



PLANNING ENFORCEMENT PROTOCOL
LONDON BOROUGH OF SUTTON

26 November 2013

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1. THE PURPOSE OF THIS DOCUMENT

2. The purpose of this document is to explain how the London Borough of Sutton's Development Services team manage planning enforcement in the Borough. This document is intended for developers, their agents and members of the public. Appendix 1 explains technical planning terms used in this document. Terms which appear in this glossary are identified in *underlined italics*

3. WHY WE NEED THIS DOCUMENT?

4. The London Borough of Sutton's Development Services operates as part of the Council's statutory role as the Local Planning Authority in the management of the use and development of land and buildings within the Borough. The credibility of the Development Service depends in part on the readiness of the Local Planning Authority to take effective enforcement action.
5. Paragraph 207 of the National Planning Policy Framework (NPPF) advises Local Planning Authorities to consider publishing a local enforcement plan. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so. The absence of a local enforcement plan or protocol could be used against the council in future appeals, including at court.
- 6 The London Borough of Sutton's planning enforcement policy was previously contained in the Unitary Development Plan. This protocol supplements the Development Plan which was adopted in 2012 and accords with the advice of the NPPF. It has been approved by the Council's Housing, Economic and Business Committee for use by the Council acting as Local Planning Authority on 26 November 2013.
- 7 Planning enforcement is a complex area of planning law. The legislative framework which has informed this protocol is principally contained in:

Town and Country Planning Act 1990;
 Planning (Listed Buildings and Conservation Areas) Act 1990;
 Planning and Compensation Act 1991;
 The Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

Other relevant legislation and Central Government Advice relating to compliance and enforcement is contained in:

Circular 10/97: Enforcing Planning Control: Legislative Provisions and Procedural Requirements;
 National Planning Policy Framework March 2012

8. WHAT IS ENFORCEMENT?

9. The Council is committed to providing an efficient and effective planning service in the interests of the local community. The enforcement of planning control is important in order to:

protect people and land from the effects of unacceptable development;
remedy the unacceptable harmful effects of unauthorised development; and
bring unauthorised activity under control to ensure the credibility of the planning system is not undermined.

10. Planning enforcement action is discretionary and the Council is required to act proportionately in responding to suspected breaches of control. The Council will robustly use the discretionary enforcement powers provided by the planning legislation where it appears there has been a breach of planning control, or where local amenity has been harmed. The use of these powers will have regard to:

- (i) Whether it is practical and a good use of public resources to take formal enforcement action, guided by the prioritisation set out in paragraph 27;
- (ii) Planning policy; including the Council's Development Plan and Supplementary Planning Guidance and the National Planning Policy Framework. Any changes in Central Government guidance or legislation will be taken into account;
- (iii) The Convention on Human Rights and the Equality Act 2010.
- (iv) The need to take enforcement action within an acceptable timescale in cases where immediate remedial action is needed to prevent serious harm to public amenity, where negotiations fail to achieve compliance, or where offences have occurred that would mean negotiation would be inappropriate.

11. WHAT CAN WE INVESTIGATE?

12. Development

13. Not all building works, changes of use, demolitions, advertisements or tree works require permission from the Local Planning Authority. Local Planning Authorities are only concerned with "development" which is defined by section 55 of the Town and Country Planning Act 1990. There are two types of "development":

Operational Development e.g. building or engineering works
Material Change of Use, changing from one use class to another e.g.
residential to business

14. "Development" is not:

Works which affect only the interior of the building,
Works which do not materially affect the external appearance of the building.

15. If there is no "development" there is no breach of planning control and no further action is available to the Council under its planning powers.

16 A breach of planning control may result from:

Carrying out work either without planning permission or in a way that is different to that which has been granted planning permission.
Carrying out work without compliance with planning conditions attached to a planning permission
Changing the use of land or property without planning permission

17. It is not illegal to carry out works without planning permission or related consents. These

works are termed as being “unauthorised” and only become illegal if they are retained in contravention of an Enforcement Notice that has come into effect and is not the subject of a current planning enforcement appeal.

- 18 Works to a listed building, the felling or lopping of protected trees, or the display of an advertisement requiring consent from the Council as the Local Planning Authority are dealt with differently as “planning enforcement”.

Listed Buildings: It is a criminal offence to carry out works to the inside or outside of a listed building which require authorization, without first obtaining that consent.

Advertisements: It is a criminal offence to display an advertisement without the appropriate consents.

Works to trees subject to Tree Preservation Orders or within a Conservation Area: These types of trees are protected. It is a criminal offence to cut down, top, lop, uproot, willfully destroy or damage a protected tree in a manner likely to destroy it, without the Council’s consent.

19. Unsightly land or buildings

We can investigate the physical condition of buildings or land where there is allegation that the current state is causing significant harm to the visual amenity of an area, this includes dilapidated buildings and vacant and overgrown sites. Under certain circumstances we can use S215 of the Town and Country Planning Act 1990 to take action.

20. Night time business uses

A balanced and socially inclusive night time economy can bring benefits to an area but businesses such as leisure uses, restaurants and public houses also need to be considerate neighbours. Where planning permission is required for a change of use to a leisure use, or uses such as restaurants and public houses it is likely that opening times will be restricted to protect the amenities of the occupiers of adjoining and nearby properties. These time restrictions may be different to those on the license. Where it is found a business is operating outside of the permitted hours of opening and, as a consequence, harm is being caused to the occupiers of adjoining and nearby properties, planning enforcement action may ensue. The grant of different or extended hours of opening on a license does not prevent the Council taking enforcement action as the Local Planning Authority, if a business is opening outside the hours allowed on the planning permission.

21. Beddington Area including the Beddington Strategic Industrial Location

The Council is undertaking a program of work to secure social, economic and environmental improvements in the Beddington Area including in the Beddington Strategic Industrial Location. It is the Council’s intention to prepare a more detailed Enforcement Strategy for this Area. In advance of the preparation of this, where it is found unauthorised development has had, or is having, an adverse effect on the area, further action may be taken.

22. A breach of planning control becomes immune from planning enforcement action if no action has been taken within the time limits set out in the Town and Country Planning Act, unless the works comprise a criminal offence. Typically, this would mean that we cannot take action relating to building work, or change of use to a self contained residential dwelling more than 4 years old, or a change of use over 10 years old.

23 WHAT DON'T WE INVESTIGATE?

24. The Local Planning Authority cannot investigate the following issues, unless there is a breach of planning conditions on a planning permission:

Boundary wall disputes or other land ownership disputes, including breach of covenant.

Highway obstructions including parking and traffic.

Clearing of unprotected trees or landscaping and gardening works

Out of hour's construction and related disturbances

Graffiti, unless it is classed as an advertisement

Dangerous structures or damage to property (unless a listed building)

Site security

Sewers, soakaways or other drainage matters (other than those relating to the formation of hard surfaces, such as driveways)

Business competition

25 HOW INVESTIGATIONS INTO ALLEGED BREACHES OF PLANNING CONTROL ARE PRIORITISED

26. Allegations are typically received from members of the public and elected members. Each allegation of a breach of planning control is treated on its merits and will be assigned a priority according to the harm being caused. All cases will be kept under review which could result in the priority assigned to the investigation changing.

1. Urgent Priority

Significant and permanent damage to the environment where works are potentially irreversible, such as unauthorised demolition or significant alteration to a listed building or loss of significant protected trees.

2. High Priority

Breaches of statutory planning notices such as Enforcement Notices. Building works commencing without compliance with pre-commencement conditions or legal agreements which are fundamental to or goes to the heart of the planning permission and without which the development would not be acceptable.

Unauthorised development/activity that results in widespread harm to amenity (i.e. affects more than the immediate neighbouring properties) or serious harm to the policies of the Development Plan, such as the protection of the Green Belt Non-compliance with a live planning permission where there is significant harm to amenity in planning terms.

Unauthorised development where it is known the time-limit for taking action is imminent.

Demolition or works unlikely to be approved without substantial modification.

3. Medium priority

Development likely to cause general harm to public amenity, in particular residential amenity the setting of a listed building or character and appearance of a conservation area.

Breaches of condition attached to a planning permission where there is likely to be general harm to public amenity in particular residential amenity.

Changes of use causing general harm to the amenity of an area, such as commercial uses in residential properties

Advertisements causing harm to amenity or public safety

Sale of Green Belt land as leisure or investment plots.

4. Low Priority

Unauthorised development which would be likely to receive planning permission/approval were an application to be submitted

Development that is unlikely to require planning permission.

Advertisements which do not cause harm to amenity or public safety.

Complaints with only very limited details

Pro-active condition monitoring/plan checking.

Examples of such cases are likely to be.

Technical breaches where there is no harm or nuisance identified,

Untidy sites, and

Developments of a temporary nature

27. The target is to visit:

1. **Urgent Priority Cases** within **one working day** of receiving the request.
2. **High Priority Cases** within **two working days** of receiving the request.
3. **Medium High Priority Cases** within **five working days** of receiving the request.
4. **Low Priority Cases** we will endeavour to visit the site within **ten working days** of receiving the request

28. WHAT ENFORCEMENT ACTION MAY WE TAKE?

29. If there is a breach of planning control, the council as the Local Planning Authority will consider what action to take. As planning enforcement powers are discretionary and the Local Planning Authority has to be able to demonstrate that any enforcement action is practical, a good use of public resources and proportionate to the impact of breach.

30. Where possible we will seek a resolution which conforms with the law. This may mean

the regularization of unauthorised development through requesting the submission of a retrospective planning application. This does not mean that the Local Planning Authority will automatically approve the application. All usual planning procedures including consultation with neighbours will be undertaken. conditions can be imposed to make the development acceptable.

the developer/owner removes the unauthorised development is removed, or the use ceases, or planning conditions are complied with.

31. If it is not possible to regularise the unauthorised development, the Council as the Local Planning Authority will assess the harm arising from the breach of planning control and take formal enforcement action. This could include issuing an Enforcement Notice or Breach of Condition Notice to address the harm In urgent cases the Local Planning Authority will consider the use of Temporary Stop Notices and/or Stop Notices.

32. We follow a 3 step process:

Step 1 – Informal action

Give advice e.g. informal letter,
 Discuss with originator of breach allowing an opportunity to stop the works/use or the reinstatement of land,
 Invite a planning application if permission may be forthcoming, or an application for non-material minor amendment or to submit details required by the conditions on an existing planning consent.

Step 2 – Preparation of Formal Enforcement Action

Formal letters, written warnings,
 Issue a Planning Contravention Notice and/ or Requisition for Information Notice to obtain more information, if required.

Step 3 – Formal Enforcement Action

Where a breach of planning control has been identified and no action has been taken to address the breach it will be necessary to consider formal action. Where formal action is taken we will explain to the recipients what is required of them, the consequences of non-compliance and the available rights of appeal

Where the requirements of formal enforcement action have not been met, prosecution proceedings or direct action will be considered.

33. In Urgent or High Priority cases, Steps 1 and 2 may be omitted.

34 A diagram illustrating these steps is included as appendix 2.

35 If you report an alleged breach, we will keep you informed. Our target is to provide an initial response to all cases, other than low priority, with an explanation of our findings within **28 days** low priority may take up **42 days**. Further written explanation will be given as the investigation progresses. This will include information relating to formal enforcement action taken, the appeal process and reasons why investigation files have been closed.

36. DIFFERENT TYPES OF FORMAL ENFORCEMENT ACTION

37. Where it has been decided to take formal enforcement action, the main options for action are:

38 **Breach of Condition Notice** – to require compliance with a planning condition on a live planning permission, prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice.

39. **Enforcement Notice** - can be served where an alleged development is being carried out without planning permission or where a condition is not being complied with. The Notice will require works or action to take place, or a use to cease, sufficient to remedy the harm caused by the breach. The recipient of the Notice has right of appeal to Planning Inspectorate. It is an offence not to comply with an Enforcement Notice. Enforcement Notices are registered as charges on the land.

40. **Listed Building Enforcement Notice**. Subject to the extent and nature of unauthorised works on a listed building, consideration will be given to whether to start criminal proceedings. As an alternative or in addition. a Listed Building Enforcement Notice may be served to make sure that appropriate remedial works are undertaken. This notice is similar to an Enforcement Notice

- 41. Stop Notice** – this can be served before, with or after an Enforcement Notice if continuing unauthorised development is causing irreparable and immediate significant *harm*. It is an offence not to comply with the requirements of a Stop Notice. This type of Notice carries compensation liabilities for the Local Planning Authority which means that we are liable to pay compensation if a judge or planning inspector decides we have incorrectly used the planning enforcement powers. An alternative means of taking action against this type of breach is for the Local Planning Authority to seek an injunction.
- 42. Temporary Stop Notice** - can be served where there is a breach of control and activity or development needs to stop immediately to safeguard the *amenity* of the area. These Notices are only valid for a period of 28 days. The recipient of a Temporary Stop notice can seek a judicial review of the Council's decision to issue the notice if they do not accept that it is valid or believe that the decision making process is flawed.
- 43. Prosecution** - can be taken where a formal Notice has been breached. In addition, in some instances we can commence legal proceedings for unauthorised works without the need to serve any formal Notices, such as unauthorised works to a listed building or a protected tree or an unauthorised advertisement. The Local Planning Authority will apply two tests in cases when considering prosecution:
- The evidential test** - Is there admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction?
- The public interest test** – Is it in the *public interest* to prosecute?
- 44. Direct Action** - Where the steps required by a Notice are not taken within the period for compliance the Local Planning Authority can enter land or property and carry out the required work. Costs incurred are recoverable from the owner or registered as a charge on the property with the Land Registry so that the council can recover its costs at a future date when the property is sold.
- 45. Section 215 Notices** – can be issued where when the condition of land or buildings negatively affects the *amenity* of an area. The Notice requires the owners and occupiers of the land to take specific steps to secure an improvement in its appearance. If those measures are not taken within a specified time an offence has been committed. The recipient of the Notice has right of appeal to the Magistrates Court.
- 46. Works to trees subject to Tree Preservation Orders or within a Conservation Area** - The Local Planning Authority has power to prosecute in the event of unauthorised works. If a tree is removed completely it will also be the duty of the landowner to plant replacement trees of appropriate size and species in the same location
- 47. HOW TO REPORT A POTENTIAL BREACH**
48. If you believe a breach of planning control has occurred you can initiate a planning enforcement investigation. Unless the breach involves works to a protected tree, a listed building or demolition, complaints should be made in writing.

The quickest and preferred way to report a potential breach of planning control is by entering the details on the 'Report an issue' section of the Council's website at <https://www.sutton.gov.uk/index.aspx?articleid=17077>, or via the 'Report it' function in planning section of the council's website <https://www.sutton.gov.uk/index.aspx?articleid=648>.

49. If you do not have access to the internet, you can write to us, including any photographs

and documents at.

Development Services
London Borough of Sutton
Development Services
24 Denmark Road
Carshalton
SM5 2JG

50. The following information must be included:

Full address or location of the site where the development / breach is taking place.

Nature of the alleged breach and the planning *harm* caused.

Date when activities first began and if they are on-going.

If the complaint relates to a change of use, the previous use of the site.

The full name, postal address and contact details of the complainant, including telephone number and where possible an email address. Where an email address is provided we will generally use this to keep you informed of progress. **The Council DOES NOT investigate anonymous complaints.**

51. The council will seek to maintain the confidentiality of complainants at all times, however the substance of the complaints themselves is not confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action, which may include acting as witness at an appeal or in court.

52. WHAT YOU SHOULD DO IF A COMPLAINT IS MADE ABOUT YOUR DEVELOPMENT?

53 The council understands that in many cases a breach of planning control is not intentional and can be the result of a misunderstanding or a person being unaware of the planning requirements. Therefore, if you receive a letter from us or a visit from a planning enforcement officer, we encourage you to respond positively and provide the information which we need to resolve the matter. It is beneficial to all parties if any breach is addressed at an early stage.

54 The Council as the Local Planning Authority has a duty to investigate all alleged breaches of planning control even if they subsequently prove to be unfounded. We do not disclose the identity of the complainant to you. It may be that the matter can be resolved quickly if there is no breach. In other cases a resolution may be found without resort to formal enforcement action. However, this does not mean that you can delay any response or action. We expect you to respond within the stated timescales (typically between 14 and 21 days) and we will pursue legal action where the requirements of formal Notices are not met.

55. The Council as the Local Planning Authority will not allow lengthy negotiations to delay the Council from taking action. In many cases, particularly where the works are likely to be acceptable, we may invite you to submit a retrospective planning application without prejudice to any decision the Local Planning Authority may take. In cases where planning permission has previously been obtained and the deviation from the approved plans is very minor, you may be entitled to apply for a *non-material minor amendment*. In cases where the requirements of pre-commencement conditions have not been met, you may still be able to submit the information specified in the condition(s) or alternatively you may need to submit a new planning application.

56. Development which requires, but does not have planning permission, is unauthorised and will be revealed by a Local Land Search if reported. This may affect you should you wish to sell a property, or remortgage. We will also make any party known to have an interest in your property, including mortgage providers, aware of any formal enforcement action and we will send them a copy of any formal notice.
57. Planning enforcement officers have legal rights of entry to land and property in order to investigate an alleged breach of planning control or compliance with an enforcement notice. The enforcement officers will make themselves known to the landowner/developer when they enter a site.
58. An enforcement officer's visit may be unaccompanied; you do not have to be present. If it is necessary to enter your house, (as opposed to just the garden) you are entitled to 24 hours notice. If you actively prevent an enforcement officer from entering onto your land the council as the Local Planning Authority may obtain a warrant to enter the site. Once a warrant has been secured, any obstruction to access the site will be a criminal offence.
59. Information obtained from the site visit will be used to assess the *harm* being caused and what further action is necessary. Allowing the enforcement officer to make a site visit and take photographs will help to reduce time delays and any potential inconvenience.
60. Planning enforcement officers can explain the different notices to you, and help you understand the implications. However, Planning Enforcement Officers will not act as your advisor and they cannot make decisions on your behalf. You should consider whether you wish to get your own independent advice from a qualified planning consultant or another appropriate property professional.

61. CONTACTS AND FURTHER INFORMATION

62. Planning Enforcement
Development Services
London Borough of Sutton
24 Denmark Road
Carshalton
SM5 2JG

Tel : 020 8770 5070 (contact centre)

Email : developmentcontrol@sutton.gov.uk

63. **Planning Portal** - This is the Government's online planning resource where you can learn about the planning system and latest government policy:
www.planningportal.gov.uk.
64. **Planning Aid** - www.rtpi.org.uk/planningaid.
Planning Aid Advice line: This service will provide fifteen minutes of free professional advice to all callers. Eligible callers may then receive further professional advice through a network of professional volunteers, who give their services free of charge to individuals and groups who are unable to afford professional fees.
Tel: 0330 123 9244

65 SERVICE STANDARDS

- 66 The Council's Customer Service Charter is available via the Council's website <https://www.sutton.gov.uk/index.aspx?articleid=5654>.

GLOSSARY

Local Amenity – includes the visual appearance of a building and its impact on the surrounding area. It also includes the impact on the occupiers of neighbouring properties arising from the change of use of a building or land (eg noise and disturbance)

Harm - The council, as the Local Planning Authority, cannot take enforcement action simply because people do not like a development. The development has to be harmful to matters of planning importance such as: loss of privacy, loss of sunlight/ daylight, access or traffic problems, excessive noise and disturbance, and inappropriate design and layout. The harm identified must be able to withstand potential challenge via appeal to the Planning Inspectorate.

Use Class – in planning the type of use of a building or land is grouped into “Use Classes”. Planning permission may be required to change from one use to another.

The “Public Interest test” – each case shall only proceed to court if the council is satisfied it meets the two key legal tests of:

- (i) the evidential stage – is there sufficient evidence to proceed to court; and
- (ii) the public interest test – which includes a consideration of how serious the offence is and the level of culpability of the defendant.

Non-material minor amendment - A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material. In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes allowed as non material minor amendments, on the planning permission as originally granted. There is no statutory definition of ‘non-material’ because it’s dependant on the context of the overall scheme (i.e. what is non-material in one case may be material in another). Non-material amendments can only be made to planning permissions and not to listed