



**LOCAL ENFORCEMENT PLAN**

**November 2018**

# Introduction

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This enforcement plan outlines the manner in which the Council will undertake its planning enforcement function and help ensure effective enforcement within the borough. The document covers the following matters:

- **Planning Policies**
  - National Policy
  - Maidstone Development Plan
  - Supplementary Planning Documents
  - Neighbourhood Plans
  - Article 4 Directions
  
- **What is and what is not a Breach of Planning Control?**
  
- **Initial Prioritisation of Case Types**
  
- **Taking Action**
  
- **Procedure for Reporting Breaches**
  - Reporting a breach
  - Next steps

## Planning Policies

### National Policy

- [National Planning Policy Framework \(NPPF\)](#)
- [National Planning Practice Guidance](#)

### Maidstone Development Plan

[Maidstone Borough Local Plan 2011-2031 \(2017\)](#)

### Supplementary Planning Documents

The Council have adopted supplementary planning documents (SPD) and endorsed supplementary guidance documents (SG). These provide additional guidance on local and national planning policies and can be found at

<http://www.maidstone.gov.uk/home/primary-services/planning-and-building/primary-areas/local-plan-information/tier-3-primary-areas/planning-guidance>

### Neighbourhood Plans

- [North Loose Adopted Plan](#)
- [Staplehurst Adopted Plan](#)

### Article 4 Directions

Article 4 Directions cover some of the borough's conservation areas. Under a Direction, any works that changes the external appearance of a building or affects its grounds may require planning permission from us.

In deciding whether to grant planning permission, we have a duty to protect the borough's heritage.

### Conservation Areas covered by Article 4's are:

- [Headcorn \(part\)](#)
- [Hollingbourne - Eyhorne Street](#)
- [Lenham \(part\)](#)
- [Loose Valley \(part\)](#)
- [Maidstone Holy Trinity Church Area](#)

For further details on Article 4 Directions in the Borough please find the following link:

<http://www.maidstone.gov.uk/home/primary-services/planning-and-building/primary-areas/heritage-and-landscape/tier-3-primary-areas/conservation-areas>

## What is and what is not a breach of planning control?

A breach of planning control could involve such matters as the unauthorised construction of a building or extension, a material change of use of land and a range of other matters defined as 'development'. Examples of breaches are:

- Unauthorised works to Listed Buildings;
- Unauthorised works to trees subject to a Tree Preservation Order or in a conservation area; and removal of hedgerows protected under the Hedgerow Regulations;
- Breaches of conditions attached to planning permissions;
- Not building in accordance with the approved plans of planning permissions;
- Untidy land which has an impact on the amenity of the area; and
- Unauthorised engineering operations such as raising ground levels.

Often changes of use of land require an assessment of fact and degree to come to a decision as to whether a material change of use has occurred.

The following examples are NOT normally breaches of planning control:

- Internal works to a building that is not listed;
- Parking of commercial vehicles on the highway or on grass verges;
- Running a business from home when the residential use remains the primary use;
- Land ownership disputes or trespass issues;
- Infringements of covenants in property Deeds;
- Any works that are deemed to be 'permitted development' under the relevant Government regulations (for example extensions within specified size limits).

Even where a matter constitutes a breach of planning control, it may not always be appropriate to take action, for example where a breach may have secured planning consent had an application for planning permission been made.

## Initial Prioritisation of Case Types

Once received, cases will be categorised in order of priority. Priority may change depending on the findings of a site visit and initial review.

Activities that may cause irreparable harm to the environment are a priority, as a fast response may stop the breach or allow officers to gather evidence for a prosecution or injunctive action. Similarly, a fast response is appropriate for listed buildings and protected trees.

Due to the high numbers of enforcement notices recently issued in respect of changes in use of land for stationing of caravans, it is considered appropriate to include this breach type in Priority 1. Should this breach type reduce in frequency, the Head of Planning and Development may re-categorise this breach type to 'Priority 2'.

Matters categorised as 'Priority 2' may be assigned a 'Priority 1' designation where a Senior Enforcement Officer considers it appropriate.

The table below sets out the categorisation of priorities by the nature of the breach. The Target Site Visit column indicates the time within which a site visit will usually take place. The Target Response Time indicates the time within which a complainant will be notified of the results of the site visit and the next steps to be taken.

<u>Nature of Breach</u>	<u>Priority</u>	<u>Target Site Visit</u>	<u>Target Response Time</u>
<p>Activities that have the potential to have a detrimental effect on public safety or cause irreparable harm to the environment, especially in sensitive sites such as Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty etc.</p> <p>Unauthorised works to a listed building where works are on-going</p> <p>Change of use of land for stationing of caravans and works associated with such changes of use.</p> <p>Unauthorised works to protected trees (Trees subject to Protection Tree Preservation Orders and Trees in Conservation Areas) and removal of hedgerows protected under the Hedgerow Regulations that are in progress.</p>	1	Within 1 working day of report being received	Within 1 working day of site visit
<p>Activities resulting in some disturbance and loss of amenity to third parties.</p> <p>Activities that are likely to be adversely affecting the environment, but not irreparably.</p> <p>Breach of planning conditions.</p> <p>Unauthorised works to listed buildings that have ceased.</p> <p>Works to protected trees (Trees subject to Protection Tree Preservation Orders and Trees in Conservation Areas) and removal of hedgerows protected under the Hedgerow Regulations that have ceased.</p> <p>Unauthorised advertisements (unless the advertisement seriously affects public safety)</p> <p>Untidy land issues, Businesses from home.</p> <p>Unauthorised fences, walls &amp; gates, telecommunications equipment or satellite dishes on residential buildings.</p>	2	Usually within 10 working days of the report being received	Within 1 working day of site visit

## Taking action

The prioritisation of enforcement action after an initial site visit can depend on:

- Statutory time limits within which enforcement action may 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 considered to be a genuine misunderstanding.
- Willingness of the contravener to rectify the breach.
- Likelihood of the offence being repeated.
- The overall probable public benefit of taking formal action.

Where appropriate, the Council will take enforcement action against breaches of planning control. The below table sets out the main notice types the Council may utilise in carrying out its enforcement function, together with potential remedies for non-compliance with these notices. Please also see the hyperlink which will take you directly to the NPPG where further information can be found.

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

<u>Notice type</u>	<u>Description</u>	<u>Remedy for non-compliance</u>
Planning Contravention Notice	Requires persons to provide information to specific questions relating to a potential breach of planning control	Prosecution
Temporary Stop Notice	Requires unauthorised activities to cease immediately for a period of up to 28 days	Prosecution and/or Injunction
Breach of Condition Notice	Requires compliance with conditions set out in a planning permission	Prosecution and/or Injunction
Enforcement Notice	Requires particular steps to be taken or activities to cease in order to remedy a breach	Prosecution and/or Direct Action and/or Injunction
Stop Notice	Requires unauthorised activities to cease within three days for a period of up to 28 days in conjunction with a related Enforcement Notice.	Prosecution and/or Injunction
Section 215 Notice	Secures the proper maintenance of land	Prosecution and/or Direct Action and/or Injunction

Please note that there is an inherent right of appeal against enforcement notices to the Secretary of State and against section 215 notices to the Magistrates' Court. There is no right of appeal against Breach of Condition Notices.

Injunctions are used to prevent or stop unauthorised development but are only used in limited circumstances.

Failure to comply with a notice is a criminal offence and prosecution proceedings may be brought where compliance with valid, effective enforcement notices are not achieved.

Persistent contraveners of planning control are not tolerated, and an appropriate level of resources will be allocated to tackle the problems they cause.

## Procedure for reporting breaches

### Reporting a breach

To help us deal with your case as soon as possible it is important to provide as much information as you can. Below is a list of the type of information that would assist us in dealing with your complaint:

- An accurate description of the location or address for the particular site;
- A detailed description of the activities taking place and why they are cause for concern;
- Names, addresses and phone numbers of those persons responsible for the alleged breach or the land owners;
- The date and times of when the alleged breach took place;
- Any other information or evidence (including photos) that may be able to assist;
- Your name and address or e mail address.

Complaints about alleged breaches can be made by e-mail; letter; or telephone providing the complainant gives their name, address and telephone number. The preferred method of receiving complaints is via the MBC website:

[https://self.maidstone.gov.uk/service/report\\_a\\_planning\\_enforcement\\_breach](https://self.maidstone.gov.uk/service/report_a_planning_enforcement_breach)

### Anonymity & confidentiality

We do not usually investigate anonymous complaints. Where complainants wish to remain anonymous, they are encouraged to speak with their elected Ward member or Parish Council representative.

Every effort is made to safeguard the confidentiality of any private individual who reports a potential breach of planning control. If an appeal is made against an enforcement notice to the Planning Inspectorate any complainant will be notified and asked if they wish to submit additional representations or to appear independently at a public inquiry or hearing to support the Council's case. The strength of local support is often crucial to the Council's success on appeal.

At all stages of the enforcement process the knowledge and information held by members of the general public and residents' groups will supplement that available to the Council from official records and from site inspections. The success of some further enforcement actions may depend on evidence from witnesses prepared to provide statements for Court.

### Next steps

When an enquiry into a potential breach of planning control is received it will be acknowledged by email or post. An investigation into the enquiry will then begin. The enforcement process followed by Maidstone Council will follow the Flowchart 1 for Investigation & Negotiations and Flowchart 2 for Formal Action.

The Council will respond to enquires made by customers in relation to specific enforcement cases depending on the priority of the case.

All **Priority 1** cases will have a site visit within one working day. Following the site visit, the complainant will be updated within one working day following the initial visit.

All **Priority 2** cases will usually receive a site visit within 10 working days of the case being set up and the complainant will again receive an update within one working day following the initial visit.

Routine updates on reports of a potential breach of planning control will not be provided during the course of an investigation. However, the complainant will be updated once a decision has been made or when a case is closed.

It is important to note that planning enforcement can be a lengthy and legally complex process and the time taken to reach a satisfactory resolution can vary considerably between investigations.