



Forest of Dean
— DISTRICT COUNCIL —

Enforcement Plan

May 2014

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1. INTRODUCTION: PURPOSE OF THE PLAN

- 1.1. The purpose of this plan is to set out what will happen if you make a planning enforcement complaint or are subject to an investigation. It explains what we will do, setting out the procedures we will follow and identifying the tools available for our use.
- 1.2. This plan was agreed by the Planning Committee on 13 May 2014.

2. SCOPE OF SERVICE

- 2.1. The Planning Enforcement Team is empowered to investigate breaches of planning control. These include:
 - ✓ Building works
 - ✓ Demolition
 - ✓ Material changes of use
 - ✓ Alterations (both internal and external) to listed buildings
 - ✓ Advertisement signs and hoardings
 - ✓ Works to trees subject to preservation orders or in Conservation Areas
 - ✓ Hedgerow removal
 - ✓ Failure to comply with conditions on any permission
 - ✓ Untidy land and buildings
 - ✓ Covenants on legal agreements
- 2.2. We attempt to resolve breaches by informal methods wherever possible but if it is necessary can resort to formal legal notices and court proceedings. We cannot intervene in non-planning matters such as boundary disputes, blocked rights-of-way, or matters controlled by other legislation such as Building Regulations or statutory nuisance under the Environmental Protection Act 1990. We will redirect such enquiries to other Council departments and other bodies, where appropriate, or advise contacting the local Citizens' Advice Bureau or a solicitor.
- 2.3. Planning enforcement action can only be pursued where works have taken place or where a development that has planning permission is not being undertaken in accordance with the approved plans/details or a condition attached to it. No action is possible in respect of anticipated breaches, regardless of how reliable the rumour, other than in exceptional instances where we may attempt to prevent a breach occurring (see the [Annex](#) of this plan).
- 2.4. Planning enforcement powers are discretionary. Government advice sets out that Council's should only use formal powers as a last resort where matters cannot be resolved through negotiation and where it is expedient to do so in the public interest. Some complainants will be disappointed if it is decided not to take action. However, the planning system is designed to achieve a balance between competing demands in the public interest, and the enforcement of planning control reflects this, focusing on proportionate

resolution rather than punishing those who have acted in breach, often unknowingly.

3. ENFORCEMENT TOOLS AND REMEDIES

- 3.1. The vast majority of breaches of planning control are resolved informally through negotiation. This may involve the submission of a planning application to retain the development. Submission of an application, if granted, affords the Council the opportunity to impose conditions so that a use or structure becomes acceptable.
- 3.2. We will allow time for breaches of planning control to be resolved without resorting to formal notices. Where informal resolution cannot be achieved, there are a variety of formal tools available to the Council. These are described in detail in the [Annex attached](#).

4. PRINCIPLES OF GOOD ENFORCEMENT

- 4.1. We will observe the principles laid down in the Council's Enforcement Policy. This entails:
- ✓ **Standards** being published and monitored for service provision (see section 5)
 - ✓ **Openness** regarding dealings and clarity of advice
 - ✓ **Helpfulness** through courteous and efficient encouragement of compliance
 - ✓ **Complaints** procedure accessible and effective
 - ✓ **Proportionality** so that costs of compliance are commensurate with the harm caused
 - ✓ **Consistency** in exercising discretion to enforce (this does not mean uniformity, as all cases are treated according to their individual merits)
- 4.2. These principles apply equally to everyone we deal with.

5. INVESTIGATING COMPLAINTS: TARGETS/ SERVICE STANDARDS

- 5.1. We set out below what you can expect when you complain to us or are subject to an investigation.

HOW WE DEAL WITH THE COMPLAINANT

- 5.2. You can make a complaint to the Planning Enforcement Team in a number of ways:
- ✓ By completing the [online form](#) - This is the preferred method of contact
 - ✓ By telephone 01594 810000
 - ✓ In writing to - The Planning Enforcement Team, Forest of Dean District Council, Council Offices, High Street, Coleford, Gloucestershire GL16 8HG

- ✓ In person by visiting the District Council Offices during office hours- 9:00 to 4:45 Monday to Thursday and 9:00 to 4:30 Fridays.
- 5.3. We will acknowledge your complaint and will investigate all complaints. Complaints should include as much relevant information as possible relating to the development and the land on which it is being undertaken.
- 5.4. We will request your contact details, but complainants can be reassured that the Council will not reveal your identity. In the event of legal proceedings and appeals, a successful outcome may depend upon the willingness of complainants to make submissions and/or appear as witnesses in court and at public inquiries or hearings, where their identity will enter the public arena. We will not do this without your agreement.
- 5.5. An initial assessment of the complaint will be undertaken and a site visit made if necessary. We aim to do this within 20 working days of receipt of the complaint. The Officer will then agree a course of action with the Team Manager within 25 working days of the receipt of the complaint.
- 5.6. If a planning application is submitted in an attempt to regularise a breach, the standard process for publicising this application will take place.
- 5.7. If we decide that formal enforcement action is required, we will advise interested parties if a report is to be presented to the Council's Planning Committee.

HOW WE DEAL WITH THE INVESTIGATION AND THE CONTRAVENER

- 5.8. Officers will provide clear advice to the contravener to help them resolve any breach of planning control and avoid the need for formal enforcement action.
- 5.9. Investigations may require officers to enter premises. We will only do this if it is necessary and officers will advise anyone present at the time of the purpose of the visit. (Officers carry proof of identity and proof of rights of entry) If there is no one present at the time of the visit then we will contact the occupier/owner to arrange an alternative time and date if required. Entry to any site or building can be achieved by exercising powers under Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 (as amended) which enable named officers to enter land specifically for enforcement purposes, full details regarding these powers can be seen in the [Annex attached](#).
- 5.10. Where a breach is identified, we will write to you setting out what you need to do, the timescale for doing so and what may happen if you do nothing. We will aim to do this within 25 working days of the receipt of the complaint.
- 5.11. Where the breach appears to comply with planning policy or can be made to do so with minor alteration works/conditions, an application to retain the development will be invited. If no planning application is submitted a decision will be made on the expediency of taking formal enforcement action.

- 5.12. Where unauthorised development is clearly contrary to policy, or has unacceptable impacts we will aim to advise you in writing within 25 days of the receipt of the complaint. We will then work with you to resolve the breach of control. If it is not possible to resolve the matter informally within a reasonable time, we will consider service of formal notices. **N.B.** Where the impacts are severe enforcement action may be taken even if the contravener submits an application for permission or appeals if the application is refused.
- 5.13. Where formal action is being considered contraveners will normally be given written warning of the decision and will be advised in advance if the matter is to be considered by the Council's Planning Committee. Such notice may not be appropriate where the breach is causing unacceptable ongoing harm, involves irreparable damage to a listed building, or justifies service of a stop notice.
- 5.14. Even where we consider the matter justifies formal action we will keep you informed of intended action and you will still be able to resolve matters voluntarily prior to the service of any notice.

6. COMPLAINTS

- 6.1. Anyone who is concerned that relevant procedures have not been followed, or feels that they have not been treated fairly, can contact the Development Manager. Formal complaints will be handled in accordance with the Council's Customer Feedback Policy.

7. PRIORITISING ENFORCEMENT ACTION

- 7.1. As with any area of work there is a need to prioritise tasks relevant to the resources available to deal with them. Some breaches of planning control will require urgent and immediate attention, either because the time period for action is limited or because the impact of unauthorised activity causes significant harm to the public interest. Other breaches can be investigated and progressed to a satisfactory outcome through submission of a planning application, or agreement to take remedial steps, and these processes may take some time. Where such breaches do not cause significant harm to the public interest they will form the ongoing work of the Enforcement Team and not be accorded urgent and immediate priority.
- 7.2. The priorities for action have been drawn up to improve the fairness and efficiency of the enforcement service. Responses will vary according to the circumstances of individual cases.
- 7.3. Priority Cases - Urgent and immediate:
- ✓ Complaints of serious irreparable harm to Listed Buildings
 - ✓ Demolition works in a Conservation Area
 - ✓ Trees covered by a TPO and works to trees likely to cause harm in a Conservation Area.

- ✓ Removal of hedgerows
- ✓ Adverse impacts on designated wildlife habitats
- ✓ Cases where the time-limit for enforcement action will expire imminently
- ✓ Complaints of development taking place which are causing serious harm to amenity and/or road safety
- ✓ Non-compliance with stop notices
- ✓ Concerns (backed up by strong evidence) that a breach of control may occur in the future - and a proactive response is required to prevent this happening.

Other Cases

- 7.5. A risk based approach will be adopted in relation to scale, impact, number of people affected, harm caused and effect on the Council's reputation.
- 7.6. It should be noted that where an investigation reveals additional breaches of planning control, the status of the complaint may change.

8. LIAISON WITH INTERNAL AND EXTERNAL BODIES

- 8.1. In our investigation of any complaint we may seek views from other departments within the Council or from other bodies/organisations as circumstances require. We will take into account their views in reaching a conclusion on whether to take action.

9. COUNCIL MEMBERS

- 9.1. Breaches of planning control can affect the lives of many residents and can also have serious legal implications for the contravener. It is therefore important that members are involved and kept informed of the enforcement process and are aware of how the Council is performing.
- 9.2. Where there is a breach of planning control and officers consider it is appropriate to take formal action to resolve that breach, a report will normally be presented to the Council's Planning Committee to seek authority to pursue formal action, excluding formal cautions in relation to trees. Specific authority is not required from members where the Council has previously refused planning permission for the development the subject of the investigation or where urgent action is required. Any formal enforcement notices served are entered, and retained, on the public Enforcement Notice Register.
- 9.3. Reports on performance will be presented to the Council's Planning Committee on a quarterly basis. These will include details of the number of cases received and closed, the average time of closure and any trends in the number or type of complaint. An update on the current situation regarding any enforcement notices that have been served is circulated on a monthly basis (detailing whether the notice has been complied with, whether an appeal has been submitted etc.).

10. CONCLUSION

- 10.1. This plan aims to ensure that the Council provides a high performing and customer focused planning enforcement service. It will be reviewed periodically to assess its effectiveness, revise procedures where necessary and to ensure that any new planning legislation and/or Government advice is incorporated.
- 10.2. Further advice on the enforcement powers available to the Council can be found within the [Government's National Planning Practice Guidance: Ensuring Effective Enforcement](#).

ANNEX- Glossary of Enforcement Tools and Remedies

Planning Contravention Notice and requests for information

In order to confirm the existence and nature of a breach, the LPA may serve a Planning Contravention Notice (PCN) under S171C of the Town and Country Planning Act 1990 (as amended). As well as an information-gathering tool, the PCN serves as a statement of intent of enforcement action by the LPA, formally demonstrating that it takes seriously the matter in question. This, on most occasions deters further non-compliance; indeed the PCN offers the contravener an opportunity to meet appropriate officers to agree a plan of remedial measures. Failure to respond within time or at all, or replying with false or misleading information, constitutes a criminal offence and may lead to a penalty of up to a maximum of £5,000.

Alternatively, the LPA can issue a notice under s.16 of the Local Government (Miscellaneous Provisions) Act 1976 or s.330 of the Town and Country Planning Act 1990 (as amended) with respect to specific matters only (for example; names, addresses and nature of interest; and use of premises, dates and names, addresses and interest of users respectively). The LPA can also undertake searches into the ownership of the land.

Enforcement Notice

This is the principal tool to remedy a breach. It imposes a legal duty on those with an interest in the land to affect certain remedial measures specified in the notice within a specific period (being no less than 28 days). Recipients may appeal to the Planning Inspectorate, effectively suspending the enforcement notice until the appeal is determined. Enforcement notices are entered on the Land Charges Register (LCR) and Planning Enforcement Register (PER) and run with the land, remaining effective even once complied with. Non-compliance constitutes a criminal offence for which recipients may be prosecuted and if found guilty may be liable to a fine up to a maximum of £20,000 together with costs and a criminal record or an unlimited fine on indictment.

Listed Building Enforcement Notice

This is the equivalent notice available under the Listed Building Legislation. It should be noted that this Notice may be issued at any time and is not subject to the time constraints imposed upon an Enforcement Notice. The same penalties will apply as above. It should be noted that any person who intentionally causes damage or undertakes works likely to result in damage to a Listed Building shall be guilty of an offence subject to a maximum fine of £20,000 and daily penalties if the works do not cease or on indictment an unlimited fine.

Breach of Condition Notice

This remedy is available in the event of non-compliance with a condition attached to a planning permission. There is no right of appeal and the penalty for non-compliance is a fine up to a maximum of £2,500. Such Notices are not entered on the Land Charges Register.

Stop Notice

In the most serious cases the LPA may decide to issue a Stop Notice. Such Notices can only be served in conjunction with an Enforcement Notice. They can require cessation of unauthorised activities where they cause severe harm to local amenity. The duty to comply is universal and not limited to recipients of the notice. The improper use of a Stop Notice may result in the LPA being liable for compensating owners or occupiers for losses directly attributable to the service of the notice.

The fine for breaching a stop notice is currently £20,000 with an unlimited fine on indictment.

Temporary Stop Notice

It is effective immediately and does not require the prior service of an Enforcement Notice. However, they last only for a maximum of 28 days and cannot be renewed unless an Enforcement Notice is also served.

The fine for breaching the notice is the same as for a Stop Notice.

Court Injunction

This may be sought in the most serious cases to restrain anticipated breaches as well as prevent actual breaches. Non-compliance is considered to be contempt of court and may result in a fine and/or imprisonment.

Untidy Land (s.215) Notice

These encompass buildings as well as land. The LPA need only show that amenity is adversely affected by the state of the premises. Appeals are to the Magistrates' Court and not to the Secretary of State. Non-compliance constitutes a criminal offence for which recipients may be prosecuted and are liable to a fine up to a maximum of £1,000.

Advertisements

All advertisements, other than those that are exempt under the terms of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, require consent, be that deemed or express. Any person who displays an advertisement on a site in contravention of the Regulations is guilty of an offence under section 224 (3) of the Town and Country Planning Act 1990 and currently liable to a fine on conviction of up to £2,500, continuing on a daily basis.

A Discontinuance Notice can be served in respect of adverts that have deemed consent, this is the relevant power where the LPA consider that an advertisement is either not appropriate or dangerous in a given location. The notice cannot take effect less than 8 weeks after service date. The notice can be appealed.

Prosecution

Prosecution is one of the remedies available in respect of a breach of any of the notices listed above (excluding Court Injunctions) and this action will be taken where there is sufficient evidence and it is in the public interest in accordance with the Code for Crown Prosecutors.

If found guilty of the offence the Defendant may incur the costs of the LPA in bringing the prosecution, any resultant fines imposed, any costs incurred themselves directly in seeking legal representation, and have a resultant criminal record.

The Proceeds of Crime Act 2002 (POCA) is an Act which provides for the confiscation or civil recovery of the proceeds from crime in the UK. It deals with a wide range of matters relevant to planning law on proceeds of crime issues. These include confiscation orders against convicted individuals (requiring payment to the State based upon the benefit obtained from their crimes) and civil recovery of proceeds of crime from un-convicted individuals. The Council may be able to seek an award under the Act if relevant criteria are satisfied and the breach of planning has resulted in monetary or other gains being made by the individual concerned.

With the respect to the Act and Planning Law, the provisions will likely apply if an individual has failed to comply with a formal notice whilst, for example, running an unauthorised business. Any monetary or other benefits made during that period will be liable to confiscation under the Act.

Direct Action (with costs recovery)

These powers only arise in the event of non-compliance with Enforcement and Untidy Land Notices. This is potentially the quickest remedy and involves the LPA itself taking steps to remedy the breach, for example by removing an unauthorised building. The LPA then recovers the costs of this from the offender. Unlike prosecution, exercising such default powers secures actual resolution. Further legal action may also need to be taken to recover the costs. However, it should be noted that costs can be pursued through civil action and can be registered as a local land charge and therefore can be recovered if the land is sold. In addition, it may be possible for the LPA to force the sale of the land in order to recover these costs.

The Council may also take direct action to remove unauthorised advertisement signs in accordance with a joint agreement with Gloucestershire County.

The Powers of Entry

The Powers of Entry the LPA has to investigate potential breaches are as follows:

- Sections 196A, S196B (Power of Entry following issue of a warrant) and S196C (supplemental provisions relating to Power of Entry) of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 2004).
- Sections 214B, 214C (Power of Entry following issue of a warrant) and 214D (supplemental provisions relating to Power of Entry).
- Section 225 of the Town and Country Planning Act 1990 (only entitles access to buildings which have public access).
- Sections 324 and 352 (supplemental provisions relating to Power of Entry) pursuant to the Town and Country Planning Act 1990.
- Sections 36 and 36A (Power of Entry following issue of a warrant) of the Planning (Hazardous) Substances Act 1990.
- Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- Section 24 of The Local Government (Miscellaneous Provisions) Act 1976.
- Section 33 of The Local Government (Miscellaneous Provisions) Act 1982.