



South Staffordshire Council

**South Staffordshire Council
Planning Enforcement
Policy and Procedures**

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1. Background

- 1.1 This policy and procedures document sets out what individuals and organisations can expect from South Staffordshire Council in the undertaking of its planning enforcement functions. All enforcement actions of the Council are governed by the Council's Enforcement Policy which is available on the Council's website. This Planning Enforcement Policy and Procedures document sits below the corporate Enforcement Policy which should be referred to in the first instance. The Council's Enforcement Policy takes precedence over this Policy document.
- 1.2 The integrity of the Planning process as a whole depends on the Council's readiness to take effective enforcement action when it is appropriate. Fair and effective planning enforcement is therefore important to protect the quality of life for the people who live and work in South Staffordshire and the quality of the district's built and natural environment.
- 1.3 South Staffordshire Council acknowledges the Government's view that the rapid initiation of enforcement action is vital to prevent a breach of planning control from becoming well established and therefore more difficult to remedy. However, Local Planning Authorities have a general discretion in taking enforcement action when they regard it as expedient and in the "public interest" to do so. Action should also be commensurate with the breach of planning control it relates to.
- 1.4 In order to provide an appropriate service to the public, it is important for the Council to give its customers guidance through this document on how the enforcement system operates in practice. The benefit of this will be to:
 - explain the overall standard of service customers can expect.
 - outline how reports can be made and how investigations are undertaken.
 - define priorities so that resources can be put to best use.
 - set timescales so that service delivery can be measured and reviewed.
 - provide an indication of possible enforcement remedies.
 - ensure compliance with Government legislation and guidance.
 - maintain a consistent, fair and transparent approach to planning enforcement in South Staffordshire.
 - provide an annual reporting mechanism to Members in relation to reports received and enforcement action taken.

2. Government Guidance

- 2.1 The Council's Planning Enforcement function will be undertaken in accordance with current and emerging Government guidance and legislation which includes:
 - Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004)
 - Town and Country Planning (Control of Advertisements) (England) Regulations 2007

- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning Policy Guidance
- National Planning Policy Framework
- Town and Country Planning (Tree Preservation) (England) Regulations 2012
- Police and Criminal Evidence Act 1984
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000

3. Principles of Good Enforcement

- 3.1 The National Planning Policy Framework (NPPF) states:

“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act appropriately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”

- 3.2 In 1998 the Government produced a Concordat setting out the Principles of Good Enforcement Practice. South Staffordshire Council is committed to the following principles:

- Standards;
draw up and publish clear standards of service and performance the public can expect.
- Openness;
provide information and advice in plain language; be open about how we set about our work; and discuss general issues with anyone experiencing difficulties.
- Helpfulness;
provide a courteous and efficient service and encourage the public to seek advice/information from us.
- Complaints About Service;
provide well publicised, effective and timely complaints' procedures that are easily accessible to the public.
- Proportionality;
ensure any action we require is proportionate to the breach.
- Consistency;
carry out our duties in a fair, equitable and consistent manner.

Although not directly applicable to planning enforcement functions, the principles and ethos of the Regulators' Compliance Code are also taken into account.

4. Overview of Planning Enforcement

- 4.1 Planning enforcement is a technically and legally complex component of the planning system which means that action is not always as straightforward as it seems. Legislation is often qualified by High Court judgments and appeal decisions made by the Secretary of State for Housing, Communities and Local Government. The Council will operate within the provisions of this legislation and other Government policy and guidance, the main elements of which are outlined in Section 2.
- 4.2 In deciding whether it is expedient to take enforcement action, the Council will also give consideration to the objectives and policies of the Core Strategy and documents of the Local Plan.
- 4.3 Each case will be dealt with on its own merits taking into account the often unique circumstances, along with the level of harm created as well as any history of previous breaches. The Council's resources are not limitless. It is therefore necessary to target available resources to have maximum effect and not necessarily as a response to who is complaining or how vociferously. Action is also not taken simply because development or works have commenced without the necessary approval. Guidance on how cases will be prioritised is given within Section 7.
- 4.4 The assessment of harm does not include private interests, such as loss of value to property, competition, loss of view, trespass or breach of covenant. In some situations, works or developments are done in ignorance, rather than intentionally, and the person responsible will first be given an opportunity to remedy the situation.
- 4.5 Investigations will be carried out as promptly and efficiently as possible. Section 8 of this document sets down Performance Standards the Council will aim for. Transparency of our decision-making is essential so that all involved in the enforcement process understand and have confidence in the basis on which the service is provided. The Council's Constitution sets out the appropriate level of decision making available to enable officers to progress cases without reference to Planning Committee.
- 4.6 Enforcement Officers must have appropriate knowledge and skills to carry out their duties. South Staffordshire Council has a programme of Personal Development in place which regularly reviews skills and training requirements in order that officers maintain the necessary level of competence.
- 4.7 All Enforcement Officers are required to follow the Council's protocol for declaration of interests. If that interest is of a personal, financial or any other nature likely to be prejudicial then that officer will take no part in the investigation and will refer the matter and interest to his/her line manager.

- 4.8 When undertaking their duties, Enforcement Officers will have regard to the Council's Equal Opportunity Policy to ensure that investigations are carried out in a consistent and fair manner, free from discrimination on any grounds including race, gender and disability.
- 4.9 As part of the enforcement process, Human Rights is also an important consideration that will be taken into account and balanced with any action taken. The relevant elements of the Human Rights Act, 1998, are:
 - Article 6 – Right to a fair trial
 - Article 8 – Right to respect for private and family life; and
 - Article 1 of the First Protocol – Protection of property.

(This is under review due to Brexit)
- 4.10 The Council will not tolerate any of its staff being threatened with or subjected to physical or verbal abuse in the course of carrying out their official duties and will take appropriate legal action where necessary.

5. Scope of Planning Enforcement

- 5.1 South Staffordshire Council deals with around 1000 applications every year for planning permission, advertisement consent, listed building and conservation area consent, prior approvals for telecommunications equipment, demolitions and to carry out work to protected trees.
- 5.2 Conditions attached to permissions frequently require various details to be approved prior to commencement of the development and failure to do this is a breach of planning control and can render any subsequent development as unauthorised. Depending upon the nature of any planning obligation, this also applies to any failure to carry out its terms. It is beneficial to all applicants if any failure relating to non-compliance is addressed as soon as possible.
- 5.3 In assessing the need for enforcement action, the Government advise councils to bear in mind the fact that it is not a criminal offence to carry out development without first obtaining planning permission required for it. However, this does not apply to the following works which do carry a criminal liability:
 - unauthorised works to a Listed Building.
 - unauthorised advertisements.
 - unauthorised demolition of an unlisted building in a Conservation Area.
 - unauthorised works to “protected” trees.
 - unauthorised works to trees in Conservation Areas.
- 5.4 Although development unfortunately occurs without the necessary permission, sometimes in all innocence, this is still a breach of planning control. In circumstances where the breach is considered not to cause harm, a retrospective application to put the matter right can be

requested. The Council expects such an application to be submitted within 4 weeks of this request. However, some applications can be more complex, and in such instances, or where considered appropriate, additional time may be given to submit an application.

5.5 It should be noted that individuals may be able to make minor changes and extensions to their home under “permitted development rights” or for some businesses to change their use without needing to apply for planning permission. These rights are granted by the Government under the provisions of the Town and Country Planning (General Permitted Development) Order 2015, and in such instances planning enforcement action cannot be taken. Further guidance can be found at <https://www.planningportal.co.uk/>

5.6 The Planning Enforcement Team does not investigate the following:

- neighbour disputes
- land boundary or ownership disputes
- the height of hedges and trees
- use of or development on highways, pavements or grass verges
- anonymous reports unless exceptional circumstances
- dangerous structures

Such matters are covered by other legislation. We can advise people where they can seek resolution but where the matter is a Council responsibility, we can pass concerns on to the relevant team.

5.7 There are time limits as to when enforcement action can be taken. Action has to be instigated within **4 years** in relation to the erection of buildings or the change of use of a building for use as a single dwellinghouse. In the case of any other breach of planning control, including breach of condition, action must be taken within **10 years**. There is, however, no time limit for the enforcement of breaches in relation to Listed Building legislation.

6. Reporting a Planning Breach

6.1 To assist the Council and help avoid misunderstanding, all reports about possible breaches of planning control should ideally be made via the Council’s website by completing the Planning Enforcement Report form, the details of which are listed in Section 12. Reports can also be reported by telephone by phoning the Council’s Contact Centre.

6.2 The Council will require as much information as possible in order to carry out its investigations and also to help keep complainants informed of what action it is taking. This information should include:

- name, address, telephone number and e-mail address of the complainant.
- details of the report itself including when the problems started.
- the location of the source of the issue.
- the name and address of the alleged contravener, if known.

- an explanation of the difficulties that the problem is causing.

The above information is treated as strictly confidential. The alleged contravener is not told who has made the report, although they can make assumptions.

- 6.3 The Council will only deal with anonymous reports of planning breaches in exceptional circumstances due to limited resource. It may also mean that your enquiry is not investigated effectively if you cannot be contacted to provide more information. Complainants concerned about possibly revealing their identity, or having difficulties explaining the problems affecting them, may wish to discuss the matter with their local Councillor. Details of who your Ward Councillors are can be obtained from the Council's web site Your Councillor.
- 6.4 Once you have made your report, we advise that members of the public/Councillors/officers (other than Enforcement Officers) do not enter onto the site or enter into discussions with the alleged contravener. The Council's Enforcement Officers will investigate and keep you informed.

7. Prioritising Planning Breach Investigations

- 7.1 South Staffordshire Council receives around 500 planning enforcement reports each year which all need to be progressed as quickly and efficiently as possible. However, investigations can often be lengthy and complex especially if formal action is required. Given this workload, coupled with limited resources, it is therefore necessary to try and prioritise cases.
- 7.2 Prioritisation of action will be taken on the basis of the following list. This list is for guidance and is not exhaustive:

High Priority

- Serious alleged breaches including threat to health and/or safety of the public or irreversible damage to the built or natural environment such as large-scale intrusions into the Green Belt, works to a Listed Building, loss of a protected tree or breaches of Hazardous Substances consent.

Standard Response

- A breach which is significantly detrimental to amenity through noise, smell, congestion, visual intrusion etc.
- A breach which conflicts with planning policy and is unlikely to be granted planning permission.
- Contravention of conditions attached to planning consents where there would be demonstrable harm.
- Non-compliance with Planning Obligation agreements where the terms of the agreement still serve a useful planning purpose.

- Unauthorised works that may affect the setting of a Listed Building or the character of a Conservation Area.
- Unauthorised advertisements in Conservation Areas and Borough Gateway sites or where there are highway safety concerns.
- A breach causing problems which may be resolved through modification or imposition of conditions on a subsequent planning permission.
- Other unauthorised breaches of a minor nature which do not cause immediate or long-term harm including small domestic structures such as sheds or fences.
- Other breaches of planning conditions where there is no immediate harm.
- All other unauthorised advertisements.

7.3 The timing of enforcement action will also depend on:

- Time limit for enforcement action to be taken.
- Previous case history.
- The availability of any witnesses and their willingness to co-operate.
- Blatant disregard of the law involved in the breach or if it was a genuine misunderstanding.
- Willingness of the contravener to put right the breach.
- Likelihood of the offence being repeated.
- The overall probable public benefit of formal action.

8. Performance Indicators

8.1 Unlike with the handling of planning applications, there are currently no national performance indicators for dealing with enforcement cases. However, having considered some of the standards set by other Councils, together with an assessment of how South Staffordshire has been performing over recent years, delivery standards to the key stages of the enforcement process have been set in this policy. They may, however, need to be re-viewed in the light of experience, workload and available staff resources:

- Acknowledging all reports within 5 working days of receipt.
- Making the first site visit (if required) to investigate a High Priority report within 5 working days of receipt and 15 working days with all other Standard Response cases.
- Investigating (i.e. determining if a breach of planning control has occurred) 80% of enforcement reports within 12 weeks of the case being logged.
- Notifying all parties to a report of the Council's decision (whether or not to enforce) within 10 working days of making the decision. This will also include providing a reason for the Council's decision.
- Customers are always welcome at any point in this process to contact the Investigating Officer by e-mail or telephone for an update.
- It should be noted that the above delivery standard targets are separate from the Council's Customer Service targets.

9. Dealing with Reports of Planning Breaches

- 9.1 As enforcement can be a lengthy and legally complex process, it is not possible to give an average time for dealing with a report. The time taken for a satisfactory resolution can vary considerably from one report to another. However, the basic process that is followed remains the same in each case.
- 9.2 When a report is received it will be registered, it is allocated a unique reference number, a file is created and then it is allocated to an officer to be investigated. All enforcement reports will be acknowledged within 5 working days of receipt and the case will be allocated a unique reference number.
- 9.3 The Investigating Officer will firstly have to establish the facts surrounding the report. This will initially mean carrying out a number of desk-based checks having regard, for example, to appropriate legislation, site history, and any relevant correspondence. Where appropriate, the officer will also liaise with other Council services such as Licensing or Housing and external agencies such as the Police and Environment Agency.
- 9.4 If necessary, the site of the report will be visited within 15 working days or sooner depending on the nature of the report. In the most serious breach cases, officers will endeavour to visit the site on the same day. Site visits will usually be unannounced, and photographs may be taken. Officers also have Powers of Entry in order to gain information, though in the case of a dwellinghouse a notice period of 24 hours is required before entry can be gained.
- 9.5 If the report involves the use of a property for instance, then officers may have to monitor it for a few weeks to make their assessment. We may also ask for your help to collect evidence in such circumstances.
- 9.6 The owner and/or occupier may be interviewed to obtain further information about the alleged breach. Occasionally, in serious cases it may be necessary to conduct an interview under caution in accordance with the provisions of the Police and Criminal Evidence Act 1984.
- 9.7 Following the conclusion of investigations, it may be decided not to take any further action because the breach is minor or because there is no breach of planning control. All persons who have been involved in the report will be notified in writing of the decision, and the reason for it, within 10 working days of the closure decision being made. Any further or new allegations will be treated as new reports and further investigations will be carried out.
- 9.8 However, if a breach of planning control has been found, the Council will, whenever possible, talk to the person responsible in an effort to resolve the matter within a reasonable and appropriate timescale. The Investigating Officer will explain, and then confirm in writing, what the person has done wrong and specify the steps needed for them to put it right. This clearly will vary between breaches but may include inviting a retrospective planning application. In these cases, such applications would be subject to the Council's normal publicity and consultation procedures with adjoining occupiers.

10. Enforcement Action

- 10.1 The Council will look to progress formal enforcement action if the negotiated approach fails or is not appropriate. Officers have delegated powers to instigate a range of actions which will be undertaken in consultation with the Council's Legal Services department.
- 10.2 The first step is usually to establish the facts surrounding the case such as ownership of the premises or land, other people who may have an interest and the alleged breach itself. This is achieved through the serving of a statutory notice (a requisition for information). Where obtaining information and opening dialogue with the owner could be useful to the process, the Council could also serve a Planning Contravention Notice. Failure to return notices by the set date and/or giving false information are criminal offences and in such circumstances the Council will consider taking further legal action.
- 10.3 The Council will use its discretion in deciding whether to prosecute. Prosecution will normally only be pursued where it is judged that the actual (or foreseeable) harm is significant or irreparable, the evidential test is met and where it is deemed to be in the public interest.
- 10.4 A summary of the main possible actions are as follows but the scope of individual enforcement powers are covered in more detail in Appendix A:
 - **Enforcement Notice:** this is the most common form of action taken. The notice will specify what the breach of planning control is and the steps needed to put matters right. It also specifies a time before it comes into effect during which time an appeal can be made.
 - **Stop Notice:** in exceptional circumstances where a breach continues to cause serious harm to either amenity, public safety or the environment, the Council may in addition to an enforcement notice consider serving a Stop Notice.
 - **Temporary Stop Notice:** recently introduced by the Government, can be served without an accompanying Enforcement Notice and can halt activity for a maximum period of 28 days where there is serious harm that needs to be stopped immediately.
 - **Breach of Condition Notice:** used when certain conditions placed on a planning permission have not been complied with.
- 10.5 An appeal can be made against an enforcement notice which is handled by the Planning Inspectorate. If an appeal is lodged the notice is held in abeyance, usually for many months, until the appeal is determined. If the appeal is unsuccessful or no appeal is made, the notice takes effect. Failure to comply with the requirements of the notice within the specified period is a criminal offence.
- 10.6 In addition to the above, other enforcement actions which the Council can use include serving a Section 215 Notice when the condition of land or a building is adversely affecting the amenity of an area or prosecution for unauthorised works to protected trees or listed buildings or where adverts are displayed without consent.

10.7 The Council will use its discretion in deciding whether to prosecute. Prosecution will normally only be pursued where it is judged that the actual (or foreseeable) harm is significant or irreparable, the evidential test is met and where it is deemed to be in the public interest.

11. Comments and Review

- 11.1 South Staffordshire Council will strive to provide the highest possible quality of service delivered in a fair and consistent manner. Customer suggestions are therefore welcome as to how we can make improvements to the planning enforcement process. Alternatively, problems may arise from time to time and any difficulties concerning the enforcement service should be brought in the first instance to the attention of the Planning Enforcement Team Manager, Council Offices, Codsall, South Staffordshire WV8 1PX.
- 11.2 If you are still dissatisfied with the way your problem has been addressed, you can make further formal representations via the Council's Complaints' Procedure or the Local Government Ombudsman, details of both of which are available on the Council's web site.
- 11.3 In order to assist in the improvement of service delivery, a review of the policy will be undertaken and reported to the Council's Planning Committee on an annual basis.
- 11.4 Such a review will enable this policy to be refined as necessary and procedures updated in light of changing workload demands, staffing levels and legislative requirements. Government guidance stresses that all Local Planning Authorities should carry out a review of the effectiveness of their procedural arrangements for planning enforcement and introduce revised arrangements where necessary.

12. Contact Details

You can contact the Planning Enforcement Team in five ways:

1. Online via the Planning Enforcement Report Form which can be found on the Council's website at:
<https://www.sstaffs.gov.uk/doc/176460/name/Planning%20Enforcement%20Complainant%20Form.pdf/>
2. In person at Planning Enforcement, Council Offices, Codsall, South Staffordshire WV8 1PX
3. In writing to Planning Enforcement Team, Council Offices, Codsall, South Staffordshire WV8 1PX
4. E-mail to planningenforcement@sstaffs.gov.uk
5. Telephone via the Contact Centre on (01902) 696000

Appendix A – Powers available to the Local Planning Authority

This final section contains a summary of the main powers available to investigate reports and deal with breaches of planning control. In each individual case the Council must assess which action or combination of actions is best suited to dealing with the particular breach of planning control in order to achieve a satisfactory and cost-effective remedy. Any enforcement action should always be commensurate with the breach of control to which it relates.

Planning Contravention Notice (PCN) – in most cases this will be the first step in resolving a breach of planning control. It is the main method for gathering information, possibly including a formal meeting, regarding suspected breaches of planning control. The intention of a PCN is also to send a clear warning that further formal action is being considered once the facts of the case have been established.

Section 330 of the Town and Country Planning Act 1990 – this power is also used to obtain information but usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a notice on occupiers and/or persons with other interests in the premises or land.

For both these cases it is an offence to fail to comply with the requirements of the notice within the period set for its return or to make false or misleading statements in reply. Conviction currently carries a maximum fine not exceeding £1,000.

Enforcement Notice – this is the most common form of notice used to deal with a breach of planning control. It is served when the Council is satisfied that there has been a breach of planning control and that it is expedient to take action. An Enforcement Notice will specify the breach, the steps that must be taken to remedy the breach, and a specified time period for compliance. The recipient(s) of such a notice have a right of appeal to the Secretary of State. An appeal suspends the effect of the notice until it is determined. If an appeal is lodged all complainants and neighbours will be advised of the appeal and how to make representations to the Planning Inspectorate. Failure to comply with a notice that has taken effect is a criminal offence which on conviction in the Magistrates Court can lead to a maximum fine of £20,000 or an unlimited fine at Crown Court.

Breach of Condition Notice (BCN) – used as an alternative to an Enforcement Notice but only in circumstances where there has been a failure to comply with certain conditions placed on planning permissions. (It does not apply to breaches of control relating to listed buildings, advertisements or protected trees.) Again, the BCN would specify the breach and the steps required to secure compliance. However, a minimum period of 28 days has to be given for compliance though there is no right of appeal. Failure to comply with the notice is an offence with a maximum fine currently not exceeding £2,500 on conviction.

Stop Notice – used following the serving of an Enforcement Notice when the effects of continued unauthorised activity are seriously detrimental to amenity, public safety or causing irreversible harm to the environment and immediate action is justified. This notice can be used to ensure that the activity does not continue when an appeal is lodged against the Enforcement Notice. There are possible compensation liabilities if the Enforcement Notice is quashed. Failure to comply with a Stop Notice is an offence.

Temporary Stop Notice – recently introduced by the Government and can be served without an accompanying Enforcement Notice. However, they can only seek a cessation to activity for a period of 28 days and so will only be applied where the breach needs to be dealt with immediately and the Council needs time to consider whether an enforcement notice needs to be issued.

Injunction – in exceptional cases where there is a necessary and serious need to restrain an actual breach of planning control, the Council can apply to the County Court or High Court for an injunction. An injunction can be sought whether or not other enforcement action(s) have been taken.

Default Powers – the Council may enter land and carry out the required works to secure compliance when an Enforcement Notice is in effect but has not been complied with. There is no requirement to give notice to either the owner or occupier of the land and anyone who wilfully obstructs the exercise of these powers is guilty of a criminal offence. The costs of the works are then charged to the landowner.

Section 215 Notice – under this section of the Town and Country Planning Act 1990, the Council has the power to issue a notice on the owner or occupier of land if it appears that the visual amenity of the area is adversely affected by the condition it is being kept in. Such a notice may deal with buildings as well as land and would specify the steps required to remedy the existing condition and within what time scale. The recipient of a 215 Notice can appeal against it in the Magistrate's Court. Failure to comply with the notice is an offence with a maximum fine currently not exceeding £1,000 on conviction. The Council may also use default powers in such situations.

Listed Building Control – under the Planning (Listed Buildings and Conservation Areas) Act 1990, it is an offence to demolish a listed building, or carry out works/alterations which affect its character, without the Council's prior consent. It is also an offence to demolish unlisted buildings in Conservation Areas (with a cubic content in excess of 115cubic metres) without a prior consent. A Listed Building Enforcement Notice may be issued, or prosecution action instigated depending on the circumstances of the case.

Tree Preservation Orders – it is a criminal offence to cut down, uproot or wilfully destroy a tree protected by a Tree Preservation Order or in a Conservation Area. Consent from the Council also has to be obtained for any remedial works to a protected tree such as lopping or pruning. If any of these are carried out, the Council can consider either prosecution action or the serving of a replanting enforcement notice.

Advertisements – it is an offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The Council will consider whether or not to prosecute in either the interests of amenity or public safety. In situations where an advertisement is displayed with deemed consent, the Council can still require its removal by issuing a Discontinuance Notice. Such a notice, against which there is a right of appeal, can only be issued to remedy a substantial injury to local amenity or if there is a danger to members of the public.