



Mole Valley District Council
Pippbrook, Dorking,
Surrey

Local Enforcement Plan

(November 2012)

Contents

1. Introduction
2. A proportionate response to alleged breaches
3. Implementation of planning permission
4. Investigating an alleged breach of planning control
5. Enforcement tools available
6. Monitoring performance

1. Introduction

- 1.1. The Mole Valley District Council Local Enforcement Plan (the Plan) identifies local priorities for enforcement action, so that the Council's scarce enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of all the residents.
- 1.2. This Plan has been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF)(March 2012) issued by the Department for Communities and Local Government which states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. 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.”

This Plan therefore will provide clarity on the Local Planning Authority's (LPA's) procedure(s) on the following;

- What is 'a proportionate response' when investigating an alleged breach of planning control?
- How we will manage enforcement proactively and in a way appropriate to the district?
- How we will monitor implementation of planning permissions?
- How we investigate alleged breaches of planning control?
- Set out what action we can take where it is considered appropriate to do so

2. A proportionate response

- 2.1. There is increasing public concern about activities that harm the local environment and damage the quality of people's lives. People who cause harm to the environment or the quality of other people's lives by not following laws and regulations designed to protect the public should not be allowed to benefit from such activities. People who knowingly carry out unauthorised development can undermine the planning system, and bring it into disrepute. Others however, often carry out works genuinely without knowledge that planning permission is required. It is therefore important to operate in a proportionate and consistent manner.
- 2.2. Powers to enforce planning controls are given by the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011.
- 2.3. This Plan defines the appropriate form of response to various breaches of planning control. This is determined by the guiding principle that the response to a breach of control should be proportionate to the harm it causes. It is never expedient, or a wise use of limited public resources, to pursue enforcement action against a development that would have been granted planning permission, except where the act of granting planning permission would have allowed necessary controls to be secured, normally through the imposition of planning conditions. In all cases, enforcement action should not be viewed as punishment, but what needs to be done to protect public amenity and the environment.
- 2.4. A planning application is the most appropriate way to consider the merits of a proposed development and to allow affected neighbours and other interested parties to have their say. It is therefore logical to apply the same approach to development already carried out, and for the Council to encourage retrospective planning applications where appropriate.
- 2.5. The exception is where the Council considers there is no real prospect of planning permission being granted. In these cases we will proceed to enforcement action as a matter of course.
- 2.6. The Mole Valley Core Strategy shows how the District is expected to evolve until 2026 and the Local Plan seeks to maintain and enhance the quality of the Districts environment. Enforcement action underpins

this by helping to protect the environment. The primary function of enforcement action is to protect the environment in the public interest, and to do this we must be firm but fair.

- 2.7. However, the developer still has the right to apply for planning permission. and if they do, the Council must deal with the application fairly before proceeding with enforcement action if that is considered necessary. In all cases, the Council will judge the development itself, not how it came about.
- 2.8. The public's frustration over retrospective planning applications is understood, and one of their concerns is that this approach is sometimes the approach that developers take to present the Council with a fait accompli. At the moment, the Council has no powers to charge differently for retrospective applications, but if the Council is able to introduce charges to allow this, the Council may pursue this approach.
- 2.9. There are three categories of enforcement cases, Category 1, 2 and 3.

Category 1 cases require an initial site visit within 2 working days of notification.

Category 2 cases require an initial site visit within 5 working days of notification.

Category 3 cases require an initial site visit within 10 working days of notification.

Category 1 case examples:-

Unauthorised works in the Green Belt, breach of an Enforcement Notice, unauthorised works in a Conservation Area, unauthorised works on a Listed Building.

Category 2 case examples:-

Breach of a planning condition (unless causing environmental harm), development not in accordance with the approved plans, unauthorised change of use, works contrary to the local plan policies.

Category 3 case examples:-

Businesses being run from home, untidy land affecting the local amenity, unauthorised advertisements

The category examples above are not a complete list of all breaches of planning control and are shown only as a guide.

2.10. In all cases the offending developer / land owner / occupier will be notified of what the Council requires them to do to remedy any identified breach of planning control. They will also be informed of the possible consequences of non-compliance in terms of taking formal enforcement action.

3. Implementation of planning permission

- 3.1. Many potential problems with a planning permission can be overcome by the imposition of planning conditions. Many are precedent conditions (i.e. conditions that need to be complied with before development commences) and need to be proactively monitored.
- 3.2. Although all developers are obliged to notify the Council when work commences on a site, this does not always happen, and in many cases it is not done in a timely manner. We cannot be aware of all developments taking place. Neighbours and interested parties are often a good source of information and we do encourage people to get involved and contact us. This can result in a reactive enforcement approach if we become aware that conditions have not been complied with. To help minimising the risk of this occurring, a letter is sent accompanying the formal planning Decision Notice confirming the necessity to comply with ALL planning conditions with a particular emphasis to conditions precedent.
- 3.3. The Council will maintain a proactive approach to monitoring major development sites. Planning permissions are being checked when major developments (i.e. 10 or more dwellings or commercial development over 1,000 square metres) commence, to ensure that all the necessary planning conditions are complied with. Planning Officers, Tree Officers and building surveyors are also involved in the monitoring and checking of major development sites. Breaches of Condition are taken seriously, and, if they result in harm and are not remedied quickly, a Breach of Condition notice can be served. (See Section 5.3).
- 3.4. Inevitably a large proportion of complaints received will continue to be reported by members of the public and need to be investigated reactively. Each report will result in a case being set up according to the priority (2.9 above) and investigated within the agreed timescales. The complainant will be kept informed of progress of the investigation through to completion.

4. Investigating an alleged breach of planning control

(to be read taking account of para 2. above – a proportionate response)

- 4.1. Full details of the legislation covering planning enforcement action, enforcement notice appeals, prosecutions and other enforcement remedies are set out in Parts VII and VIII of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011
- 4.2. The power to take enforcement action is discretionary and comes from section 172 of the Town and Country Planning Act 1990.
- 4.3. We will follow the relevant legislation and consider the harm created when undertaking enforcement action and when deciding on whether it is expedient to take formal action. In deciding whether it is in the public interest to prosecute, we will follow the Code of Practice for Crown Prosecutors. (The general principles of this relate to two critical tests, evidential and public interest)
- 4.4. The full details of the person(s) making the complaint will be taken, including a phone number or e-mail address; complaints may be taken in extreme circumstances where the complainant does not wish to disclose their details. In all cases these details are given in strict confidence and this will be respected as far as possible at all times.

Policy Background

- 4.5. Effective enforcement action is necessary to ensure that development plan policies are upheld and implemented. The planning policies applicable to all development are contained in the Local Development Plan, which comprises the National Planning Policy Framework 2012, The Mole Valley Core Strategy 2009 (adopted October 2009) and the Mole Valley Local Plan 2000 (adopted October 2000).
- 4.6. The Local Planning Authority experiences a wide variety of planning enforcement issues and many of these arise from the need to maintain the integrity of specially protected areas such as the Green Belt and the Surrey Hills Area of Outstanding Natural Beauty. The Council's location between London and Gatwick Airport means that there are very strong pressures for development in the Green Belt and continual problems with off-airport car parking sites, as this can be lucrative. Agricultural activities in the area have limited viability, so there are

strong pressures to find alternative economic uses for this land and buildings.

- 4.7. There is a need to achieve a reasonable balance between protecting amenity and other interests of acknowledged importance, and enabling acceptable development to take place, even though it may initially have been unauthorised.
- 4.8. The Council will also monitor major development sites, subject to resources, whether or not the authority is carrying out the building control function. This is to ensure that development is carried out in accordance with the approved plans and that planning conditions are fully complied with as required.
- 4.9. Our approach in deciding whether enforcement action is expedient is whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.
- 4.10. We must work within the legislative framework, having full regard to relevant judicial authority and taking account of appeal decisions. Careful consideration has to be given to other legislation that impacts on enforcement work, such as:
 - The Human Rights Act 1998;
 - The Police and Criminal Evidence Act 1984 (PACE); and
 - The Regulation of Investigatory Powers Act 2000 (RIPA).
- 4.11. These Acts advocate against resolving cases quickly, as a thorough investigation of the full facts and assessment of all the circumstances is required prior to formal action.
- 4.12. All complaints are investigated as quickly as possible (see paragraph 2.9) to establish their priority and what action needs to be taken. This is a vital part of the enforcement process. After that, the priority is to tackle the most serious breaches that harm public amenity and risk undermining the Council's objectives of caring for the environment. We will achieve this by prioritising cases according to the level of harm being caused or anticipated.
- 4.13. More than half of complaints are found not to be in breach of planning control, but these are a significant drain on resources, as a site inspection and investigation are required, as well as having to advise the interested parties. The majority of actual breaches reported relate

to minor matters and often arise from ignorance of planning controls or misunderstandings over what is taking place, and may be exacerbated by neighbour disputes.

- 4.14. Whilst the Council has a duty to investigate all alleged breaches, its resources must be used wisely to (a) allow us to concentrate on serious breaches; and (b) avoid the LPA coming into disrepute through abuse of its enforcement powers. Initiating enforcement action when the matter can be resolved through a retrospective application, and the imposition of necessary conditions, would be seen as unreasonable behaviour by appeal Inspectors and the Courts, and could lead to an award of costs against the Council. In order to maintain focus on agreed priorities and as enforcement is a discretionary function officers may decline to pursue cases that appear to arise from repetitive or vexatious complaints, or are motivated by neighbour disputes or are considered “de minimus”.

5. Enforcement tools available

5.1. Planning Contravention notice (PCN). Authorised under S171(C) of the TCPA

This is used to obtain information about alleged unauthorised development, where a change of use of the land has occurred and it can be used to invite discussion on how any suspected breach of control may be remedied. It is normally used to establish the owners and occupiers of land and details of the nature and level of activities that are suspected to be taking place. This will be issued and served by the Senior Enforcement Officer.

5.2. Enforcement Notice (EN). Authorised under delegated powers to the Development Control Manager, the Notice will be drafted by the Council’s Legal Services Manager and served by the Senior Enforcement Officer.

The LPA can issue an enforcement notice where it considers there has been a breach of planning control and it is expedient to issue the notice. The EN is used to remedy a breach of planning control that is causing serious harm to public amenity. It must specify the date it takes effect (not less than 28 days after service), the steps to be taken and the compliance period. There is a right of appeal to the Planning Inspectorate against the EN, and this suspends the EN requirements until the appeal is determined or withdrawn

5.3. Breach of Condition Notice (BCN). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This is used to secure compliance with planning conditions and takes effect not less than 28 days after service. It must specify the steps that the LPA considers ought to be taken to secure compliance with the specified condition and the period allowed for compliance. There is no right of appeal against a BCN, and failure to comply with it is a summary offence in the Magistrates' Court carrying a maximum penalty of £2,500 (April 2012).

5.4. Temporary Stop Notice (TSN). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This is used where the LPA considers that there has been a breach of planning control and it is necessary, in order to safeguard the amenity of the area, that the activity that amounts to the breach should stop immediately. This notice differs from the normal stop notice powers because it does not have to wait for an enforcement notice (EN) to be issued. The effect of the TSN is immediate and must prohibit the activity that is in breach, and can be served on any person carrying out the activity and must be displayed on the site. The TSN is only in effect for 28 days, during which time the LPA must decide whether it is appropriate to serve an EN. TSNs have been used successfully to stop work on development sites when important precedent planning conditions have not been complied with and there is a serious concern relating to issues such as highway safety, contaminated land or tree protection and unauthorised off site airport car-parking.

5.5. Stop Notice (SN). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

A stop notice can only be served on land where an enforcement notice has been served and issued and is an effective way of stopping an activity that is causing serious harm to public amenity. It prohibits the activity taking place on the land, but cannot be used to stop the use of any building as a dwelling or any activity that has been carried out for more than four years. There is a risk of the Council being liable to pay compensation if the enforcement notice is quashed on appeal or the

notices have to be withdrawn. (i.e. if it is found that the activity was legitimate and therefore the Stop Notice should not been served).

5.6. Prosecution. Authorised under delegated powers to the Corporate Head of Service

Some breaches of planning control are summary offences, but others are subject to trial (i.e in Magistrates' Court or Crown Court) such as the carrying out of unauthorised works to a listed building, or a protected tree, or the failure to comply with the requirements of an Enforcement Notice, or a Stop Notice or a Temporary Stop Notice. Legal proceedings can be instigated in the Magistrates' Court and the maximum fine, if found guilty, is £20,000 (May 2012) for these offences. For summary only offences such as illegal advertisements and failure to comply with a BCN or to complete and return a PCN, the maximum fine is lower.

5.7. Injunction. Authorised under delegated powers to the Corporate Head of Service

Section 187B (1) provides a wide-ranging power to obtain a planning enforcement injunction when a court order is needed to restrain a breach of planning control. Application for an injunction from the courts may be made when it is necessary or expedient for any actual or apprehended breach of planning control to be restrained, whether or not the LPA has exercised or is proposing to exercise any of its other enforcement powers. Any failure to comply with the terms of a Court order is an extremely serious matter, and can result in imprisonment.

5.8. Section 215 Notice (Untidy land). Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This notice requires land, which can include buildings, to be made tidy if the condition of the land is such that it causes harm to the amenity of the area. The notice must specify the steps that the landowner must take to make the land tidy, such as clearing rubbish or overgrown vegetation. There is a right of appeal against the notice to the Magistrates' Court, and if the notice is not complied with, the Council can enter the land and carry out the steps in default and charge the owner accordingly.

5.9. Listed Building Enforcement Notice. Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This type of enforcement notice applies to listed buildings, and is similar to an ordinary enforcement notice in most respects. It can require the removal of any unauthorised works, or the reinstatement of the fabric of the listed building that has been removed. There is a right of appeal against such a notice to the Planning Inspectorate.

5.10. Conservation Area Enforcement Notice. Authorised under delegated powers down to the Development Control Manager, the Notice will be drafted by the Council's Legal Services Manager and served by the Senior Enforcement Officer.

This type of enforcement notice is used in conservation areas when works have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990. An example of this would be the unauthorised demolition of a building or wall in a conservation area, and the requirement of the notice would be to rebuild it. There is a right of appeal against such a notice to the Planning Inspectorate.

5.11. Default Powers. Authorised under delegated powers to the Corporate Head of Service.

Section 178 enables the LPA to take direct action where, on expiry of the enforcement notice compliance period, the required steps have not been taken, by carrying out "default" action and recovering its reasonable expenses from the owner. This power relates to enforcement notices and untidy land notices served under Section 215.

5.12. Article 4 Directions. Under Article4(1) Of the TCPA (General Permitted Development) Order 1995 as amended. Authorised under delegated powers to the Corporate Head of Service.

These are used to remove "permitted development" rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). These have been used successfully to remove the normal permitted development rights to erect fences and other means of enclosure, or temporary uses of land, (temporary buildings, moveable structures, plant or machinery required in connection with operations being carried out on the land). This enforcement tool is used particularly when open land is being sold off as speculative building plots (sometimes referred to as 'Land Banking'). The Direction is provisional for six months and has to be confirmed by the Council within that period in order to become permanent. It means that planning permission would have to be granted by the LPA in order to carry out the development.

5.13. Confiscation under the Proceeds of Crime Act 2002. Authorised under delegated powers to the Corporate Head of Service

If an offence has been committed or an offence is considered to be ongoing at a site under investigation, in certain circumstances the Council will consider instigating confiscation proceedings under the Proceeds of Crime Act 2002 where it appears that the offender has benefited from criminal conduct.

By way of an example, these proceedings could be used where the offender operates in a manner which involves activity or activities that constitute a breach of planning control and this breach (and consequences of it) is factored into the running costs of the operation.

In these circumstances the potential maximum confiscation order would be considered a reasonable 'cost' to the operator given the greater potential gains from continuation of the breach.

6. Monitoring Performance

- 6.1. Our performance standards are monitored quarterly, as are the other targets for actions taken in the investigation of cases, particularly for timely undertaking of site visits.
- 6.2. We also intend to monitor the effectiveness of our enforcement actions and to review the priorities for enforcement regularly. This will involve identifying the achievements and shortfalls within the reactive elements of the service. Greater emphasis is being put on proactive measures with rapid and early responses to problems arising through the development process, and by developing a team approach involving all the key players in the process and across other disciplines.
- 6.3. Taking formal enforcement action will continue to occur only in a very small minority of all the reported cases.
- 6.4. Our performance details will be published in the Council's quarterly / annual report
- 6.5. Although a difficult area, with inherent conflict in the work, we will monitor the way we carry out our duties, taking feedback from users and improve the service where we can.

--0--