodged against an enforcement notice and what the next step is.
- Where the Council do not consider it expedient to pursue the case further and the reasons behind such a decision, the Council will notify the complainant and person being investigated.

### **Breaches of Planning Control**

#### **What is a breach?**

A breach of planning control is the carrying out of development without the grant of planning permission from the Council, or deemed permission by a Government Order.

Development is defined by Section 55(1) 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 any material change in the use of any buildings or other land'**.

If there has been no 'development' there is no breach and there will be no action Medway Council can take.

There are Government Orders that permit some development without the need for planning permission to be obtained, such as The Town and Country Planning (General Permitted Development) Order 2015 (as amended) and the Town and Country Planning (Use Classes) Order 1987 (as amended). Where development is permitted under these regulations there is no breach of planning control and Medway Council is unable to take any action.

### **What Planning Enforcement can investigate**

The Council's planning enforcement system can only deal with issues that relate to planning and land use matters. Common issues referred to enforcement are:

- Development consisting of the material change of use of land/buildings without planning permission
- Unauthorised building works and/or engineering operations
- Works to a Listed Building without consent
- Display of unauthorised advertisements
- Non-compliance with conditions attached to a planning permission
- Neglect to buildings which harm local amenity

The Council are unable to enforce against civil or private matters such as:

- Boundary disputes
- Neighbour disputes
- Legal covenants
- Damage to property
- Devaluation to property
- Unsafe structures
- Trespass
- Neighbour lifestyle clashes
- Graffiti and anti-social behaviour
- Parking disputes
- Cars for sale on the public highway

Independent legal advice should be sought to resolve the issues.

### **Power of Entry**

Under the provisions of Sections 196A 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, in particular circumstances, for effective enforcement of planning control.



### Time Limits

Section 171B of the Town and Country Planning Act (1990) sets time limits for taking enforcement action. Development becomes immune from enforcement action if no action is taken:

Within 4 years of substantial completion for a breach of planning control consisting of operational development.

Within 4 years for an unauthorised change of use to a single dwellinghouse.

Within 10 years for any other breach of planning control.

### Priorities

The Council receives a significant number of complaints every year. This means that the Enforcement Department has to prioritise complaints. All new investigations should be visited within 20 working days, unless the Council considers the breach to be a high priority.

High priority are cases where it is considered that the development would cause significant/serious harm to the area or building. This would include demolition/alteration to a listed building, significant land level changes, non-compliance with contaminated land conditions, non-compliance with archaeology conditions or the cutting down of a protected tree.

High priority cases will be visited within a maximum of 3 working days, but usually within 24 hours if the harm is considered significant. Other Council departments and external bodies may be involved in action if the harm is irreversible. It may also result in the service of temporary stop notices, stop notices and injunctions.

Formal action **is not** taken against all breaches of planning control. Formal action is only undertaken when the Council considers it necessary to remove or remedy a breach of planning control if the harm is significant and considered unacceptable.

Enforcement action is entirely at the discretion of the Local Planning Authority.

### Approach to Enforcement Action

#### Negotiation

Government guidance makes it clear that in all but the most serious cases the Council should initially seek to remedy planning breaches through negotiation. The person carrying out the breach will be sent a letter confirming that the breach should be remedied in a specific timescale, or information should be provided to justify to the Council why no further action should be taken.

#### Planning Contravention Notice

A notice served to obtain further specific information. This notice is served when a breach is or has taken place. Failure to respond can lead to

prosecution in Magistrates Court, which will result in a fine and the Council seeking to recover all costs associated with bringing the matter to Court.

### Section 330 Notice

A notice served to obtain information as to a person's interest in land. Failure to respond can lead to prosecution in the Magistrates Court, which will result in a fine and the Council seeking to recover all costs associated with bringing the matter to Court.

### Enforcement Notice

Used when a breach of planning control has occurred and the development undertaken is unacceptable. An enforcement notice cannot be issued before the commencement of a breach of planning control. Failure to comply with all requirements of an enforcement notice can lead to prosecution, a fine of up to £20,000 or even imprisonment.

### Breach of Condition Notice

Used when planning permission has been granted but there is a failure to comply with a condition. Failure to comply can lead to prosecution and a fine of up to £2,500 and the Council seeking to recover all costs associated with bringing the matter to Court

### Temporary Stop Notice

This notice is used to immediately stop work that is considered to cause significant harm to the amenity of the area. Failure to comply is an offence subject to prosecution and a fine of up to £20,000.

### Stop Notice

Can only be served alongside an Enforcement Notice. Prevents continuation of some or all activities specified in an Enforcement Notice.

The Council may be liable for any losses caused by the service of a Stop Notice if the related Enforcement Notice is quashed on legal grounds, but not if planning permission is granted on appeal for the relevant development. Failure to comply is an offence liable to prosecution and a fine of up to £20,000 or imprisonment.

### Injunction

Used when it is considered that there is a serious actual, intended or apprehended breach of planning control. An injunction can be sought from County Court or High Court. An existing injunction cannot be used against new owners/occupiers. Failure to comply constitutes contempt of court and can lead to imprisonment.

### Listed Building Enforcement Notice

Used when unacceptable works have been carried out to a Listed Building. There is no prescribed time limit for the issue of a listed building enforcement notice. Failure to comply can result in either a prosecution or the local authority entering the land and doing the necessary works themselves, which will result in the recovery of any expenses incurred.

### Repairs Notice

Used when a listed building is not being properly maintained/preserved. The works which can be specified in the repairs notice must be those works which are reasonably necessary for the proper preservation of the building. If, after not less than two months, it appears that reasonable steps are not being taken by the owner for the proper preservation of the building the authority can begin compulsory purchase proceedings to acquire the building from the owner.

### Section 215 Notice

Used to improve appearance of buildings and land that adversely affects the amenity of the area. Non compliance can result in prosecution and a fine of up to £1,000. Direct action may be taken and the Council will recover the costs of any works from the landowner, including placing a charge against the property.

### Discontinuance Notice

Used to secure removal of an advert erected under deemed consent.

### Removal Notice

Used to secure removal and dispose of any display structure – such as an advertisement hoarding – which, is used for the display of illegal advertisements.

## **Prosecutions**

### Advertisements

Adverts displayed without the relevant consent constitutes an offence and can result in immediate prosecution in court and a fine of up to £2,500 and the Council seeking to recover all costs associated with bringing the matter to Court

### TPOs

Used to protect an individual or group of trees.

Unauthorised works to protected trees can result in prosecution and a fine of up to £20,000 to any person who has carried out the works and the Council seeking to recover all costs associated with bringing the matter to Court.

### Direct Action/Default Action

Used by Local Authorities when steps required in an enforcement notice or section 215 notice have not been complied with. This will involve the recovery of the Council's expenses/costs to carry the work out itself; this can include putting a charge against the land/house.

## **Appeals**

When an enforcement notice is served the notice will specify the steps to be taken and the date the notice comes into effect. The appeal of an enforcement notice must be submitted to The Planning Inspectorate prior to the notice coming into effect.

Costs can be awarded against a Local Authority if the Planning Inspectorate considers they have acted unreasonably in serving an enforcement notice.

You can appeal enforcement and discontinuance notices but there is no appeal against a breach of condition notice.

### **Costs**

Where any enforcement action proceeds to Court, the Council will always seek to recover in full, from the offending party, all reasonable costs associated with bringing the matter to Court.

Date: July 2017

## Diversity Impact Assessment – Appendix B

<b>TITLE</b> <i>Name/description of the issue being assessed</i>	<b>Planning Enforcement Policy 2017</b>
<b>DATE</b> <i>Date the DIA is completed</i>	<b>26 May 2017</b>
<b>LEAD OFFICER</b> <i>Name of person responsible for carrying out the DIA.</i>	<b>Carly Stoddart</b>

### **1 Summary description of the proposed change**

- *What is the change to policy/service/new project that is being proposed?*
- *How does it compare with the current situation?*

The policy is intended to update the existing Planning Enforcement Policy dated 2007. The policy sets out an explanation of the planning enforcement process to assist customers in understanding the service and what options are open to the Council in the legal context in terms of enforcement action. The policy provides guidance on what types of breaches are covered by planning legislation and the different forms of action available to the Planning Service and when it is appropriate to implement these actions.

Full Council approval will be sought to adopt the updated policy but is first being reported to Planning Committee and Cabinet for comment.

### **2 Summary of evidence used to support this assessment**

- *Eg: Feedback from consultation, performance information, service user records etc.*
- *Eg: Comparison of service user profile with Medway Community Profile*

#### **Planning Enforcement Policy 2017**

The current Planning Enforcement Policy has been in place since 2007. Ten years on and the Planning Service are operating to updated planning legislation and a more publicly accessible service. It is important that the customers of the Planning Service are able to understand the service and options that the Council can implement in the context of the legislation to help manage expectations.

As the updated policy is a factual document regarding the service provision in the context of planning legislation, no public consultation has been carried out. However, the document has been produced by the Enforcement Officer with reviews of the document and amendments carried out by the Planning Enforcement Assistant, Derelict Buildings Officer, Planning Manager and Head of Planning.

## Diversity Impact Assessment – Appendix B

### 3 What is the likely impact of the proposed change?

*Is it likely to :*

- *Adversely impact on one or more of the protected characteristic groups?*
- *Advance equality of opportunity for one or more of the protected characteristic groups?*
- *Foster good relations between people who share a protected characteristic and those who don't?*

*(insert ✓ in one or more boxes)*

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age		✓	✓
Disability		✓	✓
Gender reassignment		✓	✓
Marriage/civil partnership		✓	✓
Pregnancy/maternity		✓	✓
Race		✓	✓
Religion/belief		✓	✓
Sex		✓	✓
Sexual orientation		✓	✓
Other (eg low income groups)		✓	✓

### 4 Summary of the likely impacts

- *Who will be affected?*
- *How will they be affected?*

The updated policy will affect those people who have carried out unauthorised works (offenders) and those people who report and/or are affected by the unauthorised work (complainants).

Both the offenders and the complainants could fall within one or more of the above protected characteristic groups.

In basic terms, the policy itself solely sets out what options are open to the Council in terms of enforcement action and when it is appropriate to take certain action within the context of planning legislation. Therefore whilst any enforcement action itself may result in an adverse impact, the policy which provides the explanation does not.

In setting out service delivery and standards, the policy assists in demonstrating to all users of the service that the ability to take enforcement

## Diversity Impact Assessment – Appendix B

action is taken in the context of what the legislation allows and therefore no one person or group of people with one or more of the protected characteristics is advantaged or disadvantaged. The policy should therefore help to advance equality and foster good relations whether it is between the offender and the complainant or the Council and the offender and/or complainant.

### 5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?

- Are there alternative providers?
- What alternative ways can the Council provide the service?
- Can demand for services be managed differently?

This updated policy will help improve equality and foster good relations as stated above. The delivery of the service is substantially dictated by the legislative context and therefore, changes to the way the service is provided is restricted to an extent. By providing up-to-date information, the policy should also help to avoid any existing adverse impacts in terms of complaints regarding service delivery and the handling of enforcement investigations which is currently being operating to an out-of-date 2007 policy.

### 6 Action plan

- Actions to mitigate adverse impact, improve equality of opportunity or foster good relations and/or obtain new evidence

Action	Lead	Deadline or review date
Review Planning Enforcement Policy to take account of relevant changes such as the release of legislation updates related to planning enforcement.	AM	Annually with the first review being 20 July 2018
Ensure policy can be available in multiple formats.	AM	20 July 2017

### 7 Recommendation

*The recommendation by the lead officer should be stated below. This may be:*

- to proceed with the change implementing action plan if appropriate
- consider alternatives
- gather further evidence

*If the recommendation is to proceed with the change and there are no actions that can be taken to mitigate likely adverse impact, it is important to state why.*

It is recommended that the Planning Committee note the Planning Enforcement Policy 2017 prior to consideration by Cabinet and Full Council.

### 8 Authorisation

*The authorising officer is consenting that:*

- the recommendation can be implemented
- sufficient evidence has been obtained and appropriate mitigation is planned
- the Action Plan will be incorporated into service plan and monitored

**Head of Planning**

Dave Harris

**Date**

26 May 2017