

PLANNING ENFORCEMENT PLAN

EXECUTIVE SUMMARY

Southwark Council supports the right development in the right place. The borough is changing with significant regeneration achieving new homes and jobs, community facilities and shops, and this is welcome. However, sometimes development goes ahead without planning permission and this can have a harmful impact on the environment. In these circumstances, the Council will take planning enforcement action to rectify the breach of planning control.

A planning enforcement investigation is a serious intervention by the local planning authority that can ultimately lead to prosecution and a criminal conviction. Resolving breaches of planning control can take an extended period of time.

Enforcement action will be taken when it is expedient to do so. The assessment of expediency is based on the Council's planning policies, the merits of the development and any other material considerations.

The Council aims to be fair and open during an investigation and will act proportionately to the scale of the breach and the harm arising.

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SECTION 1: PRIORITIES

PRIORITIES FOR ENFORCEMENT ACTION

- Unauthorised development that directly impacts on living conditions, for example
 - accommodation that fails to meet the Council's published standards;
 - accommodation created within outbuildings; and
 - the loss of existing permanent residential dwellings, including from unauthorised holiday accommodation.

- Unauthorised development that detracts from Southwark being a pleasant place to live, for example:
 - development that causes serious harm to neighbouring property;
 - development that harms conservation areas, listed buildings, trees and the environment; and
 - development that results in or contributes towards [crime and anti-social behaviour.

- A system of monitoring the delivery of planning obligations, secured via section 106 agreements, will be introduced. Monitoring the delivery of social rented flats will be given a high priority.

HOW HAVE WE SET THE PRIORITIES?

1. The Council Plan confirmed ten Fairer Future Promises, a set of key commitments to the residents and businesses of Southwark that outline the things we will be working towards as an organisation to create a fairer future for all. These promises have provided the framework for the type of unauthorised development that will be prioritised for action.

2. The Council aims to make the borough a vibrant pleasant place with homes, jobs, community facilities and open spaces, and this is captured in the Council's Development Plan.

HOUSING

3. Of critical importance is the need to protect housing and ensure it provides a good quality living standard for residents. Many boroughs have seen slum-like accommodation being created through over-intensive subdivision of dwellings, or sheds and outbuildings being used as dwellings. Investigation and action against this poor housing is a priority. This is because it affects the health and well being of the residents. The need for increased housing provision of a wide variety of types is recognised but those housing units where enforcement action is taken are considered unfit for living in.
4. Sadly, the pressure for housing, and financial rewards flowing from private rents, has encouraged unscrupulous landlords to ignore the planning process.
5. It is also becoming increasingly common for flats to be used for short term accommodation (which means less than 90 days) or as holiday homes. This depletes the borough's stock of homes for permanent residents and often leads to a loss of amenity.
6. The Council has committed to achieving a substantial increase in affordable housing in the borough. It is critical to ensure that affordable housing secured in section 106 agreements is delivered as promised. More systematic and rigorous monitoring of affordable housing delivery, particularly social rented units, is considered to be a priority.

PROTECTING AMENITY

7. Unauthorised development that harms the amenity of an area, listed building or conservation area will also be treated as a priority. This is because such harm either has a direct effect on neighbouring properties or has an impact on important buildings or areas within the borough, which contribute to the borough being a pleasant place to live.

VALUE FOR MONEY

8. The Fairer Futures Promise includes a commitment to achieve Value for Money. In each case, the Council will consider how best to achieve value for money. This may include recovering costs, where it is able to do so, from the person responsible for the breach. The Council may also seek to recover the proceeds of crime pursuant to the Proceeds of Crime Act 2002. In all cases, there is a test of expediency in whether or not to take enforcement action.

SECTION 2: WHAT IS A BREACH OF PLANNING CONTROL?

Section 171A of the Town and Country Planning Act 1990 provides that the carrying out of development without the required planning permission or the failure to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control.

Development is defined to include 'the carrying out of building, engineering, mining and other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.'

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) Order 1995, will also constitute a breach of planning control against which enforcement action may be taken.

10. Other breaches of planning control include:

- not implementing a planning permission in the form it was approved;
- demolishing a building in a conservation area without permission;
- cutting down or lopping a tree in a conservation area, or a tree protected by a tree Preservation Order;
- failing to maintain land in a reasonable state so that it harms the amenity of an area;
- internal or external works to a listed building without consent;
- Engineering works, such as changing ground levels

SECTION 3: WHAT ENFORCEMENT ACTIONS CAN BE TAKEN?

11 ENFORCEMENT NOTICE

An Enforcement Notice is usually served where there has been operational development or a material change of use. There is a right of appeal to the Planning Inspectorate against this notice. Non compliance with an Enforcement Notice can result in prosecution.

Where have we served an Enforcement Notice?

Most of our Enforcement Notices are served in relation to unauthorised flats. An Enforcement Notice has however recently been served in relation to the unauthorised use of a property in Plough Way as a shisha bar. The Enforcement Notice was a success and what was considered to be an inappropriate use within a residential area was brought to an end.

The Council served an Enforcement Notice in relation to a development on Brandon Street which deviated from its original design. The Enforcement Notice was again a success and the developer was required to work with the Council to agree a suitable redesign.

12 BREACH OF CONDITION NOTICE

A Breach of Condition Notice will usually be served where there has been a breach of a condition attached to a planning permission. Non compliance with a Breach of Condition Notice can result in prosecution. There is no right of appeal except for judicial review.

Where have we served a Breach of Condition Notice?

The Council served a Breach of Condition Notice in respect of an industrial laundry which had been operating outside of its permitted hours. The condition was considered to be important because noise from such uses can cause a considerable disturbance to neighbouring properties. The Breach of Condition Notice was a success and the laundry reduced its operating hours to those permitted by its original planning permission.

13 DISCONTINUANCE NOTICE/ADVERTISEMENT ENFORCEMENT

A Discontinuance Notice seeks to remove unauthorised advertisements. There is a right of appeal against this notice. Non compliance can result in prosecution.

Where have we served a Discontinuance Notice?

The Council has served a Discontinuance Notice in relation to a large ground level hoarding on the corner of Borough High Street and Trinity Street. The hoarding was removed as a result.

14 S215 NOTICE

A Section 215 Notice requires untidy land or buildings to be improved in appearance. There is a right of appeal to the magistrate's court and non compliance can result in prosecution. The Council is able to carry out the work in default and recover the costs of doing so from the landowner.

Where have we served a Section 215 Notice?

A Section 215 Notice was served in relation to an overgrown site on the corner of Peckham Road and Vestry Road. The site was cleared by the landowner as a result.

15 LISTED BUILDING ENFORCEMENT NOTICE

A Listed Building Enforcement Notice is usually served where unauthorised work has been carried out to a listed building. Unauthorised work to a listed building may constitute a criminal offence. There is a right of appeal against to the Planning Inspectorate against this notice. Non compliance can result in prosecution.

Where have we served a Listed Building Enforcement Notice?

The Council served a Listed Building Enforcement Notice in respect of a restaurant in Trinity Street which had attached an illuminated sign to the outside of the listed building.

16 TEMPORARY STOP NOTICE AND STOP NOTICE

A Temporary Stop Notice and Stop Notice require unauthorised development to stop immediately.

Where have we served a Stop Notice?

The Council served a Stop Notice in relation to the use of a roof top bar in Tooley Street that was causing a disturbance to neighbouring properties. The bar was exceeding the closing time specified by condition on a planning permission.

17 PROSECUTION

Some types of development are a criminal offence, such as demolishing an unlisted building in a conservation area. Prosecution will also follow where there is non compliance with an Enforcement Notice.

Where have we carried out a prosecution??

The Council successfully prosecuted the owner of an unlawfully converted block of flats in Maxted Road.

18 DIRECT ACTION

The Council is in some cases able to carry out direct action, which involves remedying the breach of planning control either itself or through a contractor and recovering the cost of doing so from the person responsible for the breach.

Where have we carried out Direct Action?

The Council's contractors were instructed to remove a first floor level pergola in the Camberwell Conservation Area.

19 INJUNCTION

An injunction is a court order requiring the recipient to either do or refrain from doing a certain thing. If the recipient fails to comply with the court order, he or she may be in contempt of court.

Where have we obtained an injunction?

The Council obtained an injunction to prevent the use of a property in Crimscott Street as a late night party venue.

20 PROCEEDS OF CRIME

In accordance with the Proceeds of Crime Act 2002 the Council will seek to recover money where this has been obtained as a result of a criminal offence.

Where have we recovered money obtained through the proceeds of crime?

The Council secured £171,000 pursuant to the Proceeds of Crime Act 2002 in relation to the continued use of a night club in Norwood Road after an Enforcement Notice had come into effect.

21 ENFORCEMENT PROJECTS

From time to time, the Council will undertake enforcement action on an area, or a topic, basis. Tackling unauthorised places of worship that had occupied employment floorspace without permission ultimately led to the publication of 'Guide for Faith Premises in Southwark' which enabled faith groups to engage more fully in the planning process and find appropriate accommodation.

WHAT DOES NOT AMOUNT TO A BREACH OF PLANNING CONTROL?

- Internal works to a building that is not listed
- Poorly maintained housing – such as mould or broken fixtures and fittings
- Obstructing the highway or a public right of way; parking issues
- Anti-social behaviour, littering, street drinking, dog fouling
- Operating a business from home where the property remains primarily as a residential use
- Boundary disputes
- Party wall matters
- High Hedges
- Deeds and covenants
- Trespass
- Health and safety issues, badly run building sites
- Neighbour disputes
- Business rivalry
- In the majority of cases, disruption and noise during building works and noise, smells and vibration from equipment is not a breach of planning control.
- Doing development that is 'permitted development'

The Enforcement Team will however liaise with colleagues from within the Council to ensure a complaint is effectively dealt with by the right team.

SECTION 4: WHAT IS PERMITTED DEVELOPMENT?

22. Some development is automatically permitted pursuant to the Town and Country Planning (General Permitted Development) Order 2015.

Examples of permitted development include:

- Extensions to houses
- Dormer windows to houses
- Garden outbuildings to houses
- Extensions to shops, schools and hospitals

- Installation of various items of telecommunications equipment
- Converting some offices to flats
- Converting some restaurants to shops
- Statutory bodies such as electricity providers, transport operators, local authorities and water and sewerage providers, have wide-ranging permitted development rights that allow them to do building works linked to the discharge of their functions.
- Many advertisements can be displayed with 'deemed consent' and do not require the council's approval.

SECTION 5: BREACHES OF CONTROL INVOLVING COUNCIL-OWNED LAND OR BUILDINGS

23. Breaches of planning control involving Council owned land or buildings will be dealt with by the council as a landlord.

SECTION 6: USE OF PLANNING CONDITIONS

24. Conditions are attached to planning permissions to ensure development is both acceptable and appropriately controlled. Non compliance with a condition is a breach of planning control.

CONSTRUCTION MANAGEMENT CONDITIONS

25. Major developments granted permission may include a condition to submit a construction management plan (CMP) setting out how the construction phase will be managed. It will include various matters of best practice found in the Code of Construction Practice: for example times of construction, measures to limit noise and dust and routes that construction vehicles should use.
26. In applying this condition, the Council expects major developers to consider carefully how the impacts of building work on neighbours can be minimised and demonstrate that this has been done by applying to discharge the condition. The Planning Enforcement Team will work with colleagues across the Council, such as those from Environmental Protection and Highways, to ensure compliance is achieved in the most effective way.
27. Planning enforcement action can also be taken if a developer has failed to apply to discharge a CMP condition.

SECTION 7: HOW ARE INVESTIGATIONS MANAGED

- 28 The Council usually has around 300 enforcement investigations at any one time and approximately 70 cases where although an enforcement notice has been served compliance has not yet been achieved. Most enforcement notices result in an appeal. Consequently, the demand for planning enforcement is always high.
- 29 Caseloads will include investigations at various stages in the enforcement process and these needs to be managed. The following list advises on which cases may have to be dealt with first owing to the stage in the process that has been reached:
- On-going appeals or court actions against served notices
 - New complaints of serious irreparable harm
 - On-going breach of an enforcement notice which has come into effect
 - Breaches causing serious harm
 - Investigations where immunity periods are imminent
 - All other complaints
- 30 There will be regular desk top reviews of historic enforcement investigations and a view will be taken as to whether some case should continue to be progressed. Cases where the complainant has made no further contact with the council for an extended period of time may be closed.
- 31 It is not an offence to carry out development without first obtaining planning permission, and permission can be granted after the development is complete. Development undertaken without planning permission is done so at the property owners' risk. Completed developments will be assessed for their acceptability in the same way as a planning application made before any work is done.
- 32 There are no immediate penalty charges or punishments for those who breach planning regulations.

HOW MANY CASES DO YOU DEAL WITH?

- 33 The Council deals with 400-500 requests for an enforcement investigation a year. Some of these investigations are initiated by Councillors or officers undertaking other regulatory functions.
- 34 The majority of investigations do not result in enforcement action.
- 35 The table below gives a typical year's output in terms of the conclusion on enforcement cases (calendar year 2014).

Cases which resulted in service of a formal notice

| Type of enforcement action | No. cases |
|--|-----------|
| Advertisement enforcement | 8 |
| Breach of condition notice | 8 |
| Enforcement notice | 48 |
| S215 Untidy Land notice | 2 |
| TOTAL OF FORMAL ENFORCEMENT ACTIONS | 66 |

Cases which did not result in enforcement action

| Decision on case | No. cases |
|---|------------|
| Breach ceased after a warning given | 52 |
| Breach immune from enforcement action (breaches of planning control become immune from enforcement action after a certain period of time) | 25 |
| Breach regularised by grant of permission | 22 |
| No breach found (many of these will relate to permitted development) | 178 |
| Breach minor and where it was not expedient to take enforcement action | 103 |
| Planning application invited to regularise breach | 33 |
| TOTAL | 413 |

SECTION 8: HOW TO REQUEST AN ENFORCEMENT INVESTIGATION

- 40 It is helpful if you search the planning register, available on line, as planning permission may already have been granted for the development you are concerned about.
- 41 There is an electronic form on the Council's website to request an enforcement investigation: <https://forms.southwark.gov.uk/ShowForm.asp>. It is helpful if photographs can be provided.
- 42 You can send your concerns in an email to planning.enforcement@southwark.gov.uk or a letter to:
- Planning Enforcement Team
Development Management
PO Box 64529
London SE1 5LX
- 43 A minimum level of information is required:
- Complainant's name and postal address; telephone contact number and email address.

- Site address of the breach, plus additional information fully describing where it is (i.e. door at second floor level to the rear)
 - What the breach of planning control involves
 - Details of the way in which it is harmful
- 44 Anonymous complaints are unlikely to be investigated.
- 45 The identity of the person requesting the investigation is normally kept confidential unless the Council is required to release it by law. If a case proceeds to an appeal, or a prosecution, and if the complainants' evidence is part of the case, then anonymity cannot be guaranteed.

SECTION 9: WHAT TO EXPECT FROM AN INVESTIGATION

If you request an enforcement investigation:

- 46 The Council will aim to log and acknowledge a request for an enforcement investigation within 3 days. Shortly afterwards, you will receive a second letter, either requesting more information, or giving you the name of the enforcement officer handling the case. If you do not provide the additional information requested, the investigation may not be commenced.
- 47 The Council aims to make a decision on 70% of cases within 12 weeks of the case being valid (i.e. the date that the request for an investigation, providing sufficient information, was received). This does not mean that the case is necessarily closed: for example, if the decision is to take some sort of enforcement action, there is likely to be a lengthy period before the case can be finally concluded.
- 48 Officers will endeavour to keep you up to date with what is happening. For some cases, it may appear that nothing is happening for extended periods but this may be because there is time given for a property owner to comply with a notice, or an appeal may have been lodged.
- 49 You will be informed of the outcome of the investigation.
- 50 Officers will respond swiftly on receipt of a report of unauthorised work to a listed building or tree, or demolition of a building in a conservation area.

If your property is subject to an enforcement investigation:

- 51 Officers may contact you to inspect the site if this cannot be seen from a public place. In some cases, it may be appropriate to conduct a site visit without notice.
- 52 Planning enforcement officers have a right of entry to land and buildings in the borough to investigate suspected breaches of planning control. If you do not allow entry, this may need to be secured by a court order. In most cases, however, access for inspection is arranged in an amicable way.

- 53 You may receive a Planning Contravention Notice requiring you to provide information. If you do not respond to this, there is a possibility of legal action.
- 54 If officers conclude that the development is harmful in planning terms, you will receive a letter setting out what the breach is and why it is unacceptable. You may be given options of what you need to do to regularise the planning position of the property. Officers will not enter into protracted negotiations and will aim to progress cases as swiftly as possible.
- 55 If you receive an enforcement notice, **YOU SHOULD NOT IGNORE IT**. You are most strongly advised to seek your own specialist planning or legal advocate. Once a notice has been served, the Council's focus will be to achieve compliance
- 56 You may wish to seek pre-application advice concerning a planning application to regularise the development. The Council provides this service:

<http://www.southwark.gov.uk/planning-and-building-control/planning-applications/pre-application-advice-service>
- 58 Local planning authorities must maintain a register of enforcement and stop notices.
- 59 Enforcement action is likely to be recorded as a local land charge. This can make the sale of the property harder in the future.
- 60 Compliance with an Enforcement Notice will not discharge the notice and it remains as a charge on the land to prevent the breach re-occurring. Subsequent owners are responsible for compliance with a notice even if they were not responsible for the unauthorised development. You may wish to apply for a Certificate of Lawful Development for formal confirmation of compliance with a notice.
- 61 In most cases, planning enforcement investigations conclude without any further action. This can be confirmed in writing to you if you request it.

WHAT HAPPENS IF A NOTICE IS SERVED?

- 62 A notice will set out how to remedy the breach of control and a time period to comply. There is a right of appeal against some notices. At the present time, the Planning Inspectorate has a target of 32 weeks to determine an appeal against an Enforcement Notice.
- 63 Once all appeals and compliance periods have expired, if the unauthorised development remains, a criminal offence has occurred. The Council may need to interview the land owner under caution and prepare a case for prosecution. At this point, an assessment will be made whether it is in the public interest to instigate prosecution proceedings.
- 64 Timescales for progressing the case will then depend on the courts.

WHAT HAPPENS IF THERE IS NO REASON TO TAKE ENFORCEMENT ACTION?

65 The majority of investigations conclude without enforcement action being taken. These are the reasons why:

- 1) NO BREACH - The matter investigated is not development, and as such does not need planning permission, or is permitted development and has permission granted under the General Permitted Development Order. It may also be development that has the benefit of planning permission.
- 2) BREACH IMMUNE - Breaches of planning control become immune from enforcement action after a certain period of time.
- 3) BREACH CEASED - Breach ceases as a consequence of the investigation
- 4) BREACH REGULARISED – An application to retain unauthorised development is submitted and approved.
- 5) PLANNING APPLICATION INVITED - The unauthorised development is such that it may be capable of being regularised through submission of a planning application. The case is then monitored. If no application is submitted, a decision on whether it is expedient to pursue enforcement action will be made.
- 6) CASE CLOSED BUT UNDER REVIEW - No clear breach of control (for example, occasional breach of condition); case will be monitored.
- 7) NOT EXPEDIENT TO TAKE ENFORCEMENT ACTION - The breach of control is not causing sufficient planning harm when assessed against the Council's planning policies to serve an enforcement notice.
- 8) MEDIATION - Occasionally officers may consider that mediation between a complainant and a developer would be helpful and would achieve a more productive outcome than formal enforcement action.

HOW IS DEVELOPMENT MONITORED?

66 There are insufficient resources to monitor each development granted permission and the Council relies on the public and colleagues in other services to draw attention to non compliance with approved plans or conditions.

67 There is co-operative working with:

- Building control
- Council tax
- Street naming and numbering
- Licensing
- Environmental Protection
- Private Sector Residential Inspectors

- 68 Joint working with these other regulatory services identifies breaches of planning control, particularly the creation of houses in multiple occupation and creation of new residential flats.

SECTION 10: WHAT OTHER REGULATORY POWERS DOES THE COUNCIL HAVE?

- 69 Planning enforcement is one strand of the Council's powers that protect the environment and wellbeing of the borough's citizens. In some cases, a multi agency approach can achieve the best outcome.

- 70 It is not unusual for requests for planning investigations to be better dealt with by other parts of the Council, or external agencies, whose powers are more effective in that instance.

- 71 What other services can help with:

- **BUILDING CONTROL** – how building work is undertaken; dangerous structures.

<http://www.southwark.gov.uk/planning-and-building-control/building-control>

- **ENVIRONMENTAL PROTECTION** – Noise, fumes, vibration, food safety, noisy parties, refuse collection, environmental crime

<http://www.southwark.gov.uk/noise-and-antisocial-behaviour>

<http://www.southwark.gov.uk/bins-and-recycling/general-household-waste>

- **LICENSING** – behaviour in licensed premises, sales of alcohol and cigarettes to minors, public order, night time uses

- <http://www.southwark.gov.uk/info/200063/licences>

- **PRIVATE SECTOR RESIDENTIAL INSPECTORS** – licensing of HMO's, inspection of private rental flats

http://www.2.southwark.gov.uk/downloads/download/2951/standards_for_houses_in_multiple_occupation_hmo

- **PARKING AND HIGHWAYS** – blocking rights of way, illegal parking, use of the pavement and highway for stalls or tables and chairs

http://www.southwark.gov.uk/info/200444/highway_licensing

- **FRAUD TEAMS** – fraudulent benefit, housing and other claims

<http://www.southwark.gov.uk/info/726/fraud>

- **CHILD PROTECTION SERVICES** – protection of vulnerable children

http://www.southwark.gov.uk/info/266/child_protection

Outside of the Council, other agencies include the Metropolitan Police (criminal matters), the Border Agency (immigration) and the Fire Brigade (fire risks).

SECTION 11: WHAT TO DO IF YOU ARE NOT HAPPY WITH THE CONDUCT OR OUTCOME OF AN INVESTIGATION

- 72 The Director of Planning has delegated powers for planning enforcement.
- 73 There is no right of appeal by a complainant against the Council's final decision on an enforcement case. A landowner has a right of appeal to the Planning Inspectorate, or the magistrate's court in the event that some kind of formal notice is served.
- 74 If there is a complaint about how an enforcement investigation has been conducted, or the outcome, you should first go through the Council's corporate complaints procedure. Once this route has been exhausted, you can request that the Local Government Ombudsman reviews the case.

<http://www.southwark.gov.uk/complaints>