

PLANNING ENFORCEMENT

POLICY

2008

This is a statement of practice used by South Somerset District Council in its enforcement of breaches of planning control, setting out the principles and standards of service which can be expected by the public

The Council aims to resolve breaches of control in an equitable manner and where possible without the need for formal enforcement proceedings

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Development Control and Enforcement

- 1) The Development Control Service discharges the Council's statutory duties under the Town & Country Planning Act 1990 (as amended), and subsequent and subordinate legislation.
- 2) The Service plays a key role in managing the competing interests and pressures of its customers, to allow a viable community to thrive in South Somerset.
- 3) The purpose of planning is to control the development and use of land on behalf of the community, and there is often a balance to be struck between protecting our local environment, and allowing sufficient development to both house local people, and enable the economy to prosper and diversify.
- 4) The Enforcement Unit of the Service monitors and investigates development and use of land to control breaches of planning legislation.
- 5) In accordance with government guidance, the Council will, when appropriate, try to resolve the breach of control through negotiation.
- 6) Enforcement is a discretionary power and action is only used when negotiations have failed to resolve the breach, or, the breach is so serious as to warrant immediate action in the public interest to protect the amenity of the environment or safety of the public.
- 7) The Council does not condone the wilful breach of planning legislation and when expedient, will exercise its discretion to take appropriate action.
- 8) Any action will be proportionate to the breach of planning control and in accordance with national and local legislation, policies and guidance.
- 9) Complainants should be aware that, for a variety of reasons, it may not be expedient to take enforcement action in every case.
- 10) Expediency is a test of whether the unauthorised activities are causing unacceptable harm, having regard to the Development Plan Policies and other material planning considerations.

11) The Council will not therefore act to rectify all breaches of planning control. However enforcement action will be taken when there is an unacceptable effect on the built or natural environment, or public safety.

12) Unauthorised development is, initially, only a breach of planning control, however, there are specific breaches which are absolute criminal offences, such as unauthorised work to listed buildings, protected trees, or the display of unauthorised signs, which can bring prosecution in the Magistrates Court with fines up to a maximum of £20,000 upon summary conviction.

13) The procedure and time scales of service delivery in this policy refer to general breaches of planning control, however, the Council may instigate or adopt a different course of action where appropriate.

14) Information and advice about the planning system in general, or individual proposals in specific, are freely available by either contacting the planning office at its Brympton Way offices, or on the Council's web site, www.southsomerset.gov.uk.

Advice to Complainant

Planning law and policies are designed to control development and use of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another

EA1) All complaints should be confirmed in writing, or on forms available on the Council web site or from the planning office. Email correspondence should include the full name and address of the complainant.

EA2) Telephone complaints will be noted, but will be given low priority and may not be acted upon.

EA3) Anonymous complaints will not be noted or acted upon.

EA4) The Council does not investigate neighbour or boundary disputes.

EA5) The Council has a duty to both the complainant and alleged transgressor and will seek to address any issue in an equitable manner

EA6) Complaints in respect of the general condition, use, parking or obstruction of a highway are not subject to planning control, and should be sent to the local highways or police authority.

EA7) Legal covenants attached to individual properties are not subject to planning control and are civil issues to be resolved between the relevant parties.

EA8) The complainant's identity is confidential unless the complaint forms part of the background papers to a committee report or court action, and is subject to the requirements of the Freedom Information Act 2000.

EA9) If a member of the public has particular concern over disclosing their identity, then they should ask their district councillor, parish or town council, to report the issue.

EA10) Complainant's should be aware that in many cases, whilst confidentiality is maintained, the source of the complaint will be apparent and they are encouraged in the interest of good relationships to discuss the issue of concern with the relevant person.

EA11) The complaint should contain sufficient factual information to enable officers to identify a potential breach of planning control.

EA12) Action is unlikely to be taken over trivial or technical breaches that do not cause undue harm to amenity or public safety.

EA13) Where any complaint becomes the subject of an inquiry or court action, the Council may, in some cases, request the complainant to provide additional information, or to attend the hearing in support of the Council's case.

Council Procedure.

EP1) A written complaint will be acknowledged within 5 working days.

EP2) When necessary, a site visit and assessment will take place within 30 working days of receipt of the complaint.

EP3) Where no breach of control exists, the complainant will be advised in writing within 30 days of the date of complaint.

EP4) Where a breach of control is substantiated, all interested parties will be advised of an initial period of 30 days, from the date of inspection, in which to resolve the breach by;

- a. removing the unauthorized development,
- b. ceasing the unauthorized use,
- c. complying with the appropriate planning condition,
- d. submitting a retrospective application to regularise the breach of control.

EP5) Where action to resolve the breach has not been taken within 60 days of complaint, and when expedient, formal action will be instigated to resolve the breach of control.

EP6) Where action is necessary, officers will act within the scheme of delegated authority, unless it is appropriate to report to the relevant committee.

EP7) Where a retrospective application has been received, action may be deferred to allow its determination, unless the breach is so serious as to warrant immediate formal action.

EP8) Where it is considered a retrospective application has little merit, or has been submitted to frustrate or delay the enforcement process, formal action will be instigated prior to the determination of that application.

EP9) When expedient, and within 90 days of complaint, the Council's Solicitor will have been instructed to take the appropriate enforcement action to resolve the breach of planning control.

EP10) Within 120 days of complaint, the unauthorised development will have been removed or ceased, a retrospective application to regularise the breach will have been under consideration or determined, or the appropriate enforcement notice issued.

EP11) When a retrospective application has been refused, the time for taking enforcement action will be adjusted accordingly.

EP12) In the event of an appeal against any notice, the procedure will be in accordance with the process and time scale set down by the Planning Inspectorate.

EP13) To avoid unnecessary communications and in the interest of maximizing officer time to resolve cases, interested parties will be advised, as and when appropriate, of the current situation regarding the investigation.

EP14) Interested parties may contact the Service either in writing or by telephone to ascertain the current situation regarding the investigation.

Time Schedule

- 5 Days** we will have recorded and acknowledged a written complaint
- 30 Days** we will have, when necessary, visited the site for assessment
we will have advised of;
no breach of control, or,
- it is not expedient to take action,
- an initial period in which to resolve a breach of control,
- the right to submit a retrospective application
- 60 Days** the breach will have been remedied,
an application will have been received, or,
formal action will have commenced
- 90 Days** the Council's Solicitor will have been instructed to instigate formal action
- 120 Days** a retrospective application will be pending consideration, or have been determined, or;
- an enforcement notice will have been issued
- the breach will no longer exist
and all parties will have been notified accordingly

Prioritisation of Complaints

Breaches of planning control can have varying degrees of impact and harm to the property or locality and therefore it is necessary to prioritise certain complaints in order to resolve the breach and minimise the effect of that unauthorised development or use of land.

Issues which will receive priority include;

- Works to a listed building
- Works to a protected tree
- Preparation and service of formal notices.
- Appeal action
- Court action

Gypsy Sites

EG1) Where it appears to the Council that an unauthorised use of land for the siting of caravans, materials, vehicles and items in association with the use of the land for occupation has, or is taking place, the Council will, in accordance with legislation;

a) Issue a Temporary Stop Notice to prevent such use continuing, or the use escalating;

b) Issue a Stop Notice to prevent such a use continuing, or the use escalating;

c) Seek an Injunction to prevent the use taking place or escalating.

d) Where a breach of either notice takes place, the Council, will, on legal advice, commence formal proceedings in the Court for non-compliance with the Notice.

Note:

The Council has an equal duty to both a user of land, and the community as a whole, to ensure the use of the land is appropriate and fit for the purpose. The use of formal action, when appropriate, is considered necessary to prevent an unauthorised use taking place and to allow the submission of a full planning application for determination of all relevant information in the correct manner. The action is not to be considered as pre-judgment of any kind of such an application.

Advertisements

The display of unauthorised signs can have a serious effect upon the visual amenity of both urban and rural areas, and may also affect the safety of highway users by distraction or confusion.

The display of unauthorised signs, is, unlike many breaches of planning control, an absolute criminal offence which may be tried in the courts. Action can be taken against the owner of the land, the occupier of the land, and/or any person who undertakes or maintains the display of the unauthorised sign.

ES1) In the interests of public safety and visual amenity, all signs displayed within the boundaries of the highway without the benefit of advertisement consent and written approval of the Highways Authority, will, when appropriate, be removed in accordance with the Council's advertisement protocol.

ES2) Where unauthorised signs are displayed outside of the boundaries of the highway, consideration will be given to the necessity of having the sign removed, instigation of prosecution action, or, the offender may be advised of the right to seek consent for the retention of the sign.

ES3) The relevant person(s) will be notified in writing of the offence of displaying an unauthorised sign.

ES4) As it is an offence to display an unauthorised sign, and where the offender intends to apply for consent to retain the sign, it should be removed pending consideration and determination of that application.

ES5) When it is considered the sign should be removed, and following written notification, the site will be inspected to confirm the removal of the unauthorised sign.

Failure to remove the sign may result in formal action to remove the sign and / or commence prosecution action.

ES6) The enforcement unit will act in cooperation with the Council's Streetscene Unit for the removal of all unauthorised signs displayed within the boundaries of the highway, and in accordance with the Council's Advertisement Protocol adopted in June 2007.

(For Definition of Advertisement, see page 16)

**Further information on the Advertisement Protocol, national legislation and guidance is available on the Council's web site:
www.southsomerset.gov.uk/signs**

Listed Buildings

The Council attaches particular importance to the protection of listed buildings, which include such structures as telephone boxes and milestones, as well as buildings. The protection extends to the complete structure, both internally and externally.

It is an outright offence to carry out any unauthorised works to a listed building and any person found guilty of the offence may, upon conviction be liable to a substantial fine.

There is no time limit upon the Council to pursue listed building enforcement action.

EB1) It is the responsibility of all relevant persons to ensure they have the appropriate consent to carry out any work to a listed structure, prior to the commencement of that work.

EB2) Where unauthorised works have taken place, consideration will be given to the issue of a listed building enforcement notice to remedy the harm to the listed structure.

EB3) Where any unauthorised work has taken place, consideration will, when appropriate, be given to the instigation of prosecution action in the courts.

EB4) Prior to the implementation of court proceedings, the relevant persons will be interviewed under caution and in accordance with the requirements of the Police & Criminal Evidence Act 1984.

EB5) Those persons who may be prosecuted are the property owner(s), the person(s) authorising the work, and / or the person(s) carrying out the unauthorised work.

EB6) In addition to any prosecution action, the relevant person(s) may also be subject to remedial work to undo the harm to the listed structure as in EB2 above.

(For Definition of Listed Building, see page 17)

Trees

Trees contribute to the visual amenity and character of an area and may be protected to ensure their survival. A tree may have an individual protection order placed upon it, or be part of a group order. In addition, trees in a conservation area benefit from the same protection without being individually identified.

The importance of protecting trees is recognised in planning legislation by making any unauthorised work to a protected tree, a criminal offence which may be tried in the Courts. Unauthorised work includes the topping, lopping, or felling of a tree.

ET1) It is the responsibility of all relevant persons to ensure they have the appropriate consent to carry out any work to a protected tree prior to that work taking place.

ET2) Where any unauthorised work has taken place, consideration will be taken to the instigation of prosecution action in the courts.

ET3) Prior to the implementation of court proceedings, the relevant persons will be interviewed under caution and in accordance with the requirements of the Police & Criminal Evidence Act 1984.

ET4) Those persons who may be prosecuted are the landowner, the person(s) authorising the work, and / or the person(s) carrying out the unauthorised work.

ET5) In addition to any prosecution action, the relevant person(s) may be required to plant a replacement tree in the same location.

(For Definition of Protected Tree, see page 17)

Partnership.

The enforcement unit will notify, consult and act in cooperation with all other services and regulatory agencies as necessary and relevant to the issue in question. Such agencies include;

All services of South Somerset District Council
All services of County and District Councils
Education Agencies
Environment Agencies
Police and Emergency Services

Abuse of Officers

The Council will not tolerate bullying, verbal, or physical abuse of its officers in the execution of their lawful duties.

The Council will consider action against all persons causing offence or injury to its officers, or damage to property, which may include civil legal action and/or notification to the police for criminal action.

Legislation

The main legislation is;

The Town & Country Planning Act 1990 (as modified).

Additional and subordinate legislation includes;

The Town & Country (Tree Preservation) Order 1969.

Local Government (Miscellaneous Provisions) Act 1982

The Town & Country (Use Classes) Order 1987

Planning (Listed Buildings & Conservation Areas) Act 1990.

The Planning & Compensation Act 1991

The Environment Act 1995

The Town & Country Planning (General Permitted Development) Order 1995

The Hedgerow Regulations 1997

The Planning & Compulsory Purchase Act 2004

Town & Country Planning (Control of Advertisements)(England) Regulations 2007

Government Guidance;

Planning Policy Guidance Note PPG 18, Enforcing Planning Control, December 1991

Circular 10/97 Enforcing Planning Control, July 1997

Procedural Legislation;

Police & Criminal Evidence Act 1984

Criminal Procedure & Investigations Act 1996

Human Rights Act 1998

Freedom of Information Act 2000

Regulation of Investigatory Powers Act 2000

Policies

Somerset & Exmoor National Park Joint Structure Plan Review 1991 – 2011

South Somerset Local Plan 2006

Regional Spatial Strategy

Definitions & Terminology

Breach of Planning Control:

- a) is considered to be the carrying out of development without the required planning permission, OR
- b) is failing to comply with any condition or limitation subject to which planning permission has been granted.
- c) is failing to comply with any Order or Notice served pursuant to statutory enforcement powers.

Development:

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

Advertisements:

means any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the previous provisions of this definition) includes any hoarding or similar structure used, or designed or adapted for use, and anything else principally used, or designed or adapted principally for use, for the display of advertisements.

Conservation Area:

is an area designated by South Somerset District Council as an area of special architectural or historic interest, the character or appearance of which it is desirable, to preserve or enhance. Conservation Area Status confers additional control over trees and the appearance/demolition of buildings to those outside of a designated area.

Area of Outstanding Natural Beauty:

is an area designated by the Countryside Commission as an area of such outstanding natural beauty as to warrant additional protection from inappropriate development that may detract from the appearance and amenity of the area.

Listed Buildings:

is a building included on a list by the Secretary of State of buildings worthy of protection and preservation by virtue of their special architectural or historic interest.

Tree Preservation Order:

is an order placed upon a tree considered worthy of protection and preservation by virtue of its species, quality and location and its value to the visual amenity of its area. There is a right to apply for consent to carry out necessary works to a tree covered by a preservation order and also to apply for the order to be revoked.

DEFINITIONS OF NOTICES

Section 330 Requisition for Information.

South Somerset District Council may, by notice in writing, require the occupier and/or any other person who may directly or indirectly have an interest in the property, to provide information as to ownership and other relevant details concerning the property. Failure to provide such information within the specified period (not less than 21 days) is a level 2 offence triable in the Magistrates Court.

Planning Contravention Notice

This can be served on owners, occupiers, other interested parties, or indeed on those undertaking development on land. It serves to put the recipient on notice that the local authority suspects a breach of planning control has occurred and requires them to submit information on the nature of the activity underway and their interest in the land.

It also allows the local authority to accept an offer from the contravenor to refrain from carrying out operations or activities or to undertake remedial works.

The PCN is thus essentially a means for collecting a catalogue of information from which an accurate “ planning description” of the site and any activity on it can be produced.

There is no right of appeal against a PCN and if the required information is not submitted by the recipient(s) then an offence is committed which can lead to a level 3 criminal offence where the maximum penalty is £1,000. If false or misleading information is provided an offence is also committed. This can attract a level 5 offence where the maximum penalty is £5,000.

Breach of Condition Notice

Where a condition attached to a planning permission is not complied with, a Breach of Condition Notice (BCN) can be served on the developer or the controller of the land in question. This can require the breach of the condition to be rectified within a period of not less than 28 days. Failure to comply with a BCN within the specified time limit is a level 3 offence which can attract a maximum fine of £1,000.

There is no right of appeal against a BCN.

Enforcement Notices

These can be served on owners, occupiers or other interested parties in respect of land where a breach of planning control has occurred. This would be carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

Their purpose can be to direct a stop to unauthorised development and or works to reverse, mitigate or remedy the effects of the developments.

There is a right of appeal on specific grounds against an Enforcement Notice.

An Enforcement Notice is of no effect pending the final determination or withdrawal of an appeal. If no appeal is made or one is unsuccessful it becomes an offence to breach an Enforcement Notice following expiry of the compliance period and the person who is then the owner of the land, and any other person who has control or an interest in the land, are liable to be subject to court proceedings

Section 215 Notice

If South Somerset District Council considers the amenity of part of their area is adversely affected by the condition of land in their area, they may serve a notice on the owner and/or occupier of the land.

The notice shall specify such steps necessary for remedying the condition of the land within a given period of time (not less than 28 days).

Failure to comply with the requirements of the notice is a level 3 offence triable in the Magistrates Court.

Stop Notice

South Somerset District Council may, having served an Enforcement Notice requiring a breach of planning control to be remedied, also serve a stop notice if it is considered expedient to require the cessation of an activity which is included in a matter alleged by the notice to constitute the breach of planning control.

This remains effective where the associated Enforcement Notice is under appeal and continues as such unless the Enforcement Notice is withdrawn or the appeal is allowed. In this case both the Stop and Enforcement Notices are quashed.

It is an offence to breach a Stop Notice and on summary conviction liable to a fine not exceeding £20,000.

Injunctions

In contrast with PCN's, BCN's, Enforcement and Stop Notices, Injunctions can be used where no actual breach of planning control has occurred but where there is good reason to think it may.

They can also be used whether or not other powers have been exercised to deal with the more serious breaches of planning control.

Injunctions, which are granted, by the County Court or High Court following applications by the local planning authority, are served against the individual or persons involved and are not a charge on the land affected in the way that BCN's, Enforcement and Stop Notices are.

As the breach of an injunction is a serious offence that can lead to imprisonment, they can be used on a site that is prone to illegal development, or by a particular person whose record shows a propensity to ignore planning controls including Enforcement Notices.

Direct Action

Execution of works required by Enforcement Notice or by Section 215 Notice.

Where any steps required by an Enforcement Notice or by a Section 215 Notice are not taken within the period specified in the notice, the Council is empowered to enter the land and take those steps and to recover from the owner of the land any expenses reasonably incurred in doing so.

Any person who wilfully obstructs a person in exercise of statutory powers shall be guilty of a criminal offence.

SERVICE OF NOTICES

Notices in connection with Enforcement Action need to be served on owners, occupiers and all other interested parties. Therefore it is essential that the identity of those with an interest in the affected site is known to the Council.

Apart from information gathered by the investigative officer there are three additional methods by which information on land interests can be obtained.

- 1) Service of a Planning Contravention Notice (PCN).

- 2) Service of a “Requisition for Information” Local Government (Miscellaneous Provisions) Act 1972 (Section 16) - a formal procedure for securing information about owners of land or other interests in land.

- 3) Service of a “Requisition for information” under Section 330 of the Town and County Planning Act 1990 - this is an alternative formal procedure for securing information about owners of land or other interests in land.

The failure to complete and return the forms within the specified period constitutes an offence and may result in prosecution action by the Council.

Once the information above has been obtained, service of notices can proceed. As it is an offence to breach the requirements of “enforcement actions” it is essential to be able to prove service. To facilitate this the following policy will be followed.

With the exception of Injunctions which will be served by hand, Enforcement and Stop Notices, BCN’s, PCN’s and “Requisitions for Information” will normally be served by recorded delivery to the address of all interested parties known to the council.

Where companies are involved, copies of the notice will also be served by recorded delivery at the registered office of the company(s) concerned.

Where notices are returned by the Post Office the notices will be re-served by hand.
