



**PLANNING ENFORCEMENT POLICY**

**AUGUST 2015**

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## 1. INTRODUCTION

The purpose of this policy is to set out the Council's approach to dealing with suspected breaches of planning control. Whilst being specific to how alleged breaches of planning control will be dealt with, this policy also follows the Council's corporate enforcement policy which seeks to promote compliance with relevant legislation. Where formal action is required in order to ensure compliance each case will be considered on its own merit and any action taken should be proportionate to the offence.

The integrity of the planning system and the public's confidence in it relies on effective enforcement action being taken by Local Planning Authorities (LPA) where necessary. Enforcement action is at the discretion of the LPA and not all breaches of planning control will result in formal enforcement action being taken, as outlined in the National Planning Policy Framework (NPPF).

Alleged breaches of planning control can be brought to the Local Planning Authorities (LPA's) attention in a variety of ways including from members of the public, locally elected members, Town and Parish Councils and other Council Officers from both the planning and other internal departments.

The LPA will also carry out its own monitoring of the implementation of planning permissions within its Borough. The enforcement team, and in particular the two designated Conditions Monitoring Officers, will check the implementation of planning permissions and the compliance with any associated conditions by checking the monthly building commencements list provided by the Councils Building Control department.

## 2. BREACHES OF PLANNING CONTROL

### 2.1 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 **'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' then there can be no breach of planning control and the planning enforcement team cannot take further action. Section 55(2) of the Town and Country Planning Act 1990 defines operations that do not constitute development. (More on what cannot be investigated in 3.0)

Also, some development is permitted by government orders such as the Town and Country Planning (General Permitted Development) Order 2015 and the Town and Country Planning (Use Classes) Order 1987 (as amended). Where development is permitted in these circumstances there will not be a breach of planning control and the Local Planning Authority (LPA) is unable to take any action.

## **2.2 What type of breaches can be investigated?**

The planning enforcement team will investigate all alleged breaches of planning control which are:

- Unauthorised building works
- Unauthorised change of use of property or land
- Non-compliance with condition(s) attached to a planning permission

In addition to the above the planning enforcement team will also investigate breaches of other planning legislation including the Planning (Listed Building and Conservation Areas) Act 1990, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, The Hedgerow Regulations 1997, Part 8 of the Anti-Social Behaviour Act 2003 and Section 215 of the Town and Country Planning Act 1990.

The team will also investigate the following:

- Unauthorised works to a Listed Building
- Unauthorised display of advertisements
- Untidy land
- Unauthorised works to protected trees or trees within a Conservation Area
- Unauthorised demolition within a Conservation Area
- Unauthorised removal of a hedgerow
- High Hedges

### 3. WHAT WE DO NOT INVESTIGATE

The planning enforcement team cannot investigate the following complaints:

- **Boundary disputes and other land ownership disputes**  
We do not keep records of land ownership details and do not become involved in land ownership disputes. Land ownership is a civil matter between neighbours and should be pursued by other means, and any queries relating to land ownership directed to the Land Registry. With any planning application the onus is on the applicant to ensure that all persons with an interest in the land have been notified.
- **Breaches of property deeds or covenants**  
The planning department does not investigate issues arising out of property deeds issues or covenants relating to a property and have no power in ensuring that they are upheld. Any complaints regarding deeds or covenants being breached are civil matters and complainants should seek legal advice.
- **Dangerous structures or damage to property**  
Concerns over dangerous structures are not a planning matter, but can be investigated by the Councils Building Control section who can be contacted on 01952 384555 or [building.control@telford.gov.uk](mailto:building.control@telford.gov.uk) . Alleged damage to property is a civil matter between the parties concerned.
- **Highway obstructions or breaches occurring within the public highway**  
Any vehicles causing an obstruction on the highway, commercial vehicles parking on grass verges or in residential areas and any other matters on the public highway are matters for the Councils Highways Authority or the police. The Councils highways department can be contacted on 01952 384000 or [highways@telford.gov.uk](mailto:highways@telford.gov.uk)
- **Noise disturbances and general pollution**  
Smell, noise disturbances and any other pollution complaints are dealt with by the Council's Environmental Health team who can be contacted on 01952 381818 or [environmental.health@telford.gov.uk](mailto:environmental.health@telford.gov.uk)
- **Fly tipping on Council land**  
Any complaints in relation to fly tipping or any other breaches on land that is known to be under the ownership of Telford & Wrekin Council should be directed to the Council's Environmental Maintenance team who can be contacted on 01952 384384

- **Business competition**  
Concerns over competition or potential competition between businesses are not something that we can investigate.
- **Health and safety and site security**  
Concerns over site security and general health and safety issues are civil matters or could possibly be looked into by the Health and Safety Executive.
- **Blocking of a designated right of way**  
The blocking of a right of way (where no development has occurred) or any other issues concerning a right of way should be directed to the Councils Rights of Way team who can be contacted on 01952 384614
- **Party Wall Act**  
The LPA cannot get involved in matters relating to the Party Wall Act. Any issues in relation to this are a civil matter and you should seek legal advice. Further information can be found at [www.planningportal.gov.uk](http://www.planningportal.gov.uk)
- **Trespass**  
The LPA cannot investigate complaints concerning alleged trespass. You should contact the police or seek legal advice in this instance.
- **Loss of property value and/or loss of view**  
As planning enforcement operates to protect the public interest and not the interest of specific individuals these matters are not planning issues and will not be taken into account

#### **4. MAKING A COMPLAINT AGAINST AN ALLEGED BREACH**

When making a complaint about a breach as much detail as possible should be given including the exact location of the site or property, and the nature of the alleged breach of planning control and any harm that it is causing.

##### **4.1 How to complain**

- online at <https://secure.telford.gov.uk/planning/planning-allegedbreach.aspx>
- by emailing [planning.control@telford.gov.uk](mailto:planning.control@telford.gov.uk)
- by telephone 01952 380380

##### **4.2 Confidentiality**

Complainants should provide their name, address and telephone number so that we can contact them to discuss the matter further and to assist us with our investigation. Anonymous complaints are accepted but will not be a priority, and in some cases it may not be possible to investigate the matter without contact details being provided.

The Council will seek to maintain the confidentiality of complainants at all times and we will not reveal the identity of the complainant, or information which is likely to reveal the identity of a complainant, to an alleged offender. We may be asked to reveal the identity of a complainant under the Freedom of Information Act however any decision to reveal this information would need to show that there is a public interest in doing so.

### 4.3 Timescales

All complaints received will be registered and acknowledged within **2 working days**, with the exception of 'CATEGORY A' complaints which are prioritised on **the day of receipt**.

Confirmation of the enforcement case number and the enforcement officer dealing with your complaint is provided.

Each site will be visited between 1 and 15 working days depending on the type of complaint received, explained in Section 5:

CATEGORY A – within 1 working day

CATEGORY B – within 10 working days

CATEGORY C – within 15 working days

Following the visit, complainants will be notified which course of action that the LPA intends to take next, (see 6).

This will depend on the type and severity of the breach and will differ on a case by case basis. Complainants should be aware that unfortunately due to the often complex nature of planning enforcement which can involve legal challenges and appeals against statutory enforcement notices, some cases can take several months to resolve and it is impossible to give a specified time period that cases will be resolved within.

All complainants will also be contacted at the conclusion of the investigation to inform them that the file is being closed and the reasons for that.



## 5. PLANNING ENFORCEMENT PRIORITIES

Telford & Wrekin Council currently receives on average between 600 and 700 planning enforcement complaints per year. Unfortunately it is not possible to investigate all complaints immediately, and each case will be prioritised depending on the severity of the alleged breach.

Site visits will be carried out as soon as possible depending on workload; however complaints will be prioritised as follows:

### CATEGORY A – We aim to carry out our initial site visit within 1 working day

- Any development or breach of condition taking place that is causing or likely to cause serious and potentially irreversible harm to the surrounding environment
- Unauthorised works to a Listed Building
- Unauthorised demolition within a Conservation Area
- Unauthorised works to trees covered by a Tree Preservation Order or trees within a Conservation Area

### CATEGORY B – We aim to carry out our initial site visit within 10 working days

- Any other operational development or unauthorised change of use potentially causing harm to residents and/or the amenity of the surrounding area
- Non-compliance with approved plans or conditions attached to a planning permission
- Alleged non-compliance with an existing enforcement notice
- Development where the time limit during which formal enforcement action can be taken expires imminently

### CATEGORY C – We aim to carry out our initial site visit within 15 working days

- Untidy land
- Unauthorised display of advertisements
- Minor householder development (e.g. sheds, fences, aerials etc)
- High hedge complaint

It is possible that following the initial site visit by the enforcement officer a complaint may be upgraded or downgraded in terms of its priority dependent upon what has been found and established in the visit.

## 6. PLANNING ENFORCEMENT OPTIONS

Following receipt of the complaint and subsequent site visit(s) a number of options are available to the enforcement team.

Please note that formal enforcement action **is not** taken against all breaches of planning control, and will only be taken where the LPA considers it necessary to remove or remedy a breach of planning control or the harm being caused thereby. The taking of formal enforcement action is entirely at the discretion of the LPA.

In all but the most serious of breaches the planning enforcement team will try to resolve breaches of planning control through negotiation, instead of taking formal enforcement action. We will not however unnecessarily delay commencing formal enforcement action where it is necessary and required in order to facilitate negotiations.

Following the initial site visit one of the following options will be taken:

### **Option 1 – No breach of planning control or not expedient to pursue**

It has been established that there is no breach of planning control, or that the breach was so minor that it is not expedient to pursue formal enforcement action or request a retrospective planning application. The enforcement file will be closed and complainant(s) notified in writing or by telephone.

### **Option 2 – Further site visits/monitoring required**

In some cases, most commonly with complaints concerning an alleged unauthorised change of use and running of businesses from home, it is not always possible to establish whether a breach of planning control has occurred in one visit to site. In these cases numerous visits may be required to establish whether a breach has occurred, in addition other supporting information and evidence may need to be gathered. In these instances the complainant(s) will be kept updated and may be asked to provide further information. Once sufficient evidence has been gathered a decision will be made which follows (Options 1, 3, 4, 5 or 6).

**Option 3 – Request retrospective planning application to regularise works**

The unauthorised development is considered acceptable when judged against local and national planning policies, or would be acceptable subject to minor changes or alterations being made to the scheme. A planning application is requested in order to regularise the works. The complainant(s) will be notified that an application has been requested and when the application is registered. However should an application not be forthcoming formal enforcement action will not always be taken.

**Option 4 – Request that unauthorised development is removed or ceases**

The unauthorised development is not considered acceptable, either in full or in part, therefore the offender is given a reasonable period to remove the unauthorised works or cease the unauthorised use. If this request is not adhered to it is likely that formal enforcement action will be pursued as soon as possible. If during this period the offender submits a retrospective planning application as opposed to removing/ceasing as requested then formal enforcement action may still be taken either before, during or after the determination of any retrospective planning application.

**Option 5 – Take formal enforcement action immediately**

The unauthorised development is not appropriate and is causing immediate and severe harm to the amenity of surrounding properties and area. In this instance formal enforcement action will be taken immediately in order to rectify the breach and remove any harm being caused.

**Option 6 – Prosecution proceedings/direct action**

The following are criminal offences if unauthorised:

- works to a listed building
- works to trees in a Conservation Area or trees subject of a Tree Preservation Order
- the unauthorised display of advertisements
- the non-compliance with an enforcement notice

If the nature of the breach is serious and it is in the public interest then prosecution proceedings will be brought against the offender(s).

If the breach is minor and/or is rectified quickly and efficiently (e.g. removing an unauthorised advert) it is unlikely to be in the public interest to commence prosecution proceedings therefore no further action will be taken.

With regards to formal notices served by the LPA (Enforcement, Breach of Condition, Section 215 etc) the non-compliance with these notices will result in prosecution proceedings being brought and/or direct action being taken at the earliest opportunity in order to ensure compliance.

## 7. PLANNING ENFORCEMENT POWERS

If the planning enforcement team considers that it is expedient to pursue formal enforcement action there are a number of options available depending on the type of offence that has occurred.

- Enforcement Notice/Listed Building Enforcement Notice – Is served when a breach of planning control is causing harm to amenity or conflicts with planning policy. Copies of the notice are served on all persons with an interest in the land and the notice takes 28 days before it comes into effect. During this 28 day period recipients of the notice can appeal to the Planning Inspectorate which suspends the notice until the determination of the appeal. Non-compliance with the notice is a criminal offence.
- Breach of Condition Notice – Can be served on the developer or occupier when they do not comply with conditions attached to a planning permission. There is no right of appeal against this notice and failure to comply with the requirements of the notice is a criminal offence. Minimum compliance date of 28 days.
- Stop Notice – Is only served where there is very serious and irreparable harm being caused by a breach of planning control, where urgent action is required to cease works prior to the period of compliance stipulated in an enforcement notice. The stop notice comes into effect even if an appeal is lodged against an enforcement notice and the non-compliance is an offence.
- Temporary Stop Notice – Allows action to be taken very quickly in order to address some breaches of planning control, and can require activities to cease immediately. A Temporary Stop Notice is different from a Stop Notice in that it does not have to wait for an enforcement notice to also be served. It is an offence not to comply with this notice which lasts for 28 days.
- Section 215 Notice – Can be served when the condition of land or property is adversely affecting the amenity of the area. The notice will require the owner/occupier to take necessary steps in order to remedy the condition of the land or property. Recipients of the notice do have a right of appeal to a

Magistrates Court if they consider that the notice is not warranted. Non-compliance with the notice is an offence.

- Tree Replacement Notice – Can be served where a tree has been unlawfully felled or removed. The notice takes 28 days before it comes into effect. During this 28 day period recipients of the notice can appeal to the Planning Inspectorate which suspends the notice until the determination of the appeal. Non-compliance with the notice is an offence.
- Planning Contravention Notice – Is used to gather information about an alleged breach of planning control. This will usually involve a list of questions about the site/development. It is an offence not to reply within the specified period or to provide false or misleading information.
- Planning Enforcement Order – Where a person deliberately conceals unauthorised development and the breach is not noticed until after the time limits for taking enforcement action have passed, the LPA may make an application to the Magistrates Court for an enforcement order to be granted. If granted enforcement action can still be taken against the breach previously concealed.
- Injunction – In the most serious and persistent of planning breaches the LPA can apply for an injunction at the High Court or County Court. Whilst an injunction can be sought regardless of whether or not other powers to enforce planning control have been exercised or not, this course of action will only be taken if it is expedient, reasonable and necessary to do so and if all other enforcement actions have been or will be ineffective.

## **8. WHAT IF A COMPLAINT IS MADE ABOUT YOUR PROPERTY OR DEVELOPMENT?**

If a complaint is received about your property or development then the LPA has a duty to investigate the complaint in order to establish whether or not there has been a breach of planning control. It is often the case that breaches of planning control are not intentional and may arise from a misunderstanding or the person involved being unaware of planning regulations, and in many cases it is established that there has been no breach of planning control.

### **8.1 Your responsibilities**

If you receive a letter or a visit from an enforcement officer then we would encourage you to respond quickly, positively and to provide any required information so that the matter can be resolved quickly to the benefit of all parties.

The LPA will not reveal the details or identity of the complainant(s) to you. The investigating enforcement officer will confirm to you as soon as practicable whether or not it is considered that there has been a breach of planning control, and in cases where there has been no breach the matter will usually be resolved quickly.

In cases where a resolution may be negotiated, the enforcement officer will be happy to enter into discussions; however we will not accept undue delays to required actions or responses during these negotiations and will expect you to respond within stated timeframes.

In some cases however the unauthorised development or activities will not be considered acceptable and you will be requested to cease/remove the works in order to avoid a formal notice being served upon you.

### **8.2 Consequences of unauthorised development**

Property owners should be aware that development that does not benefit from the necessary planning permission is unauthorised. Any unauthorised development could delay or potentially prevent a future sale of the property if the relevant permissions do not show up on searches. Additionally any formal enforcement notices served will be registered with the Councils land charges section and will appear during any searches on the property. Consequently it is in the owner's interest to have all necessary planning permissions in place and any enforcement issues resolved.

### **8.3 The Investigation**

The planning enforcement officers have a right of entry onto any land without warrant in order to investigate an alleged breach of planning control. If it is necessary to enter your house (and not just the garden) then you are entitled to 24 hours' notice. It is an offence to wilfully obstruct an enforcement officer exercising their right of entry and further action will be taken should this be the case, including if necessary a warrant being secured from court.

Upon receipt of a complaint the enforcement officer will usually visit the site concerned without advanced warning being given. The site visit may be unaccompanied and the land owner or developer does not have to be present. At the site visit the enforcement officer will make themselves known to any person(s) present and show the appropriate identification when they enter the site. Should the land owner or occupier not have been present at the time of the initial site visit and it was not possible to gain access, or should it be necessary to contact the land owner or occupier after establishing that there is a breach of planning control on the site then a letter will be sent to the owner and/or occupier. The letter will request contact to be made with the enforcement officer and in some cases requiring specific actions taken within a specified timeframe. It is recommended that you respond to this correspondence as soon as possible.

## **9. COMPLAINTS AND COMPLIMENTS**

In accordance with the Councils complaints and compliments procedure any person wishing to make a complaint about the service they received or how their case was dealt with, or should any person wish to compliment the planning enforcement team they should contact the Councils Customer Quality Team via one of the following channels:

- Telephone: 01952 382006
- Email: [customer.quality@telford.gov.uk](mailto:customer.quality@telford.gov.uk)
- Post: Customer Quality Team, Telford & Wrekin Council, Addenbrooke House, Ironmasters Way, Telford, TF3 4NT

If after making a complaint the complainant is not happy with the response received then they may complain to the Local Government Ombudsman. Further information on the type of complaints that the Ombudsman can investigate and how to make a formal complaint can be found at [www.lgo.org.uk](http://www.lgo.org.uk)

## **10. PHYSICAL AND VERBAL ABUSE TOWARDS OFFICERS**

The Council will not tolerate any physical or verbal abuse towards its enforcement officers. Where necessary the Council will use legal action to prevent abuse, harassment or assaults on its Officers.