

## **Thanet District Council Planning Enforcement Protocol**

### **What is the purpose of planning enforcement?**

The Council uses its planning powers to help the council achieve the ambitions of the local community. In most cases the Council deals with applications for proposals for development that has not yet been carried out. However, on occasions development is carried out without planning permission, in such cases the Council will need to consider using the range of powers available to it that will ensure that such development is brought within planning law.

Effective enforcement of planning and associated legislation is necessary to protect the amenity and environment of Thanet. Investigation powers are entrusted to Local Planning Authorities (LPA) by Parliament to enable the LPA to protect the amenity and community safety of Thanet residents from the adverse effects of undesirable developments and neglect of open land.

The Government's view in the National Planning Practice Guidance is that effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

There is a clear public interest in enforcing planning law and planning regulation in a proportionate way.

In conducting its investigations and when deciding whether or take further action, and when taking that action, the Council will ensure that it maintains the principles of fairness, honesty and openness. All action will be taken in accordance with the Human Rights Act and other relevant legislation.

### **What is a breach of planning control?**

A breach of planning control is defined at Section 171A of the Town and Country Planning Act as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”. Section 55 of the Town and Country Planning Act 1990 defines development as “the carrying out of building, mining, engineering or other operation in, on, under or over land, or the making of any material change in the use of any buildings or other land.”

On receipt of a complaint we will carry out initial investigations of breaches of planning control which include:-

- Buildings that do not have planning permission
- Use of land and buildings without planning permission
- Land that is kept in a poor condition and has a harmful effect on the character and appearance of an area
- Works to protected trees without consent
- Advertisements that do not have consent
- Works to Listed Buildings
- Development not built in accordance with approved plans
- Non-compliance with planning conditions

### **Conditions of planning permissions**

Once planning permission is granted, you may need to get formal approval of any details required by conditions. It is therefore imperative that land owners carefully read their permission once it is received ensuring that works do not commence on site in breach of planning conditions.

The onus is on the land owner or developer to make sure that all the necessary consents are in place before work starts, and to make sure that all the conditions are complied with. The Development Management department will not write to you reminding you of your responsibility to discharge conditions.

### **What is not a breach of planning control?**

We often receive complaints regarding matters that are not breaches of planning control. Often this is where other legislation covers and controls the matter. The following are examples of what we cannot become involved in through our planning enforcement service:

- Neighbour nuisance/boundary and land ownership disputes – these are civil matters that the Council cannot get involved in. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau. The council does not investigate highway matters, boundary wall or other land disputes as these issues do not constitute planning matters.
- Use of/ or development on the highway, footway or verge that is covered by highway legislation – please contact Kent County Council on 03000 418181.
- Fly tipping

- Any matter covered by other substantive legislation such as noise and smells It should be noted that the General Permitted Development Order sets out development that can be carried out without requiring planning permission. Many enforcement complaints relate to permitted development, which is not a breach of planning control.

### **How to report a breach of planning law**

To report an alleged breach of planning control, completing the online form is the quickest and easiest way. The online form can be found at:

It is strongly encouraged that the online form is used in the first instance, as this is the most efficient use of resources available.

### **What happens when an alleged breach of planning law is reported?**

The complaint will be recorded and acknowledged, so long as the minimum required information of address and location is provided. Complaints made based on sound planning issues will be investigated, while non-planning related matters will be referred onto relevant regulatory authorities.

Anonymous complaints about a third party will not usually be investigated. The identity of persons reporting suspected breaches will be treated as confidential by officers and members of the council. If a member of the public wishes to remain anonymous then they should go through either their local Ward Councillor or Parish Council to submit the online form on their behalf.

### **How does Council investigate an allegation of breach of planning law?**

Most investigations result from complaints from the public, Councillors or Parish and Town Councils. All these individuals and groups have a role to play in planning enforcement, as they are the local eyes and ears of the Planning Authority in the community.

On receiving complaints we will follow the following procedure:

1. **Establish whether the works need planning permission** (much development does not require planning permission, including internal works and domestic extensions). In some cases the Council will conclude that no action will be taken either because the alleged breach does not exist or that the breach is not significant so as to warrant further action.
2. **Seek to resolve the matter without formal action** where possible (nationally this is the case in over 90% of cases). Our first aim is to work with the contravener to assist them in complying with planning law and policy. The council will aim to resolve breaches where

possible by negotiation and agreement.

It is **not an offence** to carry out works without planning permission. Whilst such development is unauthorised, councils must consider the expediency of taking formal action. This is important to remember as members of the public often refer to illegal development or works. This is incorrect as it is not a criminal offence to carry out most works without planning permission, with the exception of works to Listed Buildings and TPO trees, advertisements displayed without consent and non-compliance with formal enforcement notices. These offences can lead to a prosecution from the outset.

The Town and Country Planning Act enables people who have carried out unauthorised development to apply for '**retrospective planning permission**' in an attempt to regularise matters. In dealing with such applications, the Authority must consider them in exactly the same way as any other application. The fact that the development has already been carried out is not something that can be taken into account in the determination of the application.

In following up allegations of breaches of planning control we will in all cases first attempt to **resolve matters by agreement**. Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it.

3. **Decide whether or not to take action** at the earliest possible stage following the conclusion of our investigations. Decisions whether to take further action will be in accordance with this protocol (see below) It will also be necessary for such decision to be prioritised taking account the staff and financial resources available at the time. A written record of the decision whether or not to take further action will be made.

Planning enforcement operates to protect the public interest. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds and be proportionate to the harm caused by the breach. Local opposition to or support for an unauthorised development will not be given weight unless that opposition or support is founded upon valid planning reasons. Other issues that cannot be taken into account include loss of value to property, competition with other businesses, land ownership and boundary disputes or breaches of covenant.

The Council will only take formal enforcement action when expedient to do so. Formal enforcement action will not be instigated solely to regularise trivial breaches of planning control, where there is no harm to public amenity; the breach is of a technical nature, or can be readily remedied by negotiation. Such breaches include temporary structures, unobtrusive and minor changes of use or extensions. In taking formal enforcement action,

the council will be prepared to use all the enforcement powers available, but the action taken will be commensurate with the seriousness of the breach.

### **How does the Council prioritise enforcement cases?**

The primary purpose of our enforcement work is to protect public amenity. The Planning Enforcement Team receives a high number of complaints regarding allegations of breaches of planning control every year. It would be impossible to investigate and pursue all of these allegations with equal priority. Resources are limited, and it is essential to use them to maximum effect. Therefore, each case is prioritised according to the seriousness of the alleged breach and the degree of harm being caused. The aim is that the Council response is fair and proportionate to both the context and the nature of the breach

**High priority** will be given to ensuring compliance with section 106 agreements, dealing with breaches that cause significant irreparable damage to Listed Buildings, harm to specially protected areas including conservation areas, and other visually prominent development and protected trees. Priority will also be given to breaches that cause significant and unacceptable harm to living conditions.

**Low priority** will be given to other cases, particularly where the development has relatively limited visual impact and/or effect on living conditions.

### **What Enforcement Powers are available to the Council?**

Listed below is a brief description of the various enforcement powers available to the Council. This is not intended to set out in full all the detailed legal considerations, but simply to try to explain the general nature of the available enforcement powers. In all cases, the Council will seek to use the most effective power available to remedy a breach of planning control.

*Enforcement Notices* -can be served on unauthorised development and uses where the development can be remedied by alteration, complete demolition or the ceasing of the unauthorised use. For these Notices there is a right of appeal to the Planning Inspectorate.

*Listed Building Enforcement Notices* -are served where unauthorised works to listed buildings have taken place and requirements are made to remove those works or improve upon their impact. For these Notices there is a right of appeal to the Planning Inspectorate.

*Breach of Condition Notices* -are served to require compliance with a condition attached to a planning permission. These Notices are suitable for specific breaches of planning control that need to be corrected within a specified deadline. There is no right of appeal for these

Notices.

*Stop Notices* -would normally be served in cases where the unauthorised development or use is considered to be so harmful that the outcome of the enforcement process could not be waited for. These will be served together with an Enforcement Notice. There is no right of appeal for these Notices.

*Temporary Stop Notices* -are served where a harmful unauthorised development or use has occurred and needs to be stopped immediately (for up to 28 days). This allows time for negotiation between us and offending parties. There is no right of appeal for these Notices.

*Section 215 Notices* -can be served on any interested party where land or buildings have become untidy and are considered by us to adversely affect the amenity of the area. There is a right of appeal to the magistrates court for this Notice.

Planning Contravention Notices -can be served on any known interested party where it is suspected that a breach of planning control has occurred. They contain a number of relevant questions relating to the alleged breach of planning control. Failure to respond within a specified timescale is a criminal offence which can result in a prosecution in the magistrates court.

*Section 330 Notices* -require information from any occupier of land asking what his interest is in it. Failure to respond within a specified timescale is a criminal offence which can result in a prosecution in the magistrates court.

*Section 225 Notices* -enable us to issue Notices on any interested parties against unauthorised advertisement displays on buildings and on other surfaces. Subject to these provisions, we will invoice the recipient of any such action in order to recover the costs that have been reasonably incurred in taking the action.

### **What happens after a Notice is served?**

The recipient of a Notice will either:

- Comply with the Notice (in which case the matter is then closed)
- Contest the Notice by way of an Appeal to the Planning Inspectorate or challenge in a Court of Law- where this is appropriate.
- Fail to comply with the Notice

Hearing a case on appeal will take time and can often delay proceedings particularly if a Public Inquiry has to be arranged. If the appeal against the Notice does not succeed the formal Notice comes into effect. If the appeal is successful and/ or planning permission is granted, then this is normally the end of the matter. If the Notice is

upheld or there is no appeal but it is still not complied with, we will then take steps to prosecute the offender in Court.

### **What happens when a notice is not complied with**

In the event that an enforcement notice is not complied with the council has to be ready to remedy the breach by direct action where appropriate. This of course can be costly in terms of both staff and financial resources and should be considered at both the outset and also as matters progress.

*Direct Action* will be used so we can ensure remedial works are undertaken to secure satisfactory compliance with an Enforcement Notice. In cases such as this it may also be necessary to apply for an Injunction to prohibit parties from entering the land during the period when direct action is taken. We will always look to recover our costs from the offender when placed in the position of taking such action even if this results in placing a charge on the land to aid future recovery.

*Prosecutions* will be undertaken by us in incidences such as unauthorised works to listed buildings and protected trees, demolition in conservation areas, the display of advertisements and the failure to comply with the other Notices listed in this plan.

*Injunctive Action* can be used where a breach of planning control is severe, or there is a threat of it becoming severe, and which can be halted by the successful application to the High Court (or County Court) for an Injunction. It can also be used in longstanding cases where the offender has failed to comply with an Enforcement Notice and the harm is ongoing and now needs to be brought to an end. We will always look to recover our costs from the offender when placed in the position of taking such action even if this results in placing a charge on the land to aid future recovery.