

# SLOUGH BOROUGH COUNCIL

## Local Planning Authority Enforcement Plan

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### 1. Introduction

- 1.1 The Council is committed to providing an effective planning and building enforcement regime.

*“ Effective enforcement is important to maintain 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. They 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 appropriate”*

National Planning Policy Framework MHCLG – February 2019

- 1.2 The Enforcement Plan supports the Council’s vision of contributing to a high quality of life for all residents. It sets out how the Council will investigate and tackle reported breaches of planning control in a consistent, fair and proportionate way.

## **Compliance and monitoring**

1.3 We will:

- Identify works that are due to commence, or have commenced development, which will often trigger a site visit.
- Check a sample of developments to ensure that they are being built in accordance with the planning permission and conditions, as well as building regulations.
- Share information with other statutory bodies (when appropriate to do so in accordance with the provisions of the Data Protection Act 2018)

## **2. The remit of Planning Enforcement**

2.1 The aims of the Planning Enforcement team are to:

- Put right undesirable effects of unauthorised development; and
- Bring the unauthorised activity under control.

Action is discretionary. It will depend on the degree of planning harm being caused. Any action taken will be proportionate to the harm being caused by the development.

2.2 What is a breach of planning control?

A breach of planning control is defined as:

Carrying out works, which would require planning permission, without the necessary consent; or failing to comply with any condition or limitation for which planning permission has been granted.

### ***What we investigate***

- ✓ Unauthorised building works, uses of land and buildings
- ✓ Breaches of planning permission/approved plans
- ✓ Breaches of the General Permitted Development Order (GPDO)
- ✓ Unauthorised works to a tree in a conservation area or covered by a TPO
- ✓ Unauthorised works to a listed building
- ✓ Unauthorised advertisement displays and flyposting
- ✓ Untidy land
- ✓ Gypsy and traveller incursions.

## What we do not investigate

- × Complaints that do not involve a breach of planning or building control
- × Complaints that fall within another council's jurisdiction
- × Complaints that would be most effectively dealt with under another statutory regime

Examples are:

- × Damage to verges, the highway or any other highway matters, such as mud on the road or obstruction of the highway (Slough Borough Council Highways & Transport)

<https://www.slough.gov.uk/parking-travel-and-roads/report-an-issue.aspx>

- × Noise & disturbances, including bonfires (Neighbourhood Enforcement Team)

<http://www.slough.gov.uk/crime-prevention-and-emergencies/types-of-anti-social-behaviour.aspx>

- × Health & Safety, including asbestos on building sites (Health and Safety Executive) <http://www.hse.gov.uk/>

- × Neighbourhood, land boundary or ownership disputes, including covenants (consult your own legal advisor)

- × Works to party walls (Party Wall Act 1996 – consult your own legal advisor and/or party wall surveyor)

<https://www.gov.uk/guidance/party-wall-etc-act-1996-guidance>

- × Dangerous structures (Building Control)

<http://www.slough.gov.uk/planning-and-building-control/building-regulations-enforcement.aspx>

- × Goods Vehicle Operators Licences (VOSA)

<https://www.gov.uk/government/organisations/vehicle-and-operator-services-agency>

- × Non-planning matters – moral or ethical concerns, competition and private interests.

- × Vexatious/anonymous/repetitive complaints (unless there is a serious breach of planning control or criminal offence that can be substantiated – e.g. harm to trees protected by tree preservation orders or listed buildings)

### **3. How to report an alleged breach**

3.1 Complaints should be made by using an online form available on the Council's website <https://www.slough.gov.uk/planning-and-building-control/report-a-possible-enforcement-case.aspx>. Alternatively, complaints may be made by letter, by email (planning.enforcement@slough.gov.uk) or by telephone (01753 475111), providing us with the following information:

- The address of the site of the alleged breach
- The nature of your concerns, including any planning reference numbers
- Your name and contact details, including your address, a telephone number and/or email address
- When the alleged breach started
- How the breach impacts on you and any other information which may assist an investigation.

We may pass your details to other departments and organisations that may be better suited to investigating your complaint. We will tell you when this happens.

3.2 Sometimes members of the public may wish to contact their ward councillor to seek their help. Ward Councillors should use the member case work process to report alleged breaches if acting on behalf of a constituent.

### **4. Service standards and investigation timescales**

4.1 The planning enforcement code of practice:

- All complaints received will receive a response. Priority will be given to cases involving irreplaceable assets (Listed Buildings or Tree Preservation Order trees). Priority will also be given to cases where a breach may involve criminality or a gypsy and traveller incursion.
- We aim to acknowledge your complaint within two working days of receipt, giving you a named contact.
- We aim to carry out a site visit within ten working days of acknowledging your complaint.
- We will update you after the initial site visit has been carried out.
- We will try and resolve breaches of planning control by negotiation. Where it is not possible or appropriate, we will take formal enforcement action when it is expedient to do so.
- Any formal action taken will be proportionate to the breach.
- We will only invite a retrospective planning application where there is a reasonable prospect that planning permission may be granted.

- We will treat all complaints in confidence and we will only release your details if instructed to do so by a Court.
- We will be clear and open where the provisions of the Data Protection Act allow us to be.
- If we have established a breach of planning control, but we are taking no formal action, we will explain our reasons to you.
- If we are taking formal action, we will let you know.
- We will carry out our investigations in accordance with the Police and Criminal Evidence Act (PACE) 1984 and the Regulation of Investigatory Powers Act (RIPA) 2000 when appropriate.
- We will monitor the performance of the service to ensure we are meeting the standards outlined above.

## **5. Initial investigation process and establishing a breach**

- 5.1 Within 2 days of receiving a complaint we will open an investigation file, assign a reference number and an officer.
- 5.2 Within the next 10 working days, the officer will conduct a desktop assessment and research the history of the site. An unannounced site visit will take place. If the officer needs access to parts of the site that are not accessible, then contact will be made with the alleged transgressor to inspect the site and alleged breach.
- 5.3 After the site visit and initial checks undertaken, the officer will establish whether there has been a breach of planning control. There will be some instances when more than one site visit is needed to establish if there is a breach of planning control.
- 5.4 Parts of the investigation require us to test the following:
- 'Has development occurred?' and refer to the definitions contained in Section 55 of the Town and Country Planning Act 1990.
  - Does it have planning permission? If the answer is yes, then there is no breach of planning control. If the answer is no, then is it possible the development is 'permitted development' under the provisions of the Town and Country Planning General Permitted Development Orders? If it is found to be permitted development then there is no breach of planning control.
  - Is it immune from enforcement? (See section 5.6)

If the above questions are not answered then it is likely there is a breach of planning control.

This part of the investigation can take up to 28 days to complete.

## **5.5 What happens when a breach of planning control is found?**

The decision as to whether or not to take formal enforcement action is discretionary and depends on the level of planning harm.

Any works carried out without the relevant planning permission are done so at the risk that enforcement action may be taken. This could require the works to be reversed fully.

We have to ask a number of questions before a decision is taken as to whether or not to take formal enforcement action. This stage can take several months.

## **5.6 How long has the breach been happening?**

Planning law says that after set periods of time the breach may be immune from enforcement action. The breach will have become lawful, and/or planning permission is not required. The time limits are:

- Four years from the substantial completion of operational development (when the works were finished)
- Four years from when the change of use of a building to a single dwelling began
- Ten years for all other breaches including change of use of land or breaches of conditions (except dwelling houses)

It is not an offence to carry out development without first obtaining planning permission unless the works: relate to a Listed Building; concern a tree protected by a Tree Preservation Order (TPO); or are in contravention of a Temporary Stop Notice, Stop Notice or Injunction.

There is no time limit for immunity in relation to unauthorised works to a listed building, or relevant demolition, under the Listed Buildings and Conservation Areas Act 1990.

## **5.7 Has there been a deliberate attempt to conceal unauthorised development?**

If the period for taking enforcement action has passed, we may apply to the courts for a Planning Enforcement Order (PEO). This must be done within six months of the date the breach has been detected.

## **5.8 Would planning permission have been granted?**

The Council will not issue an Enforcement Notice solely to remedy the absence of a valid planning permission.

If a material breach of planning control has occurred, the Council:

- May invite a retrospective planning application to regularise the unauthorised development where there is a reasonable prospect that planning permission would be granted, subject to conditions and/or a S106 legal agreement
- May resolve the breach informally by negotiation/remedial works or will give the transgressor the opportunity to regularise the breach if planning permission is likely to be granted on application with no restrictive conditions,
- May commence enforcement action where it is expedient to do so and there is no other appropriate alternative.

#### **5.9 Is it a minor or technical breach?**

The Council will not take formal enforcement action against a trivial or technical breach of planning control that causes little or no harm to the amenity of the local area, or if planning permission is likely to be granted.

#### **5.10 Is it expedient to take formal enforcement action?**

This is a complex area. We need to balance the harm caused by the unauthorised development against the potential impact on the health, housing needs and welfare of those affected by the proposed action.

Any action must:

- be proportionate to the breach,
- be in the public interest,
- consider any implications of the Human Rights Act 1998 and the Equalities Act 2010, and
- be appropriate to the stage reached in the planning process.

Each case must be considered on its own merits.

5.11 The decision whether or not to take formal enforcement action is delegated through the Council's constitution to the Planning Manager in consultation with Head of Legal Services.

5.12 If it is not expedient to take enforcement action, this is a decision usually taken by senior officers in the planning department often in consultation with legal advice. The investigation will be closed and interested parties informed.

5.13 If an enforcement notice is served, it will state:

- What the alleged breach of planning control is,
- The measures required to address the breach of planning control, and
- The time period in which to comply with the requirements of the notice.



## 6. Processes when an Enforcement Notice is served

- 6.1 The enforcement notice is served on all parties understood to have an interest in the land. There is a period of usually 28 days before the notice comes into effect. The Notice will not come into effect if an appeal is lodged between the date of service and the date stated when the notice would come into effect.
- 6.2 If an appeal is lodged, the outcome of the appeal is that it can either be upheld or dismissed. If the appeal is upheld, then the enforcement notice becomes null and void. If the appeal is dismissed, then the enforcement notice will come into effect. The inspector who considers an appeal does have the power to vary the requirements of the enforcement notice.
- 6.3 The compliance period can vary but it is often a period between 3 and 6 months. If the notice is complied with, then no further action is taken at that time.
- 6.4 If the enforcement notice is not complied with, then further legal advice would be sought regarding the failure to comply with the Notice. Failure to comply with an enforcement notice could result in court proceedings or direct action being taken by the Council.

## 7 Appealing an Enforcement Notice

- 7.1 An Enforcement Notice can be appealed against through the independent Planning Inspectorate, on the following grounds:

Grounds	Type of appeal
<b>A</b>	Planning permission ought to be granted
<b>B</b>	The matters alleged have not occurred
<b>C</b>	The works do not constitute a breach of planning
<b>D</b>	Out of time to take enforcement action
<b>E</b>	Copies of the notice were not properly served
<b>F</b>	The steps required to be taken are excessive
<b>G</b>	Insufficient time specified for carrying out remedial works required by the notice

7.2 Appeals may be dealt with by:

- Written representations (exchange of written submissions),
- Hearings (a meeting with a Planning Inspector, Council officers, appellant and any other third parties), or
- Public Inquiries (led by a Planning Inspector in a public forum with cross-examination of either party by a solicitor or barrister).

7.3 In the event of an appeal, the notice will not come into effect until the appeal has been decided. If the appeal Inspector grants permission for the development, the notice will be quashed.

## **8 Prosecution and direct action**

8.1 Failing to comply fully with an Enforcement Notice within the relevant timeframe is an offence, liable for prosecution in either the Magistrates Court or the Crown Court. The Council will normally invite a suspect to an interview under caution, in accordance with PACE guidelines, before proceeding with a prosecution.

8.2 There are circumstances in which the Council can prosecute without having to serve an Enforcement Notice. The range of offences includes:

- Non-compliance with an Enforcement Notice (including S215 Notice) or Injunction,
- The illegal display of advertisement(s),
- Unauthorised works to a listed building,
- Damage to trees protected by a TPO or Conservation Area status,
- “Relevant Demolition” in a Conservation Area, and,
- Non-return of a Planning Contravention Notice/Section 330 or providing false or misleading information in connection with the same.

8.3 A person suspected of an offence should be placed under caution before any questions are put to them. All Officers investigating a suspected offence will carry out their duties in accordance with PACE guidelines.

### ***Direct action***

8.4 In some instances, failing to comply with a Notice will give the Council the power to carry out the works and seek to reclaim the costs. This is known as direct action. Few cases reach this stage, but the Council will consider taking direct action when appropriate (e.g. with S215 Untidy Land Notices). Any such decision may be referred to the Planning Committee, and the proportionality of undertaking such works will be given thorough consideration.

## **9 Advertisements**

- 9.1 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). The Regulations seek to control the height, size, positioning and illumination of advertisements, with regard to amenity and public safety.
- 9.2 To display any advertisement, the advertiser must have consent from the land owner and it must not cause a risk to public or highway safety. The advertisement must also comply with the appropriate requirements of the Regulations.

***Anyone who displays an advert without the necessary consent is acting illegally.***

- 9.3 It is open to the Council to pursue a prosecution in the Magistrates Court for an offence under S224 of the Town and Country Planning Act 1990. For first offences, the Council will request an illegal advertisement to be removed or obliterated until such time as advertisement consent is obtained. However, if repeat offences are committed, the Council will consider prosecution to act as a deterrent, in accordance with the Council's Corporate Prosecution Policy.
- 9.4 Any form of fly posting is also an offence, and it is open to the Council to bring prosecution proceedings immediately.
- 9.5 The Council may remove or obliterate illegal adverts in certain circumstances. The first is where two days' notice has been given when required by S225 of the above Act in writing. The second is where the adverts are displayed on Council land without consent.

## **10 Unauthorised encampments**

- 10.1 The Council has powers to take action against unauthorised traveller encampments, protest camps and squatters on both public and private land.
- 10.2 In the case of an illegal encampment, it should first be reported to the Planning Enforcement Team during office hours on 01753 475111 or the Out-of-Hours Contact on 01753 875298 at any other time.
- 10.3 The Council will aim to respond effectively to a report of an illegal encampment and will also:
- Work with local police to identify vulnerable sites if appropriate;
  - Work with landowners where encampments have occurred, and inform them of their powers in relation to unauthorised encampments;
  - Prepare any necessary paperwork, such as applications for possession orders or injunctions, when applicable;

- Maintain a clear notification and decision-making process to respond to instances of unauthorised encampments; and
- Work to ensure that wardens, park officers and enforcement officers are aware of who they should notify in the event of unauthorised encampments.
- Ensure that the locations of the unauthorised encampments are communicated to all necessary parties.

## **11 Trees and Woodlands**

11.1 Where unauthorised works are alleged to have been carried out to protected trees and hedges, the following process will be followed:

- An initial desktop assessment will take place by the enforcement officer and a tree officer to establish if the trees are protected..
- A site visit will take place to assess the works. This visit may be a joint visit between a tree officer and an enforcement officer. If it is found that minor works have taken place, then a warning letter will be sent
- Further investigation will take place usually by the tree officer in conjunction with legal and the enforcement officer. This could include a land registry search to further establish who owns the land.
- An invitation and preparation for interview under caution with the transgressor and any other interested party will take place. This will be a joint interview with the tree officer and enforcement officer.
- A further assessment will take place and the appropriate legal advice sought. This may require preparation of statements for our legal department leading to a decision regarding prosecution in accordance with Council policy.

## **Appendix A – Powers of Entry**

**S196A of The Town and Country Planning Act 1990 (TCPA)** – Rights to enter land without a warrant at any reasonable hour to ascertain whether there is or has been any breach of planning control on land or any other land.

**S196B (TCPA)** – Right to enter under a warrant.

**S196C (TCPA)** – Right to take any other persons as may be necessary for the purposes of the investigation.

**S214A , 214B, 214C (TCPA)** – Rights of entry in connection with injunctive proceedings.

**S324 (TCPA)** – To enter any land for the purpose of the preparation, revision adoption or approval of a local development order under Part 2 of the Planning and Compulsory Purchase Act or local development plan.

**S88, 88A, 88B of the Planning (Listed Building and Conservation Areas) Act 1990** – Powers of entry in relation to heritage and listed building cases.

### **Leaving the land**

On leaving the land, the authorised person shall, if the owner is not then present, leave it as effectively secured against trespassers as it was found.

### **Entry to agricultural land**

In the interest of animal and plant health, special precautions are essential when the right of entry on to agricultural land is exercised.

#### ***Animal health***

In circumstances where there is an outbreak of a serious disease in animals (i.e. foot and mouth, anthrax, avian flu), officers should abide by notices displayed on farmland. Officers should not enter land in circumstances where they could be responsible for the spread of disease. Officers should contact DEFRA or the Local Animal Health Office in the first instance.

#### ***Plant health***

Where there is a serious plant disease, access to land may be strictly controlled. Disease can spread on footwear and officers should contact DEFRA for advice and assistance.

It is an offence to wilfully obstruct an authorised officer exercising the above powers in connection with their duties.

**Vulnerable person(s)**

Should the initial site visit be undertaken and it is found that only vulnerable people are present on the site. The visit will be abandoned and contact will be made with a responsible person to arrange a suitable time and date. No photographs will be taken that could include vulnerable persons.

## **Appendix B – The Enforcement toolkit**

Enforcement action may involve any of the following:

### **Planning Contravention Notice**

*s171C and s171D of the Town and Country Planning Act 1990 (as amended)*

The Planning Contravention Notice is used to obtain information relating to activities on land, and can only be issued when it appears to the local planning authority that a breach of planning control may have occurred.

There are penalties for non-compliance with a Planning Contravention Notice, providing misleading or inaccurate information, or failing to provide a response within 21 days of the notice being issued.

### **Section 330 Notice**

A Section 330 notice has a limited use, and is generally used to ascertain information relating to interest in land.

### **Formal Caution**

When the Council is minded to prosecute for an Offence, but the suspect is willing to admit their guilt and contribute to the Council's Costs, the Council will consider issuing a formal Caution, which will be held on record and produced at sentencing if the suspect is found guilty of any future offences.

### **Enforcement Notice**

*s172 of the Town and Country Planning Act 1990*

An Enforcement Notice can be used to remedy an injury that has been caused by the breach, to secure compliance with conditions of a planning permission, or to require the use of land to cease and to restore land to the position it was before the breach, within a specified time period.

## **Under-enforcement**

*s173 (11) (as amended) of the Town and Country Planning Act 1990*

Where an Enforcement Notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease but does not do so, and all the requirements of the notice have been complied with, planning permission is deemed to have been granted in respect of those buildings or works/activities not required to be removed or to cease by the notice.

## **Listed Building Enforcement Notice**

*s38 - 43 Planning (Listed Buildings and Conservation Areas) Act 1990*

A Listed Building Enforcement Notice can be issued where there have been works to a Listed Building without consent or failure to comply with a condition attached to a consent.

There are no time limits for issuing a Listed Building Enforcement Notice and irrespective of whether a notice has been issued, the carrying out of work without the necessary listed building consent is an offence under s9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

## **Breach of Condition Notice**

*s187A of the Town and Country Planning Act 1990*

A Breach of Condition Notice may be issued where planning permission has been granted (including on appeal) subject to conditions, and the conditions have not been complied with. This Notice is an alternative to the enforcement notice requiring compliance within the date specified on the notice (usually 28 days), starting from the date the notice was issued. There is no right of appeal. It is an offence not to comply with the notice and the maximum penalty is currently set at level 4 (£2,500).

## **Temporary Stop Notice**

*S171E of the Town and Country Planning Act 1990*

A Temporary Stop Notice may be issued where there has been a breach of planning control and it is expedient that the activity should stop immediately. The notice is effective for 28 days from the date of display or as specified in the notice. It is an offence to contravene a Temporary Stop Notice.



## **Stop Notice**

*s183 of the Town and Country Planning Act 1990*

A Stop Notice can be issued at the time an Enforcement Notice is served or afterwards. This notice cannot be used on Listed Buildings. The Notice is used to ensure that works cease before the expiry of the compliance period of an Enforcement Notice, and prohibits the carrying out of that activity on the land subject to the Enforcement Notice.

It is an immediate offence for anyone to contravene a Stop Notice and the offender may be prosecuted in the Magistrates Court or in some cases the Crown Court, depending on the seriousness of the offence.

## **Injunctive Proceedings**

*s187B of the Town and Country Planning Act 1990*

Where the local planning authority considers it expedient to restrain a breach of planning control, it can apply to the High Court or County Court for an injunction.

Under section 214A of the 1990 Act, the local planning authority may apply for an injunction to restrain an actual or apprehended offence under section 210 (work on TPO trees) or section 211 (work on trees in a conservation area).

An injunction may also be used to enforce listed building control (to cease works to listed buildings). It is an offence to contravene an injunction.

## **Direct Action or Default Action**

*s178 (1) of the Town and Country Planning Act 1990*

In some circumstances, direct action or default action may be considered. Direct or default action involves the local planning authority undertaking works that are necessary to remedy the breach of planning control, where the recipient of the enforcement notice has not complied with the requirements of the notice, and all options have been exhausted.

This can be an expensive option as the costs would need to be paid for upfront and recovered from the land owner. In cases where this is not possible, the local planning authority has the power to register a charge against the land in breach of the notice and recover the money when the land or property is eventually sold.

## **Tidy Site Notice**

### *s215 of the Town and Country Planning Act 1990*

The Council may issue a notice requiring steps to be taken to tidy up land when its condition adversely affects the amenity of the area. The Notice will be issued on the owner or occupier of the land requiring the works to be carried out within a specified time period.

There is a right of appeal to the Magistrates Court. If the notice is not complied with, the Council may prosecute the owner for non-compliance, or enter the land to carry out the works in default and recover the costs from the owner.

It is an offence to contravene a s215 Notice, and the Council has the power under s219 to carry out the works in default and recover the costs if the Notice is not fully complied with.

## **Section 106 Agreements**

### *s106 of the Town and Country Planning Act 1990*

A section 106 agreement of the Town and Country Planning Act 1990 (as amended) is a planning obligation in the form of a legal document (a deed) which makes a development or proposal acceptable in planning terms. The obligation becomes a land charge and can be enforced by way of a private law claim, either in court or by arbitration.

## **Removal Notices**

### *s225A of The Town and Country Planning Act 1990*

A removal notice can be served on a structure which facilitates the display of, or is itself, an advertisement. A minimum of 22 days must be given for the structure to be removed. If the responsible party fails to remove the advert within the timescale, the Council can enter the land, remove the structure and recover the costs of doing so. There is a right of appeal to the Magistrates Court.

## **Completion Notices**

### *s94 of The Town and Country Planning Act 1990*

If a development subject to planning permission has been started and not finished, and the time limit for starting the development has lapsed, with completion within a reasonable period unlikely, a completion notice can be served, which has the effect of expiring the planning permission after a specified period, which must not be less than 12 months. Completion notices are rarely used, but consideration will be given if a development appears to have stalled and it is expedient to take action.

## **Replacement Tree Notices**

*s207 of The Town and Country Planning Act 1990*

Notwithstanding the offences in relation to carrying out unauthorised works to trees, if a protected tree is removed uprooted or destroyed, the owner of the land has a duty to replace the tree under s206 and s213 of the Act. If satisfactory replacement is not carried out, the Council can serve a formal Notice under Section 207 requiring the replacement to be carried out in a specified timeframe. Failure to comply with the Notice will give the Council the powers to carry out the works under s209 of the Act and recover the costs.