

HASTINGS BOROUGH COUNCIL

PLANNING ENFORCEMENT POLICY



Our Aims

1. To provide a high quality, fair, proportionate, consistent, open and efficient planning enforcement service to protect the local environment, economy and the interests of local residents, businesses and visitors to the Borough in accordance with the Council's core values.
2. To ensure that the planning process is not undermined by unauthorised developments and changes of use whilst underpinning planning decisions and the policies of the Local Plan.
3. To work in a joined up fashion with other Council Departments and external agencies in the interests of upholding the law and improving the Borough.
4. To undertake enforcement in accordance with national guidance.

Priorities

Cases are carefully prioritised. The highest priorities are as follows:

- **Priority 1: aim to visit within 2 working days**
 - Unauthorised felling of trees covered by a Tree Preservation Order (TPO);
 - Demolition of a listed buildings or structure;
 - Dangerous structures, premises and/or buildings;
- **Priority 2: aim to visit within 5 working days**
 - Unauthorised works to trees covered by a TPOs;
 - Unauthorised work to trees in Conservation Areas;
 - Unauthorised works to designated heritage assets (other than demolition);
- **Priority 3: aim to visit between 5 to 10 working days**
 - Unauthorised occupation of land;
 - Commencement of major developments before pre-commencement conditions have been discharged;
- **Priority 4: visit between 10 and 15 working days**
 - Commencement of non-major developments before pre-commencement conditions have been discharged;
 - Untidy sites identified under the Grotbuster initiative and being located in the following areas:-
 - Seafront
 - Old Town
 - Central St Leonards
 - Hastings Town Centre, including Queens Road
 - Secondary shopping areas, including Silverhill and Bohemia Road

(Grotbuster priority areas will be reviewed periodically).

- **Priority 5 – visit between 15 and 20 working days-**

- Untidy sites identified under the Grotbuster initiative and located other than in the areas identified in Priority 2 above;
- Display of unlawful advertisements;
- Fences;
- Other breaches of planning control (such as unauthorised changes of use and Householder extensions/outbuildings);

The Planning Enforcement Team will seek to resolve breaches of planning control, where appropriate, as quickly as possible. There are several key ways in which this is achieved:-

- The Senior Enforcement Officer has fully delegated powers to sign and serve enforcement notices.
- All planning permissions carry the caveat that enforcement action may be taken without further warning in the event of a condition being breached.
- By taking enforcement action, if the circumstances dictate it, in the event of any undue delay or lack of co-operation on the part of the responsible party.

Anonymous Allegations

5. Anonymous allegations of breaches of planning control are not investigated unless there appear to be absolutely exceptional and extraordinary circumstances why they should be. This is to ensure that complaints made are not malicious, being born of factors such as neighbour disputes or rivalries between competing businesses. Name, address and telephone number are therefore required.
6. Planning Enforcement Officers will not pursue complaints which are obviously malicious and/or vexatious.

Instances when Enforcement Action is not appropriate

7. Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan, any other material considerations and the public benefit that would result. Where the balance of public interest lies will vary from case to case and will be at the discretion of the Enforcement Officers to determine. Enforcement action should be proportionate to the breach of planning control to which it relates.
8. The National Planning Practice Guidance sets out instances where it will not be appropriate to take enforcement action, these are listed below:
 - There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
 - Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;

- That an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed;
- In the case of the ‘Grotbusters’ scheme, where there are no public views of the areas raised in the complaint;

9. We will write to inform you when enforcement action is not considered appropriate.

What we require from you

10. In order for us to investigate your breach we ask you to:

- State clearly the address of the site you are referring to;
- State clearly what is the nature of the works you are concerned about?
- State clearly what harm is the works are causing?
- Set out when you first noticed the works?
- Advise us who you think is responsible for the works?
- **Provide photographic evidence to assist us with our investigations.**

All this information can be provided using our [on-line form](#).

After the Initial Investigation

11. Once you have provided us the information requested in paragraph 10 above, and in cases where we do consider enforcement action may be appropriate we will undertake a site visit in accordance with our priorities noted above. We will then make an assessment of what further action may be needed.

12. The complainant will receive updates on the progress of the investigation in accordance with our service offer (see below).

13. This assessment may lead to the following courses of action:

- Case is closed because the investigation identifies that no breach of planning control has occurred.
- Case is closed because an alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application is submitted following the investigation.
- A breach of planning control is identified and a retrospective application is requested but not submitted within the required timeframe. An assessment has been made that it is not expedient to take formal enforcement action.

- A breach in planning control is identified and an assessment is made that it is expedient to take formal enforcement action. Formal action may be in the form of notices issued and/or legal proceedings.

Our Service Offer – How Will We Respond?

14. We will acknowledge your initial complaint in 5 working days. Our acknowledgment will:

- let you know if the complaint will be investigated;
- If being investigated, let you know the priority it has been given and who is your enforcement officer;

15. For those cases where a breach of planning control has occurred and an assessment is made that formal enforcement action is the most appropriate approach we will:

- contact you if we need further information;
- We will keep you informed – at key stages of the investigation such as a site visit, the submission of an application, the service of an enforcement notice, the submission of an appeal, an appeal decision. We will not provide updates in instances where no key stages have changed from that of the last update;
- let you know the final outcome of your complaint;
- As far as is possible we will treat your complaint sensitively and where possible confidentially. However it may be difficult to preserve confidentiality in every single case e.g. if we need to go to court we may ask you to give us further help with the case.

16. In respect of the person(s) responsible for the alleged breach of planning

- provide identification whenever we visit;
- provide the name of the officer carrying out the investigation;
- investigate the complaint thoroughly before making any decision on what action to take;
- we **aim** to inform the person(s) responsible for the breach within 10 working days of the site visit of the nature of the problem and the course of action necessary to remedy matters. It is possible that the nature of enforcement action may change over the course of time having regard to how a case develops and the person(s) responsible for the breach will be kept informed of any such developments;
- explain what you need to do to put matters right, how long you have to do this and what the consequences might be if this does not happen;
- inform you if we decide to issue an Enforcement Notice or start legal action;

General Principles of Enforcement

17. Each case is unique and must be considered on its own merits. However, there are general principles that apply to the way each case must be approached.
18. Standards – Clear standards for level of service and performance which the public and businesses can expect to receive.
19. Openness – Information and advice provided in plain language.
20. Transparency – This is important in maintaining public confidence in the Council's ability to regularly make clear why an officer intends to or has taken enforcement action. An explanation of that intention will be provided to the person(s) responsible for the breach of planning control within 10 working days of the site visit at the latest.
21. Written explanation of any rights of appeal will be made clear at the time formal enforcement action is taken) this would normally be issued with the enforcement notice
22. Helpfulness – The Council will provide a courteous, helpful and efficient service and our staff will identify themselves by name where it is appropriate to do so.
23. Proportionality – Enforcement action will be proportionate to the risks posed and to the seriousness of any breach of the law. The Council will ensure that where a caution or prosecution is being considered officers will apply the Code for Crown Prosecutors and any other relevant guidance. Prosecutions and or works in default will be pursued where the circumstances are such that this course of action is in the public interest, proportionate and reasonable. Prosecutions will normally be pursued where an enforcement notice has not been complied with.
24. Consistency – Enforcement officers will be expected to exercise judgment and discretion. Consistency means taking a similar approach in similar circumstances to achieve similar aims. The Council recognises however that consistency does not mean simply uniformity. Officers need to take account of many variables, the scale of impact and the history of previous incidents or breaches. Decisions on enforcement are a matter of professional judgement. Council officers need to exercise discretions. The Council expects all developments with planning permission to proceed in full accordance with approved drawings, conditions and legal agreements.
25. Targeting - Means making sure that regulatory effort is directed primarily towards those whose activities give rise to or risk of serious social physical or economic environmental damage or affects personal health or safety, where the risks are least well controlled or against deliberate or organised crime.
26. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

Human Rights and Equality Issues

27. The Council will recognise the fundamental principles of the Human Rights Act 1989 and, in particular, Article 6 and Article 8. As such, enforcement investigations

and any related action will be conducted in a manner which does not conflict or undermine the fundamental principles of that Act.

28. Article 6 – The Right to a Fair and Public Trial Within a Reasonable Time. The Council will ensure that its approach to enforcement is compatible with Article 6 of the Human Rights Act and affords the right of access to a court or tribunal and the right to a fair hearing. Where enforcement action is to be taken the Council will also ensure that, in so far as the Council has control, any hearing is held within a reasonable time and avoid delays.
29. Article 8 – The Right to Respect for Private and Family Life, Home and Correspondence. The Council will ensure that in its enforcement activity is consistent with Article 8 of the Human Rights Act and only interferes with a person's private life where it has lawful authority to do so. Council officers will also satisfy themselves that the action is necessary in a democratic society in the interests of public safety, the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morale, or for the protection of the rights and freedom of others.
30. Officers will satisfy themselves that the enforcement action taken is proportional to the nature of the offence.
31. The Council is committed to equality in all respects and its officers will ensure that enforcement action is taken consistently and fairly without any discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (Article 14). The Council also recognises its duties and responsibilities under the Race Relations (Amendment) Act 2000. In particular the Council will develop links with minority ethnic groups to ensure that there is effective communication and understanding of the need for and reasons behind enforcement action it takes.
32. For a copy of Hastings Borough Councils full equalities policy please go to http://www.hastings.gov.uk/my_council/transparency/equalities/equalities/

Costs

33. The Council will always seek to recover the costs of investigation and Court proceedings.

