

Planning enforcement FAQs

The following questions and answers are intended to explain how the Council uses its planning enforcement powers to protect amenity and ensure the right development takes place in an acceptable way.

Planning permission is needed for many types of development and changes in use of land or buildings. Permission is also required to erect many forms of advertisements and there are controls to protect Listed Buildings and preserved trees. When development or work takes place without permission, or not in line with a planning permission or condition placed on it, the Council has various legal powers to take what is called 'enforcement' action to remedy the problem.

The Council attaches particular importance to planning enforcement to ensure that the amenity of all residents and businesses is properly protected.

We also have an online Planning Enforcement Register containing details of enforcement notices the Council has served.

Included in the following is information about when and what sort of planning enforcement action can be taken and how you can tell us about something you think is wrong.

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Q1: What does Planning Enforcement cover?

Planning Enforcement involves ensuring that planning permissions and any conditions imposed are complied with.

It also includes situations where something requiring planning permission or related consents has taken place without permission being obtained, for example:

- construction of buildings or works, eg wall or fence
- change of use of buildings or land
- display of advertisements
- works to protected trees and hedgerows
- work to buildings listed as being of special architectural or historic interest
- demolition of certain buildings in a Conservation Area
- the Council also has statutory powers to require land that is in a poor condition and has an unacceptable impact on public amenity to be tidied up

Q2: Is it illegal to build something without planning permission?

Whilst building something without planning permission is not normally a 'criminal' offence, failure to comply with some notices to rectify a problem can be. However, unauthorised work to a 'listed' building, preserved tree or erecting advertisements without consent is a criminal offence.

Q3: What is not covered by Planning Enforcement?

Planning Enforcement cannot deal with some issues and you will need to seek your own legal advice

- neighbour disputes
- land boundary or ownership disputes
- deeds of covenant issues
- works to party walls
- use of/development on highways or pavements (Please contact: Surrey County Council Highways Department)

Some things can be dealt with by the Council through other powers relating to the Building Regulations (eg structural issues relating to building work) or Environmental Health (eg noise issues). Our Neighbourhood Services section deals with flyposting of adverts and 'A' boards which are placed on pavements or attached to other structures on the highway.

Q4: How do I report unauthorised development?

Please contact the Council by e-mail, using our on-line form, telephoning Customer Services or writing to Planning Enforcement at the Council Offices

The following information should be included:

- the exact location of the site, or address of the property in question - including which part of a site
- exactly what has or is happening and when
- what harm it is causing you or your neighbours
- when the problem started, eg date building work or use of a site started

The more information you can give us the quicker we can resolve the problem.

Q5: What happens when an enforcement complaint is received?

The Council receives over 300 planning enforcement related queries every year and needs to deal with them in a consistent and fair manner, giving the greatest priority to the most serious and/or urgent cases.

When we receive a complaint/query we will check the following:

- does it need planning permission?
- does it have planning permission?
- are any conditions that were imposed with a permission not being met?
- has a planning application relating to the problem already been submitted to the Council and is still to be decided?

The Council also has to check how long ago a development or change of use took place as there are time limits on when action can be taken. Generally changes of use are immune from action after 10 years and development after four years, although there are some qualifications. The Government is, however, seeking to introduce legislation to allow retrospective action at any time where works have been deliberately concealed to gain immunity.

When a matter needs to be investigated further we will prioritise the problem - see question 8.

The Planning Enforcement flowchart summarises the key questions and actions that the Council has to consider.

Q6: What type of action can the Council take?

The Council has to decide whether it is expedient to take action and will not pursue cases which are trivial and involve a very minor technical infringement where no actual harm has or could arise. Nor will it take action simply to regularise a development. We will act reasonably and seek to deal with matters in a manner proportionate to what has happened and which represents an effective use of public money.

In all cases we will need to establish the facts; this research can take some time, particularly where several site visits or surveys over a period of time are required.

Wherever possible and appropriate we will seek to resolve matters by negotiation as this may often be quicker and more cost effective for all concerned. However, we do have statutory powers to serve the following notices and action can be taken through the Courts when they are not complied with:

Planning Contravention Notices (PCNs): These are used to seek information and help us decide what has happened and what to do about it. There are penalties for failing to provide the information requested.

Breach of Condition Notices (BCNs): These are used where a condition of a planning permission is not being followed. Failure to comply with a BCN is a criminal offence.

Enforcement Notices: These can require unauthorised uses to cease, or unauthorised building works to be altered or removed. The notice must give a reasonable period for compliance. Failure to comply with an Enforcement Notice is a criminal offence. There is a right of appeal against an Enforcement Notice.

Stop Notices and Temporary Stop Notices: If the unauthorised development is causing a very severe problem, and we consider that the unauthorised development or use should be stopped immediately, we can serve a Temporary Stop Notice which stops all work for 28 days while issues are resolved, or a Stop Notice together with an Enforcement Notice. Failure to comply with a Stop Notice is a criminal offence.

Section 215 Notices: This is a power available under the Planning Act 1990 and can be used when the condition of land is adversely affecting the amenity of the area. The Notice can require that the land is cleared of rubbish and overgrown vegetation. It can also require the appearance of a dilapidated building to be improved.

Injunctions and other Court actions: Action can be taken through the Courts for 'criminal offences' which include unauthorised work to Listed Buildings and preserved trees or erecting advertisements. Injunctions are Court Orders preventing unauthorised development from taking place. If they are not complied with the Courts can impose severe penalties.

As a last resort the Council can take direct action to remedy a breach of planning control, such as removal of an unauthorised structure by its own contractors and recovering the costs by a 'land charge' on the property.

Q7: How quickly will a complaint be dealt with and then resolved?

We aim to respond to any complaint as quickly as we can, however, the time required to resolve an issue will vary considerably - from those where a quick discussion leads to an immediate stop, to an activity where formal notices have to be served

Complex cases can for example involve detailed research, including surveys of a site over several weeks, possible submission of retrospective planning applications and decisions on them, issuing of notices, appeals and further action to enforce compliance through the Courts.

We will aim to:

- acknowledge receipt of any complaint within five working days and provide an initial response within 10 working days on the actions we are taking
- update you on significant stages in dealing with a case, eg submission of a retrospective planning application or serving an enforcement notice
- let you know when a case is finally resolved

Q8: How do you prioritise planning enforcement work?

We prioritise planning enforcement work according to how serious it is

It categorised as follows:

Category 1: Serious harm - this includes:

- unauthorised demolition of Listed Buildings, ancient monuments and demolition of locally Listed Buildings
- felling or lopping of a preserved tree or tree in a Conservation Area
- development or breach of conditions likely to cause serious harm/danger to people or amenity
- unauthorised work in a conservation area likely to lead to permanent harm
- where development has started and is subject to planning conditions. relating to either contamination, archaeology, nature conservation or trees which are required to be agreed before commencement
- development which is unsafe

Category 2: Significant and widespread harm to local amenity:

- unauthorised development causing significant or widespread harm
- breaches of planning conditions causing serious nuisance to adjoining residents
- breaches of advert control causing a serious impact on amenity

Category 3: Matters causing demonstrable harm or where quick action is expedient:

- breaches of planning control or conditions where the time limit for enforcement action is less than six months
- breaches likely to be resolved quickly by negotiation

Category 4 - Other - these may include: Breaches of a technical nature and not in significant conflict with planning policy:

- breaches which are temporary and unlikely to result in any long term harm
- advertisements not included above
- breaches of other planning conditions
- other changes of use
- high hedges
- unauthorised pitching of caravans

Q9: Will I be kept up-to-date with progress on a complaint?

Please see question 7 and the Planning Enforcement flowchart for details of when we will contact you, however, you are welcome to contact the enforcement officers at any time to check on the progress of a complaint - preferably by email as they are often out on site.

Q10: What happens if an enforcement notice is not complied with?

The Council may prosecute offenders who do not comply with an Enforcement Notice.

Those involved will be advised that the period for compliance has lapsed and they will be invited to state their intentions. If no agreement can be reached, they will be advised that non-compliance constitutes a criminal offence for which, if proven guilty through the courts, a fine of up to £20,000 can be imposed.

Q11: What can the Council do about untidy land?

Owners of untidy land or unkempt buildings which cause significant harm to amenity can be served with a notice under Section 215 of the Town and Country Planning Act 1990 which requires the problem to be resolved.

Q12: What is a Retrospective Application?

A retrospective application is a planning application which has been made after something has already been built or a change of use has started.

Appropriate publicity and consultation will be carried out on such applications, and interested parties given an opportunity to comment before a decision is made.

Q13: How do I report someone using his or her own home to run a business?

Where a business use, eg use of a bedroom as an office, is relatively low key and incidental to the residential use of the property planning permission is not required.

However, where the activity is significant it may not be appropriate and we will take action.

To let us know about a business activity which is causing a problem you can e-mail, use our online form, send a letter to Planning Enforcement at the Council Offices or call our Customer Services.

Q14: How do I report a development which is not being carried out in accordance with the approved plans?

You can e-mail, use our on-line form, send a letter to Planning Enforcement at the Council Offices or call our Customer Services.

Q15: How do I report work being carried out which I don't think has Planning permission?

Planning Permission may not necessarily have been required.

You can check if there is a planning permission by accessing our 'Planning Application Online' or call Customer Services who will check for you.

To let us know about a business activity which is causing a problem you can email, use our online form, send a letter to Planning Enforcement at the Council Offices or call our Customer Services.

Q16: What happens if a Planning Enforcement complaint is made against my property?

Officers investigating a report will usually contact you in person to establish the facts

The Council has a legal right to enter your land to investigate any reported breach. Once we have established the facts, if it is clear a breach of control has occurred we will write to you formally and ask you to remedy the breach voluntarily in an agreed timescale.

If you fail to remedy the problem voluntarily the Council will take enforcement action and will again inform you of this in writing. At each stage of formal enforcement action the Council may, if appropriate, seek to offer you the option of voluntarily resolving the problem, which will help to avoid time-consuming and often costly appeals or prosecution proceedings.

Q17: What happens if an enforcement notice is served on me?

If you are issued with an Enforcement Notice you will be given the details of the breach, the reason for the action, the steps required to overcome the problem, and the time period for compliance.

The notice will remain 'registered' against the land/property and not the person upon whom it is served.

Q18: Can those who make a complaint do so confidentially?

Under the Data Protection Act, the identity of the complainant is always kept confidential and will not be disclosed, however, if a case goes to court there are circumstances where these details may need to be revealed.

Q19: Can I appeal against the Council's Planning Enforcement decision?

Any person who has an enforcement 'notice' served on them has the right of appeal to the Planning Inspectorate - further information is available on the Planning Portal website

The Planning Inspectorate is an independent body based in Bristol. Their main work is the processing of planning and enforcement appeals and other varied casework, including listed building consent appeals and advertisement appeals. An Inspector from the Planning Inspectorate will look into the case and decide whether the enforcement notice should be quashed or upheld.

If the notice is quashed (not agreed by the Inspector) then the Council can take no further action. The Inspector may, in some circumstances, grant planning permission for the activity that was the subject of the notice. If the notice is upheld, then the person must carry out the requirements of the notice, or risk prosecution.

Sometimes the Inspector will vary the enforcement notice, for example to allow a longer time to comply with the notice.

If a person does exercise their right of appeal, then the enforcement notice does not take effect whilst the appeal is being considered. During this time, which may be several months, the Council cannot prosecute for failure to comply with the requirements of the notice.

Any person who has a Section 215 Notice served on them has a right of appeal to the Magistrate's Court, on certain grounds.

There is no right of appeal against a Breach of Condition Notice and you will risk prosecution if you do not comply with it. The reason for this is that there is a right of appeal against the original imposition of a condition on a planning application.

For further advice on appeals you are advised to contact a solicitor or a planning agent.

The contravention of an injunction is contempt of court and the court can levy an unlimited fine or impose a custodial sentence.

Q20: Can the Council take action where high hedges are causing a problem?

The Government has given local authorities powers to deal with high hedges where they adversely affect someone's reasonable enjoyment of their property. However, government guidance makes clear that local authorities should only seek to act as a last resort where there is clear evidence that a complainant has tried and exhausted all other ways of resolving the hedge dispute over a reasonable period of time.

This will include evidence of at least three exchanges of correspondence and a solicitor's letter. Further guidance is available on the Communities and Local Government website. The Council recommends that a mediation service may be more appropriate than statutory powers, eg Mediation North Surrey.

Q21: Where can I find more information?

More information on Planning Enforcement is available on the [Gov.UK](https://www.gov.uk) website, you are also welcome to discuss any matters with the Council.

Contacts

- **Customer Services**

Email: customer.services@spelthorne.gov.uk

Telephone: 01784 451499

Full details for Customer Services

External links

- [My Spelthorne - Enforcements](#)