

## 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 (20 September 2023)
- National Planning Practice Guidance ( March 2014, as amended)
- 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 a statutory function 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 the borough 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 keep all complainant's details confidential.

The complaint needs to be made in writing, specific to a site and must include your name and address. The provision of only an email address as contact information is insufficient and will result in the complaint being treated as anonymous (see below):

- The Council will not accept or investigate anonymous or vexatious complaints. If a complainant does not wish to give their name or address due to potential consequences then they can approach their ward Councillor to lodge a complaint on their behalf and be the conduit for responses and updates.
- It is the responsibility of the complainant to make the Council fully aware of all matters required to be investigated at the time the complaint is made.

- 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.
- The Council will acknowledge your complaint either by email or letter, informing you 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 when there is updated information in relation to action/way forward. It will not do general updates or advise merely when a site visit has been undertaken.
- 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.
- The Council will notify complainants in writing, either by email or letter when the enforcement case has been closed.

## **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 planning breach and there will be no action Medway Council can take under its planning enforcement powers.

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 these 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 or 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 the requirements of an enforcement notice can lead to prosecution, an unlimited fine or even imprisonment.

### **Planning Enforcement Order**

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action has expired. A planning enforcement order enables an authority to take action in relation to an apparent breach of planning control where there has been deliberate concealment, notwithstanding that the time limits may have expired.

### **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. It is an offence to contravene a temporary stop notice.

### 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. A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence. A person guilty of this offence is liable on conviction to an unlimited fine.

### 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 the 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.

### TPO's

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: November 2023