

**TO: THE MONITORING OFFICER
(TOM CLARK, SOLICITOR TO THE COUNCIL)**

**RECORD OF ACTION TAKEN BY A CABINET MEMBER
UNDER DELEGATED POWERS**

Subject: Authorisation of revisions to Enforcement Charter and Planning Enforcement Policies and Procedures document	
Cabinet Member: Cllr. Jonathan Ash Edwards	
Has the Cabinet Member received a report prior to making the decision?	yes
In the case of a key decision where the Cabinet Member has received a report, please state the date a copy of the report was made available to the Chair of the relevant Scrutiny Committee and placed in the public domain:	Not a key decision
Record of decision taken: Revised Enforcement Charter and Planning Enforcement Policies and Procedures document is authorised for purposes of planning enforcement in Mid Sussex.	
Date of decision: 10 th June 2021	
Statement of reasons for making the decision: National guidance encourages the publishing of a Local Enforcement Plan to help manage enforcement proactively. The Council's current Enforcement Charter and Planning Enforcement Policies and Procedures document (which make up the Local Enforcement Plan) was last updated in November 2012. The decision authorises revisions to the Enforcement Charter and Planning Enforcement Policies and Procedures document following a review by Council Officers.	
Alternative options considered and rejected: In the alternative, the current documents that date from 2012 could not be updated. However, this is not considered a viable option as the Charter and Policy document are considered important in providing transparency and clarity to the enforcement process to all those engaged in, and affected by, the development process. In updating them, enforcement can be managed proactively, in a way that is appropriate to Mid Sussex.	
Code of Conduct Interest of Cabinet Members? If yes, please advise on the nature and whether dispensation in place	
Is the decision to be protected from call-in? (<i>i.e</i> if any delay would seriously prejudice the Council's or the public's interest) - see Scrutiny Procedure Rule 14 (M)	No
If so, please state:	

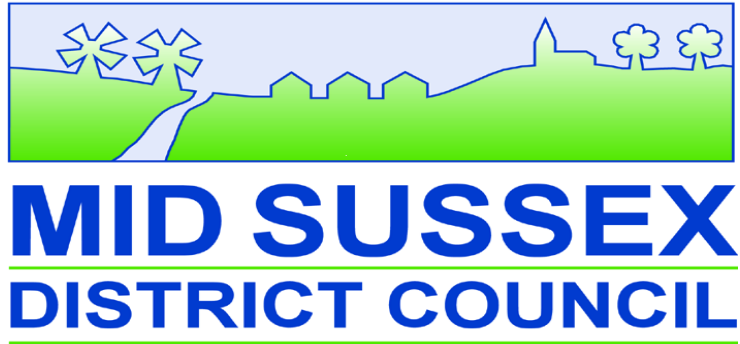
Signed:
Cabinet Member



This record must be forwarded immediately to the Monitoring Officer (TC) and copied to the relevant Cabinet Member.

For Monitoring Officer

Date of publication of Member Information Service Bulletin	16/6/21
Date of decision can be implemented (on the Thursday after publication of the Member Information Service Bulletin, unless already protected from call-in)	24/6/21



Planning Enforcement Charter and Planning
Enforcement Policies and Procedures
Documents Update May 2021

Report for Councillor Jonathan Ash-Edwards

Background Report

Information Requirements and Validation for Planning Applications

1. This report explains the reasoning behind the request to the Cabinet Member to authorise the updated planning enforcement charter and planning enforcement policies and procedures document.
2. Mid Sussex District Council last reviewed and updated the 'enforcement charter' and 'enforcement policies and procedures document' in November 2012 and since then there have been significant changes to planning legislation, both locally and nationally, that impact planning within Mid Sussex and it is important that the planning enforcement service respond accordingly to the tailored local circumstances within Mid Sussex.
3. While enforcement action is discretionary, effective enforcement is important to maintain public confidence in the planning system and paragraph 58 of the National Planning Policy Framework (NPPF) sets out that local planning authorities should consider publishing a local enforcement plan 'to manage enforcement proactively, in a way that is appropriate to their area'. These documents set out the Council approach to planning enforcement and constitute its 'enforcement plan'.
4. There is no formal statutory process that needs to be followed in reviewing and updating an 'enforcement plan', however advice within the National Planning Policy Guidance has been taken into account. This advises local planning authorities on the importance of such documents as it:
 - allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
 - sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
 - provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
 - provides greater certainty for all parties engaged in the development process.

There is no statutory period within which a review of the enforcement plan should be made, nor is there a statutory period against which the plan is deemed up-to-date.

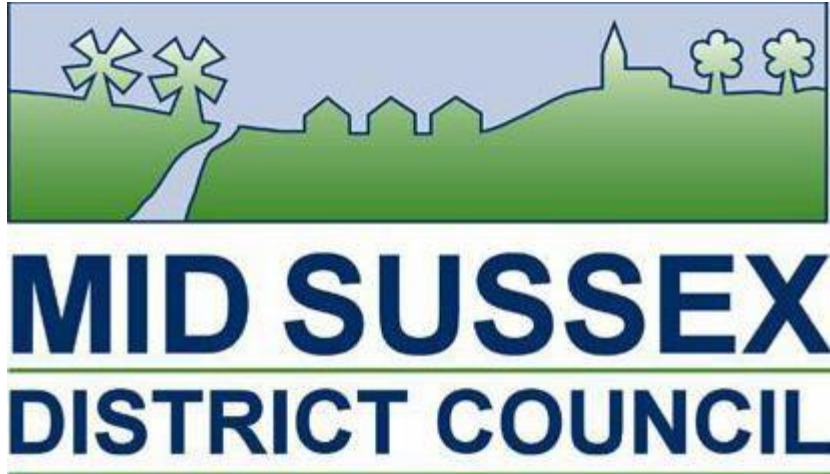
4. The current documents were subject to informal internal view by professional planning officers, including the planning enforcement team, to identify matters that needed to be updated to reflect the changing nature of enforcement issues within Mid Sussex. In particular, there were two main matters that needed to be clearly identified and added to the documents. The first related to construction management plans on major development sites and placing more emphasis on developers to resolve minor issues. The second related to compliance with pre-commencement conditions and setting out clearly the Council expectations in relation to such matters and how they will respond to developers. The remainder of the documents remained relevant and only required superficial updates/reformatting.

Recommendation:

5. It is requested that authorisation be given to the publication and use of the revised Enforcement Charter and the Planning Enforcement Policies and Procedures document for the purposes of planning enforcement in Mid Sussex from the 1st June 2021.

Appendices attached to this report are:

- Appendix 1 the recommended updated Enforcement Charter for authorisation
- Appendix 2: the recommended updated Planning Enforcement Policies and Procedures document for authorisation



Planning Enforcement Policies and Procedures

1. Background

Government advice is that Councils should make a clear statement on their planning enforcement policies. This should provide a firm decision-making framework to enable effective enforcement procedures to be put in place.

This document sets out our overall planning enforcement policy and procedures. In our Charter on Planning Enforcement we have set out the level of service the public can expect to receive in relation to complaints about breaches of planning control.

In accordance with the advice contained in the National Planning Policy Framework and the national Planning Practice Guidance note, the making of a Planning Enforcement Policy is essential to promote and maintain effective and efficient working practices in the enforcement of planning control.

2. National policy

Central Government's general approach to planning enforcement is set out in the National Planning Policy Framework. Technical guidance on enforcement is contained within the national Planning Practice Guidance note. The main points may be summarised as:

- Local Planning Authorities have the responsibility for taking whatever enforcement action may be necessary in their administrative area;
- A private citizen cannot initiate formal planning enforcement action;
- Failure to take enforcement action where it is plainly necessary can lead to a Council being found guilty of maladministration;
- When deciding whether to take enforcement action, the decisive issue is whether the breach of planning control unacceptably affects public amenity, or the existing use of land and buildings merits protection in the public interest;
- Enforcement action should always be commensurate with the breach of planning control to which it relates;
- It is usually inappropriate to take enforcement action against a trivial or technical breach which causes no harm to the amenity in the locality of the site;
- Negotiations should be undertaken to resolve a breach of planning control but should not be allowed to hamper or delay formal action;
- Local Planning Authorities must be mindful of the statutory time limits for taking enforcement action [i.e. 4 years for operational development and for breaches of planning control consisting of the change of use of any building for use as a single dwelling house and 10 years in the case of any other breach of planning control].

Essentially, two elements must be in place for enforcement action to be successful. Firstly, the development must constitute a breach of planning control. Secondly, it must be a development that, having regard to the development plan and to any other material considerations, would have been refused had a planning application been made at the correct time.

3. The meaning of 'Development'

As defined in Section 55 of the Town and Country Planning Act 1990 [‘the 1990 Act’]

" 'Development' means the carrying out of building, engineering, mining, or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land"

4. Local plan policies

The Mid Sussex District Plan sets out the planning policies for the District to both protect the environment and to satisfy the needs and expectations of those who live and work here. The Plan does not refer explicitly to enforcement powers, but the necessity to enforce is implicit to achieve the policy objectives.

5. Enforcement concordat

Mid Sussex District Council is registered under the Enforcement Concordat prepared and issued by the Local Government Association, and the Cabinet Office Better Regulation Unit. The Council has prepared an Enforcement Charter setting out the levels of service and performance that can be expected. Central to these are the concepts of openness, helpfulness, proportionality, consistency and responsiveness to complaints about the service we provide.

6. The enforcement issues

This enforcement policy addresses the following issues:

- The main planning enforcement policies applicable;
- The type and incidence of planning enforcement problems encountered;
- Monitoring procedures;
- Resources devoted to enforcing planning control.

7. The Council's approach to planning enforcement

The integrity of the development management process depends on our readiness to take enforcement action when it is considered expedient to do so.

- We acknowledge that, in certain circumstances, swift action is vital to prevent a breach of planning control from becoming well established and more difficult to stop.
- We recognise the importance of establishing effective controls over unauthorised development.
- We will not condone wilful breaches of planning law, but we will exercise our discretion with regard to taking enforcement action.
- We will only take enforcement action when it is considered appropriate and expedient to do so.

8. General policies on enforcing planning control

Main Enforcement Policy Statement

- We recognise the importance of establishing effective controls over unauthorised development, to assist in the preservation and enhancement of the qualities of both the built and natural environment, and to protect public amenities.
- Reasonable resources will be committed to ensure effective implementation and maintenance of planning enforcement control
- Decisions with regard to the taking of formal action, or taking no action, will be in accordance with the Council's constitution and scheme of delegated functions

As the Local Planning Authority, the Council will exercise all reasonable powers granted under the provisions of the 1990 Act, including all other subordinate legislation, to control unauthorised development effectively. In considering whether it is expedient to commence enforcement action, we will take account of the policies in the District Plan and all other material considerations.

Initiating enforcement action

In considering enforcement action, we will assess whether the breach of planning control unacceptably affects public amenity, or the existing use of land and buildings merits protection in the public interest.

We will attempt to persuade an owner or occupier of land to remedy, voluntarily, any harmful effects of an unauthorised development. We will not, however, allow discussions to hamper or unnecessarily delay any formal enforcement action that may be required.

Minor or technical breaches of planning control

Enforcement action must always be commensurate with the breach of planning control to which it relates. Formal enforcement action will not normally be taken against trivial or technical breaches of planning control that cause no harm to amenity.

Slight or minor variations to works carried out under 'Permitted Development' Rights

By virtue of the Town and Country Planning [General Permitted Development] Order 2015, as amended ['GPDO'] there are certain classes of development that do not need planning permission. Where these 'permitted development' rights have been exceeded, it may only be necessary to initiate formal enforcement action when a variation is considered to be material and unacceptable.

Granting unconditional planning permission for unauthorised development

Where development requiring permission has been, or is being, carried out without consent, an assessment will be made to establish if it is likely that planning permission would be granted. If planning permission is likely to be granted, we may invite the submission of an application for retrospective permission. The submission and consideration of such applications is lawful under S.73A of the 1990 Act

Where a retrospective planning application has been asked for, but not submitted within a reasonable time, and Where there is no specific planning objection to the development, further enforcement action will not, normally, be considered appropriate.

The Council will advise an owner or occupier of land that difficulties may arise in the subsequent sale or disposal of that land if no specific planning permission has been granted and a breach of planning control has taken place.

Imposition of conditions to make development more acceptable

If no application is submitted, consideration will be given to the issue of an Enforcement Notice which may impose conditions upon the unlawful development but stopping short of requiring the development to cease. The Notice will have the effect of granting conditional planning permission, but only if the requirements detailed in the Notice are complied with.

Failure to comply with an Enforcement Notice is an offence and may result in prosecution.

Non-compliance with planning conditions

Where planning permission has been granted for development, subject to conditions, and those conditions have not been complied with, consideration will be given to the issue of an Enforcement Notice or a Breach of Condition Notice.

There is a right of appeal to the Secretary of State against the serving of an Enforcement Notice. An appeal against any Enforcement Notice could result in the Secretary of State quashing the Notice, upholding the issue of that Notice, or varying the Notice. A variation of the Notice may be in respect of the steps to be taken to comply with the Notice or in respect of the time period for compliance. Any appeal process will result in the delay of the effective date of an Enforcement Notice and the compliance period will re-commence from the date of any appeal decision.

Failure to comply with an Enforcement Notice may result in prosecution

Where an Enforcement Notice has not been complied with, the Council can, in exceptional circumstances, enter on to the land and carry out any works required by the Notice. In this situation, the Council would be entitled to recover from the owner any costs incurred and can raise a Charge on the Land to recover those costs

There is no right of appeal against a Breach of Condition Notice.

The failure to comply with a Breach of Condition Notice may result in prosecution.

9. Policy on unauthorised changes of use

Changes of use in general

By virtue of the Use Classes Order 1987 and the GPDO, certain changes of use are allowed to take place without the need for planning permission. Where a material change of use has occurred which requires permission, and permission has not been granted, enforcement action will be considered.

10. Policy on unauthorised works by businesses

Unauthorised development is unacceptable on site but re-location is feasible

The Council does not seek to penalise those who work from home when the house remains essentially residential in character. However, if the impact of any home-business is such that there is an adverse impact on the local community, the proprietor of that business will be encouraged to re-locate to appropriate premises.

Whilst it is not the Council's responsibility to find alternative sites, advice can be given by the Council's Planning Policy and Economic Development Section for re-location. If a suitable site can be identified, a time limit may be imposed for relocation. If a timetable for relocation is ignored, an Enforcement Notice may be served with a compliance period which will allow relocation to take place within a reasonable time.

Unauthorised development is unacceptable and re-location is not feasible

Where unauthorised development has been carried out that is considered unacceptable, and there is no realistic prospect of it being relocated to a more suitable site, we will not allow the operation or activity to continue in its current form.

If agreement cannot be reached to reduce the impact of the activity or operation to an acceptable level, an Enforcement Notice may be issued allowing a realistic time for the unauthorised development to stop, or its scale to be reduced to a level whereby the breach of planning control ceases.

Unauthorised development by small businesses

Where unauthorised development has been carried out by a small business or a self-employed person, and it was carried out in good faith believing that no planning permission was needed, we will assess whether the business can be allowed to continue operating on the site at its current level of activity, or perhaps less intensively.

If, following informal discussions [including the possibility of re-location], a satisfactory compromise cannot be reached and formal enforcement action is considered essential, we will make clear our intention to act and formal Enforcement action will follow

Unauthorised development is unacceptable and immediate remedial action is required

Where we consider that a breach of planning control has taken place and, the breach is causing serious harm to public amenity, enforcement action may be taken including, if appropriate, the service of a Temporary Stop Notice, Stop Notice or an Enforcement Injunction.

11. Unauthorised works to listed buildings

Works to a listed building normally need Listed Building Consent. Where works have been carried out without consent, a criminal offence may have been committed. Subject to the extent and nature of the works, consideration will be given to whether to start criminal proceedings and/or serve a Listed Building Enforcement Notice to make sure that appropriate remedial works are undertaken.

In considering what action to take if works are carried out to a listed building without consent, we will have regard to the advice contained in the national Planning Practice Guidance note and the National Planning Policy Framework.

12. Unauthorised development in Conservation Areas

The Council has a statutory duty to make sure that any development that takes place within a Conservation Area preserves or enhances the character and appearance of the area. Where development takes place without permission, and we believe that it seriously affects the character and appearance of a Conservation Area, remedial steps will need to be taken either by negotiation or by formal enforcement action.

13. Refusal of retrospective applications

Nothing within our policies condones a wilful breach of planning control. The submission of a retrospective application will not be encouraged where the development is unacceptable and in circumstances where we are likely to take enforcement action. The submission of a retrospective application will not stop us from taking enforcement action once the application has been determined. Applications will be determined in accordance with the policies of the development plan and cannot be prejudiced by being retrospective in nature.

14. Departure from approved plans

Where development is carried out but is not strictly in accord with the approved plans, an assessment will be carried out to establish whether the variation is sufficiently material to constitute new development. If it is considered necessary, a separate planning permission may be sought

Where the changes are relatively minor and are not sufficiently material to alter the development as a whole, those changes may sometimes be considered as 'de-minimus' [i.e. so small that they are of no consequence] and no action will be taken.

Whilst we do not condone unauthorised works being carried out, we do recognise that, in many instances, minor variations do not cause any material harm. Enforcement action may not necessarily be taken against minor variations from approved plans. Any assessment of the situation will take account of the site and its surroundings, the scale and massing of the development and the consequences of those changes after the development has been completed.

15. Monitoring building activity and compliance with conditions

Effective controls are necessary to make sure development is carried out strictly in accordance with approved plans. The main problems that may be encountered are variance with the approved plans; incorrect siting; inadequate protection to existing trees and hedgerows; inappropriate use of materials and inadequate hard and soft landscaping / boundary treatment.

Conditions with regard to a development may be imposed at the time of the grant of planning permission and should be in accord with Government guidance in the national Planning Practice Guidance note. Such conditions may be with regard to activities before development takes place, during the period of development or after completion of that development. There is, however, no value in imposing restrictive planning conditions that have no effect or cannot be monitored.

The planning legislation does not require a developer to notify the Council of the commencement of development. Effective monitoring requires close liaison with the Council's Building Control Section where information is received on building regulation applications, commencement dates, and completion dates. Where an independent development inspector has been appointed, [e.g. NHBC], the Building Control Section are advised through the receipt of the Initial Notification of Development Notice.

If any breaches are discovered, the Planning Investigation Officer will seek to negotiate a resolution. If a resolution cannot be achieved by negotiation, consideration will be given to taking formal enforcement action.

16. Compliance with pre-commencement conditions

In accordance with government advice, the Council works pro-actively with applicants to reduce the need for planning conditions to be imposed on any permission that is granted. A pre-commencement

condition cannot be imposed without the written agreement of applicant, except in circumstances set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018. In light of this pre-commencement conditions are generally limited to the main matters that go the heart of any planning permission namely;

- Ecology
- Contaminated land

- Drainage

- Levels

- Construction Management

Given that these conditions, and their requirements, will have been agreed with the applicant prior to the granting of a planning permission, the Council will not accept the commencement of site works to implement a planning permission where these conditions have not been fully discharged.

Where the Council become aware of a confirmed breach of this nature, developers will be requested to stop voluntary, until such time as all the pre-commencement conditions are discharged. Should they choose to continue, then the Council will serve a Temporary Stop Notice, which lasts for 28 days, without the need to write formally regarding their intentions and without further discussion with the developer.

Before any formal action is taken, the Council will satisfy itself that it is in the public interest and expedient to do so.

17. Display of unlawful advertisements

The Town and Country Planning (Control of Advertisements) Regulations 1992 ('the 1992 Regulations'), under the provisions of Section 220 –225 of the 1990 Act, allows the display of some classes of advertisements and signs without the need for permission from the Council. In many instances, however, express consent is needed to display advertisements.

Those who display 'unlawful' advertisements without the benefit of permission risk prosecution. Those at risk include:

- The owner of land on which an advertisement is displayed
- The occupier of land on which an advertisement is displayed
- Any person whose goods, trade or business or other concerns publicity is given by the advertisement
- The person who undertakes or maintains the display of the advertisement

When a complaint is received that an advertisement requiring consent has been displayed in contravention of the 1992 Regulations, that complaint will be investigated. If the person(s) responsible for such an advertisement can be identified, they may be advised that, if the advertisement is not removed within 72 hours, the Council will remove the advertisement and the person(s) responsible will be prosecuted.

If the person(s) responsible cannot be identified, the Council retains the power to remove any unlawful advertisement.

18. Derelict or unsightly land or buildings

The condition of certain buildings or land can cause harm to the visual amenity of an area. Where the condition of land or buildings is adversely affecting the amenity of the area, consideration may be given to serving a notice under the S215 of the 1990 Act. This Notice will specify measures to remedy the condition of the land and the period for compliance.

There is a right of appeal to the Magistrates Court in respect of the issue of this Notice and a further right of appeal to the Crown Court in respect of the Magistrates decision.

If the requirements of this Notice are not completed within the specified time, an offence will have been committed. The Council can prosecute and/or enter the land and carry out the work required. The Council is entitled to recover from the owner of the land any costs reasonably incurred as a result of having to take direct action to tidy the site.

19. Lawful uses or activities

Where we are considering enforcement action for an unauthorised use, operation or activity, but it is claimed that the use, operation or activity is lawful, an application for a Lawful Development Certificate may be invited. The submission of such an application will give us an opportunity to determine whether the specific use, operation or activity is lawful.

The onus of proof in such an application is firmly on the applicant. If the applicant fails to submit sufficient evidence that, on the balance of probabilities, does not satisfy the application, that application will be refused and we will consider whether enforcement action is required.

20. Resources

Currently, the Planning Investigation Team investigates some 650 cases each year. The team consists of Investigation Officers and Planning Officers, who are employed within the Planning Division to enforce planning control. Each has responsibility for investigating complaints and report directly to the Team Leader for Major Applications and Investigations.

The Investigation Officers receive complaints, conduct relevant research into such complaints, investigate those complaints, make recommendations, respond to all callers, formulate their own reports and conduct their own administration.

Response to allegations of breaches of planning control will be in accord with the published period of response as detailed in the Planning Enforcement Charter.

Legal Services Section will provide specific advice, prepare necessary Notices and undertake all prosecutions.

Appeals against the issue of formal Notices will usually be undertaken by the Council's Planning staff. Each Planning Investigation Officer has access to a dedicated computer system ensuring confidentiality for those reporting alleged breaches of planning control.

The Council will ensure that reasonable resources are committed to the effective implementation of planning investigation and enforcement.

The Council will publish a register of all Enforcement Notices issued and a list of resolved enforcement investigations on a monthly basis.

21. Conclusion

Mid Sussex District Council will always strive to seek an effective resolution to any reported breach of planning control and, with this in mind, will endeavour to implement relevant policies in the most appropriate fashion. The policies detailed within this document may be subject to change, dependent upon need and changes in legislation.

Updated May 2021