

Enforcement Policy Document:

A Guide to Planning Procedure



What are Guides to Planning Procedure?

This is one of a series of Guides to Planning Procedure being produced by the Council to help you understand the planning process and how decisions are made. It sets out various internal processes and procedures that have been agreed. Separate guidance on planning policy is available through the Development Plan (including the Malvern Hills District Local Plan 1996-2011) and various Supplementary Planning Documents.

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1. Introduction

1.1

The planning system seeks to control land uses and development for the benefit of the whole community. This involves balancing various interests including enhancing and protecting the natural or built environment, satisfying the wishes of individuals or businesses who want to develop and encouraging sustainable development that will provide for the economic and social well-being of the community.

1.2

Occasionally unauthorised development takes place without the benefit of planning permission or other forms of consent. Such instances are often referred to us by members of the public and this policy document sets out how the Council will investigate these cases and determine the appropriate course of action. It includes various objectives and service standards that we will aim to achieve and these are highlighted in boxes with bullet points.

1.3

The objectives of the Council's Enforcement Team are to:

- Control unauthorised development, works and operations and ensure effective compliance with planning permissions, listed building and other related consents and regulations through an approach to enforcement that is fair, proportionate, targeted, timely, consistent and clear, and in the interests of protecting the environment, local amenity and the community

1.4

It is the developer's responsibility to ensure that the appropriate consent is applied for and that any development takes place in accordance with the decision, including any conditions or legal agreements. However, on occasions, unauthorised development does take place. To reduce the number of such instances and to ensure that any resulting harm is kept to a minimum, we will:

- Use a system of prioritising cases on a risk based approach (see Section 4.2)
- Where the development is being inspected by the Council's own Building Surveyors, provide the developer with a copy of the planning permission

- Decide whether proposed changes to an approved scheme may be dealt with as a minor amendment in accordance with the Council's guidance on dealing with such changes, within 14 working days.
- Liaise with our Building Control Section to ensure that any discrepancies with either plans submitted under the Building Regulations or the setting out of development are identified at an early stage. Where discrepancies are identified, inform the developer of their options.
- Investigate all alleged breaches of planning control, allocate each case to a named Officer and prioritise cases according to the alleged or potential level of harm (see Section 4.2)

2. The Scope of Our Powers

2.1

The Council's Planning Enforcement Team deals with a variety of different unauthorised works, changes of use and development. These include:

Unauthorised development and changes of use

Some development may not require planning permission. Where development has taken place, or a change of use has occurred, we will investigate whether it requires permission.

Development in breach of a planning condition or legal agreement or in contravention of approved plans

Many planning permissions and other planning consents include conditions or matters controlled by means of a legal agreement which must be complied with. Where it is alleged that works are in breach of such conditions, or have taken place contrary to the approved plans, we will always investigate the matter.

Unauthorised works to Listed Buildings

Most works to Listed Buildings require consent and, unlike planning applications, it is a criminal offence to carry out works without such consent. Prosecution can be pursued under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively the Act also includes the power to serve a Listed Building Enforcement Notice to which there is a right of appeal.

Unauthorised works to protected trees

It is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order. Where works are proposed to trees in a Conservation Area, the Local Planning Authority should be notified in advance. In both instances the Council has power to prosecute offenders and require the planting of replacement trees.



Unauthorised removal of hedgerows

Under the Hedgerow Regulations 1997, the Council is responsible for protecting 'important' hedgerows. It is an offence to remove certain hedgerows if the owner has not served a Hedgerow Removal Notice on the Council or where the Council has served a 'Hedgerow Retention Notice'. Enforcement of the Regulations may involve prosecution, requiring the planting of a replacement hedgerow or the service of an injunction.

Unauthorised advertisements

Many forms of outdoor advertising require consent from the Council. To put up an advertisement without the benefit of consent is an offence, and the Council may prosecute any person who displays an advertisement in contravention of the Advertisement Regulations.

Land adversely affecting amenity and dangerous structures

Where land or premises have become an eyesore, the Local Planning Authority has powers to serve a notice, under section 215 of the Town and Country Planning Act, requiring steps to be taken to remedy the condition of land. There is a right of appeal to the Magistrates Court.

There are also powers under the Building Act to deal with dangerous and defective structures.

Contraventions of Hazardous Substances Control

It is a criminal offence under the Planning (Hazardous Substances) Act 1990 to exceed controlled quantities of hazardous substances or fail to comply with a condition on a Hazardous Substances Consent. Prosecution is through the Magistrates Court. The Council can also serve a contravention notice and apply for an Injunction.

2.2

There are other bodies that may have powers to enforce and some of these are referred to in section 8.4

3. The Legal Framework

3.1

There are several tools available to the Council to deal with breaches of planning control under the Town and Country Planning Acts and these are set out below. In all these cases the Council may initiate a prosecution where the requirements of a notice are not met in the stated timescale.



Requisition for Information

These are usually served to gather information on ownership of land or buildings prior to serving one of the notices listed below.

Planning Contravention Notice

These can be served where it appears that there may have been a breach of planning control and the Council requires information about activities on the land or nature of the occupier's interest in the land.

Breach of Condition Notice

These can be served where there is a failure to comply with any condition imposed on the grant of planning permission.

Enforcement Notice

These can be served to remedy an actual breach of planning control by requiring an unauthorised use to stop or building works to be removed. A notice can also be served to restrict or condition a particular operation which is otherwise unacceptable. There is a right of appeal against the notice.

Stop Notice

This can be served to require unauthorised activities to cease before an Enforcement Notice comes into effect. A Temporary Stop Notice may also be used to prohibit activities for a period of 28 days to enable the Authority to make a full assessment of the case. However use of such powers has to be weighed against the threat of claims for compensation.

Injunction

This can be sought in the County Court or High Court to restrain any actual, or expected, breach of planning control.

- Not volunteer the details of the complainant to any person against whom the complaint is lodged. However, in some cases information may be released under the Freedom of Information Act. There may also be cases where the complainant's evidence will be crucial to successful action and an approach will be made to request that they act as a witness.
- Undertake a site visit within 1 to 10 working days according to the priority level of the case

4.2

To ensure that our resources are targeted effectively, we will allocate each case a code according to the alleged or potential level of harm caused and the urgency of the case. The following coding system will be used:

Level	Initial assessment of harm caused	Examples of types of case	Time for investigations to commence
1	Severe, irreversible and usually ongoing/ progressive	Breaches of Listed Building control, removal of hedgerows , works to trees which are protected by Tree Preservation Orders/ within Conservation Areas, damaging works to SSSIs etc	Within 1 working day
2	Ongoing work which may cause significant and progressive harm to the area if not addressed swiftly	Excavations which could have a nature conservation or landscape impact, large scale building works causing significant loss of amenity	Within 4 working days

3	Operations or uses that cause local harm or loss of amenity, or significant detriment to the amenity of neighbours. Includes on going building works	Noise and smell issues causing loss of amenity, resulting from development or from breaches of condition. Ongoing building works, including extensions	Within 7 working days
4	No significant harm or impact limited to adjacent properties and reversible. Completed works & operations. Issues unlikely to be a breach of planning control	Most adverts, domestic structures such as extensions, sheds, fences, most breaches of planning conditions where likely to be resolved without formal action.	Within 10 working days

4.3

The code given to a case only reflects our initial assessment. Once investigations commence, it may be found that the harm caused is greater or less than originally anticipated. The initial coding is therefore undertaken without prejudice to any subsequent enforcement action.

5. Investigating and Gathering Evidence and Timescales

5.1

Before deciding on the appropriate course of action, including whether formal enforcement action or prosecution is necessary, we will gather evidence to find out what is happening on a site or in a building, who the owner/ occupier is, and the relevant planning history of the site. In doing this the Enforcement Officer will do any or all of the following:

- Visit the site. This will usually be unannounced, although the Officer will usually make their presence known. The Officer does have authority to enter sites without permission. Photographs may be taken.
- Interview the owner and/or occupier. Such interviews are used to obtain information about the alleged breach of planning control. If requested, the Enforcement Officer will give information about the enforcement process and possible courses of action.
- Occasionally, in serious cases where an offence may have been committed, it may be necessary to conduct an interview under caution as required by the Police and Criminal Evidence Act 1984.
- Write to the owner to gather further information.
- Issue a Planning Contravention Notice or other statutory request for information.



- Check the Council's files for planning permission, planning conditions or other correspondence which may be relevant to the alleged breach of planning control.
- Make enquiries with other statutory bodies and enforcement agencies to co-ordinate action.

5.2

We recognise that an enforcement complaint may cause stress and anxiety to all parties. To help minimise such concerns we will:

- Explain, when asked, what we are investigating and why, and outline the possible courses of action
- Behave in a professional and courteous manner
- Explain any right to appeal, where there is one, to the Planning Inspectorate or the Courts

5.3

Some investigations may be resolved within 3 to 4 weeks particularly where the issues are relatively clear cut, such as whether permission is required for a house extension or outbuilding. However, in other cases, where considerable evidence gathering is required, investigations will take considerably longer. This will particularly be the case where interviews are required or a Requisition for Information or Planning Contravention Notice is served, which allow between 14 and 21 days for the recipient to respond.

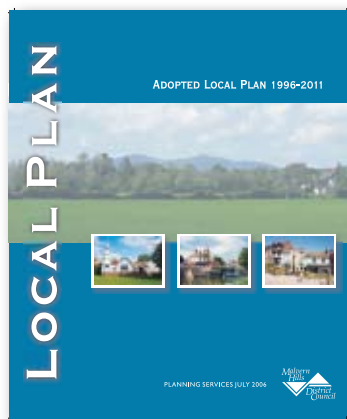
5.4

An enforcement investigation may result in a retrospective planning application being submitted. Consultation will be undertaken in accordance with our *Statement of Community Involvement* and most such applications will take approximately 6 to 13 weeks to be determined. Where formal enforcement proceedings are initiated these notices may take some time to prepare. There may also be a right of appeal against any notice served by the Council. In these cases, where an appeal to the Planning Inspectorate is lodged, it is likely to be at least 12 months before the issue is resolved.

6. Deciding the Appropriate Course of Action

6.1

Having gathered evidence regarding the alleged breach of planning control, the Case Officer will discuss the matter with Senior Officers to determine the appropriate course of action. As part of this process, Enforcement Officers may discuss their findings with Planning Officers, Environmental Health and Conservation Officers, the Council's Solicitors and other professionals as appropriate, to determine the level of harm caused and whether there is a suitable remedy. In particular, Officers will consult relevant legislation and the *Development Plan* to assess whether the development accords with planning policy. Relevant legislation and guidance may include Planning Policy Guidance notes and Statements, such as PPG 18 on Enforcement policy, the General Permitted Development Order 1995 which sets out what you can do without planning permission and the Town and Country Planning Act 1990 (as amended).



6.2

In addition, before any formal enforcement action is taken, the provisions of the Human Rights Act 1998 will be taken into account. This will involve a consideration of whether taking action or not taking action will interfere with one of the convention rights. The rights of both the complainant and the offender will be taken into account.

6.3

To carry out development without the benefit of planning permission (as opposed to listed building consent or advertisement consent) is not an offence. Therefore, in determining the appropriate course of action, Officers will seek to establish whether the development requires consent, the level of harm caused and whether the development would be likely to be granted consent, and whether formal enforcement proceedings would be likely to be successful. Formal enforcement action will not automatically be taken where there is a breach of planning control. Having regard to these factors, the case will be likely to fall in to one of the following categories:

6.4

Unauthorised development causing very significant or irreparable harm

We will determine whether it is in the public interest to take enforcement action, serve a Stop Notice or, if an offence has been committed such as unauthorised works to a listed building, whether to prosecute. This will involve a professional judgement weighing up various factors. This public interest test will include an assessment of:

- the number of people affected,
- the degree of harm caused, and whether such harm is progressive in nature
- the extent of any conflict with planning policies
- the personal circumstances of the offender
- whether steps could be taken to overcome the harm and whether

- the defendant is prepared to undertake the necessary works
- whether enforcement action or prosecution would act as a deterrent to future works and
- evidence of previous advice being disregarded, or of intent.

In addition to the tests above, before proceeding with a prosecution or serving a Notice, Officers will also judge whether there is sufficient good quality evidence to provide a realistic prospect of a successful outcome. In these cases, where it is judged that immediate enforcement action or prosecution is required, we will work with the Council's solicitors to prepare a case. The steps required and time allowed for compliance with a Notice will depend upon the individual circumstances and facts of the case, with regard to the various factors set out above.

In some cases, where very significant damage is caused, and there is a very real risk that ongoing works will exacerbate the harm, the Council will serve a Stop Notice or an Injunction.

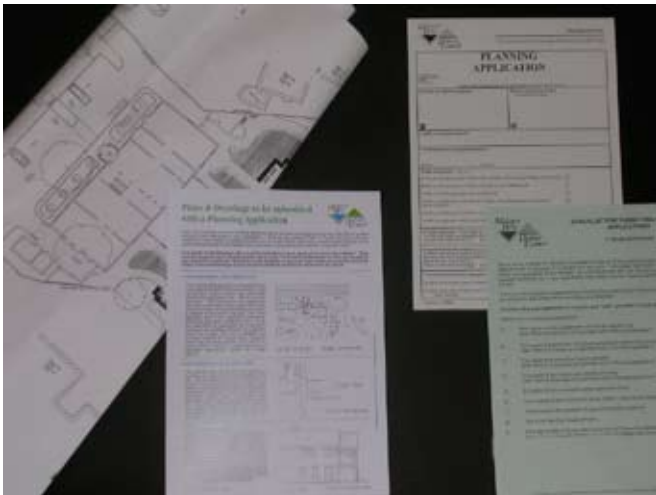


6.5

Unauthorised development that causes lesser harm or where there is a reasonable prospect of a negotiated solution

This will include development or work that requires permission or consent and there is a reasonable chance that, with or without amendment, permission or other form of consent may be granted, with appropriate conditions. In these cases we will usually invite the person involved to submit a retrospective application for the development as carried out. Where that application is refused, we may seek to find a negotiated solution, but will take formal enforcement proceedings where a remedy has not been found and it is deemed expedient and in the public interest, using the tests detailed in 6.4 above.

An Enforcement Notice may stipulate either works required to be undertaken to remedy the harm, or other factors, such as hours of operation, that need to be complied with. It may not therefore be necessary to entirely remove the works or operations, or cease the unauthorised use to overcome the harm. This is known as “under-enforcement”.



6.6

Unauthorised development that causes little or no harm

This includes development or works that require permission or consent, but are judged to be of a type or degree that it would not be expedient to take enforcement action. It will be deemed not expedient to take action if it is judged that permission or consent is likely to be granted for the use or works, and it is therefore not in the public interest to devote time and resources to pursuing the matter further.

Where it is deemed not expedient to pursue the matter, a planning application may nonetheless be invited for retrospective permission to regularise the situation and to avoid difficulties when a property is sold. However, we will not take action if no application is submitted.

6.7

Development that does not require consent

This will include works that do not constitute development or are “permitted development” by virtue of the General Permitted Development Order 1995 and therefore do not require planning permission.

6.8

Unauthorised development that is immune from enforcement action

This includes development that is exempt from enforcement action due to the passage of time since the development took place or the use commenced, and is therefore considered lawful. In these cases, the person involved may decide to submit a Certificate of Lawfulness to establish if the works are lawful. This may help avoid difficulties when a property is sold.

6.9

Development that is outside the scope of our control

This includes development or works that appear to fall within the remit of another enforcing agency. These will be referred to the relevant agency concerned.

6.10

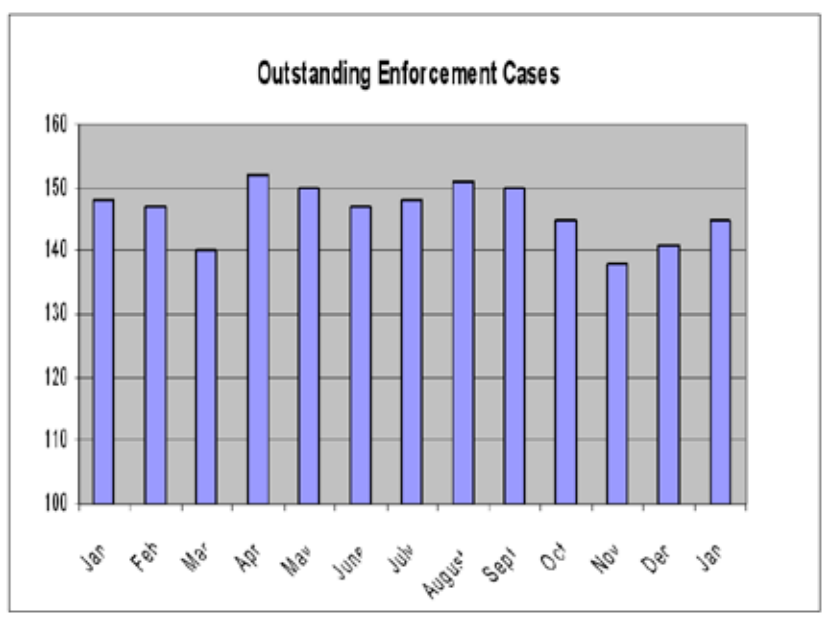
In all cases, the Case Officer will prepare a brief report in the form of a worksheet, for consideration by a Senior Officer. Where it is proposed to take formal enforcement action, the Head of Planning Services or Development Control Manager and Council's Solicitors will jointly review the case and check that there are no legal obstacles to initiating enforcement action. If appropriate, formal proceedings will then be initiated, without recourse to any Committee, in accordance with the Council's Scheme of Delegation.

7. Performance Monitoring and Reporting

7.1

To ensure that we are meeting the standards that we set ourselves, we will:

- Report the number of enforcement complaints received, the number of cases closed and the number of outstanding cases to the relevant Development Control Committee.
- Publish annually a summary of the statistics referred to above and a summary of the main cases and issues raised.
- Report the outcome of all enforcement appeals to the appropriate Development Control Committee.



7.2

We do not intend to publicise details of individual enforcement cases under investigation, as, until our investigations are complete, it is not possible to confirm the status of an alleged breach of planning or related control. It would therefore be inappropriate and potentially unfair to publicise the details of an individual, business, site or operation which ultimately may be found not to have breached planning controls. However, any formal notice served on a property will be revealed in a Land Charges Search and, if a specific question is asked, we may have to reveal that there is an ongoing investigation.

8. Other Contacts and Sources of Advice

8.1

District Councillors are an important source of local knowledge and advice and may be contacted and lobbied. However, it is important to bear in mind that they operate under a formal Code of Conduct under which they will not be able to express an opinion on any development that they may need to consider formally at a later stage.

8.2

You may also find that your local Parish or Town Council have information or knowledge of development that has taken place.

8.3

Other sources of advice and guidance include private consultants and Planning Aid who may be able to provide you with free, professional and independent advice. 8.4

Finally, Planning Services at Malvern Hills District Council only has powers to enforce certain breaches of planning regulations. It may be that other bodies, such as the Environment Agency, Worcestershire County Council or the Health and Safety Executive have additional or more appropriate powers to enforce against any alleged development or activity. In such cases we will refer any reported breach to the appropriate body.

9. Appeals and Complaints

9.1

If you are served with an Enforcement or Stop Notice, there is an appeal procedure which is explained in the notice.

9.2

If you have any complaints about the way in which an enforcement complaint or other issue has been handled which cannot be resolved with the Case Officer, or Area Planning Officer, these should be taken up in the first instance with the Customer Service Department in accordance with the Council's complaints procedure. There is a section detailing this procedure under "compliments and complaints" on our website. If you are not satisfied with the outcome, you can take your complaint to the Local Government Ombudsman. Leaflets explaining this procedure are available from the Customer Service Centre.

How to Contact Us

For further information about Planning Services, including community involvement, viewing applications and making appointments to see a Customer Service Advisor or Planning Officer please call 01684 862151. Alternatively, visit us at the Customer Service Centre in Great Malvern Library, Graham Road, Malvern (Opening Hours Monday to Friday 9:00am to 5.30pm) or visit the District Council's website www.malvernhills.gov.uk/planning.

Need help with this? Tel: 01905 25121

01905 25121 سے رابطہ کریں ٹیلیفون: [Ethnic Access] رسائی نسلیاتی میں مدد جانتے ہیں۔ آپ انگریزی میں مدد جانتے ہیں۔ [Urdu]

ইংরেজি ভাষার বিষয়ে সাহায্য চান – এথনিক্‌ অ্যাকসেস্ [Ethnic Access] এর সঙ্গে যোগাযোগ করুন, টেলিফোন: 01905 25121 [Bengali]

'Necessita de ajuda com o seu Inglês? – contacte Ethnic Access Tel.: 01905 25121' [Portuguese]

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“如需我們幫助你理解英文－聯繫 Ethnic Access（少數民族服務獲取組），電話：01905 25121” [Chinese]