

MALVERN HILLS DISTRICT COUNCIL

Local Enforcement Plan 2016



District
Council

Malvern Hills District - Proud of Our Place

The purpose of planning enforcement

The integrity of the planning system and the service for the Malvern Hills district depends on the district council's readiness to take enforcement action when it is appropriate to do so. The district council is committed to providing an effective planning enforcement service.

Planning laws and policies are designed to control the 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.

In order to undertake effective investigations it is essential that there is co-operation between the district council and other agencies, such as the Police, Environment Agency, Worcestershire Regulatory Services and Parish/Town Councils. The district council will continue to develop these relationships in the future in order to make best use of all our available resources.

The district council will not condone wilful breaches of planning control and will exercise discretion to take enforcement action if it is considered expedient to do so. The district council will investigate all alleged breaches of planning control, to determine whether a breach has as a matter of fact occurred, and if it has, will then determine the most appropriate course of action.

What is a breach of planning control?



This could involve such matters as the unauthorised erection of a building or an extension to a building, a material change of use of land or a building, or the display of unauthorised advertisements. Other breaches of planning control may consist of the following:-

- **Unauthorised works to Listed Buildings;**
Most works to Listed Buildings require consent and it is a criminal offence to carry out works without such consent. Prosecution proceedings can be instigated under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Alternatively the Act also includes local planning authorities with the power to serve a Listed Building Enforcement Notice to which there is a right of appeal.
- **Unauthorised works to trees subject of a tree preservation order (TPO) or in a Conservation Area;**
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 and permission obtained in advance. In both instances the Council has the power to prosecute offenders and require the planting of replacement trees.
- **Breaches of Planning Conditions;**
A breach of condition notice can be served where there is a failure to comply with any condition imposed on the grant of planning permission. There is no right of appeal against a breach of condition notice.
- **Untidy land where it affects the amenity of the area;**
Where land or premises have become an eyesore, the Local Planning Authority has the power 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.
- **Failure to comply with a Section 106 agreement;**
As part of the planning process a local planning authority and a developer may enter into a legal agreement to enable any adverse impacts of a

development to be offset, to enhance the physical environment or to contribute to local services and facilities where this is not possible through planning conditions.

This agreement, known as a Section 106 agreement (the legislative basis for planning obligations is Section 106 of the Town and Country Planning Act 1990) is a delivery mechanism for the matters that are necessary to make a development acceptable in planning terms.

If the s106 agreement is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner of the land on which the development has taken place. The s106 agreement can be enforced by injunction. In the case of a breach of the obligation the authority can where appropriate take direct action and recover expenses. If planning obligations under a section 106 agreement are not met then the LPA has powers to take enforcement action by way of:

- invoking an injunction (section 106(5) TCPA 1990) this can be for both the fulfilment of a requirement or restriction under the agreement.
- entering onto the land to carry out the works itself and recover its reasonable expenses for so doing. To do so the LPA must first give 21 days notice to any person against whom the obligation is enforceable (sections 106(6) and 106(7), TCPA 1990).

A Planning obligation is a local land charge for the purposes of the Local Land Charges Act 1975 (section 106(11), TCPA 1990) and, since 1 July 2002, is entered on the planning register.

- **Deliberate concealment of unauthorised building works or changes of use;**

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A Planning Enforcement Order enables the council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

The application is to be made within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the local planning authority's knowledge. The appropriate officer must sign a certificate on behalf of the authority which states the date on which that evidence came to the local planning authority's knowledge, and the certificate will be conclusive of that fact.



The application must be made to a magistrates' court and a copy must be served on the owner and occupier of the land, and on anyone else with an interest in the land which, in the local planning authority's opinion, would be materially affected by the taking of enforcement action in respect of the breach. The applicant, any person who has been served with the application, and any other person the court thinks has an interest in the land that would be materially affected by the enforcement action have a right to appear before, and be heard by, the court hearing the application.

- **Removal of protected hedgerows – Hedgerow Regulations 1997**

Under the Hedgerow Regulations 1997, 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 to restrain an actual or apprehended offence.

- **Not building in accordance with the approved plans that form part of a planning permission;**

In some cases this can result in the whole development being deemed as unauthorised

- **Unauthorised engineering operations, such as raising of ground levels or earth bunds;**

These matters may involve engagement with both Worcestershire County Council (Minerals & Waste) and the Environment Agency.

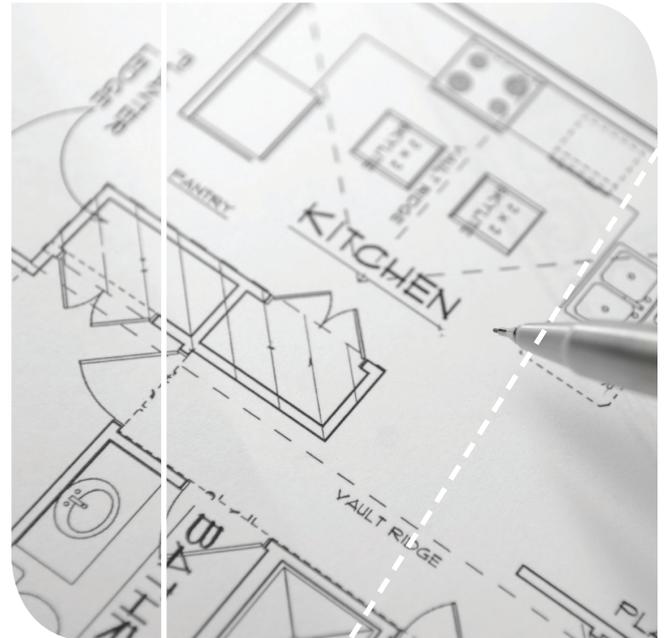
- **Unauthorised demolition within Conservation Areas;**

If you live in a conservation area, you will need planning permission for some demolition activities such as:

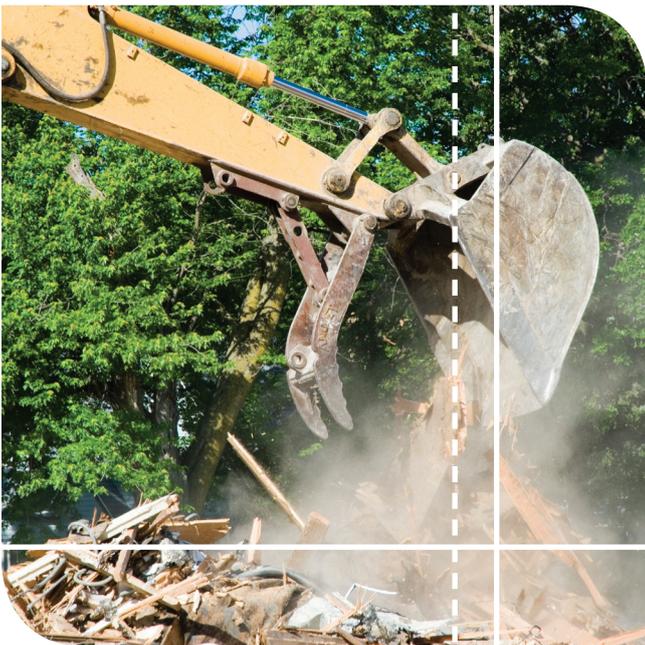
Demolishing a building with a volume of more than 115 cubic metres. There are a few exceptions - you can get further information from Planning Services.

Demolishing a gate, fence, wall or railing over 1 metre high next to a highway (including a public footpath or bridleway) or public open space; or over 2 metres high elsewhere.

Matters that are not breaches of planning control



- Internal works to a non-listed building;
- Obstruction of a highway or public right of way (PROW)
- Parking of vehicles on the highway or on grass verges;
- Parking caravans on residential driveways or within the curtilage of domestic properties as long as they are incidental to the enjoyment of the property;
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity;
- Land ownership disputes or trespass issues;
- Covenants imposed on property Deeds
- Any works that are deemed to be 'permitted development' under The Town and Country Planning (General Permitted Development) (England) Order 2015 and or substituted;
- Advertisements that are not subject to deemed or express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 and as such are excluded from direct control



- Dangerous structures or other health and safety issues such as those that fall within the remit of the Health and Safety Executive (HSE);
- High hedge disputes (evergreen hedges) – however, these are dealt with by Planning Services and are investigated by the council’s Landscape Officer under Part 8 of the Anti-Social Behaviour Act 2003. There is no legally fixed height that a hedge should be maintained at specified in the legislation. Instead, in response to a formal complaint and following payment by the complainant of the appropriate fee, the council will assess the hedge in relation to its surroundings. If appropriate, the council will specify what height the hedge should be cut to and then maintained at. The council’s decision is legally binding. Information on high hedge issues can be found on the council’s website at:

<http://www.malvern hills.gov.uk/hedges-urban-and-rural>

Enforcement action is discretionary

It is important to note that just because there may be a breach of planning control this in itself, is not sufficient reason for the district council to take enforcement action. The district council must first decide, having regard to relevant planning policies contained within the Malvern Hills District Local Plan (2006) [prior to the adoption of the South Worcestershire Development Plan]and the emerging South Worcestershire Development Plan (SWDP), guidance contained in the National Planning Policy Framework (NPPF), the national Planning Practice Guidance and all other material planning considerations whether or not it is ‘expedient’ i.e. in the public interest to take formal action. Expediency is a test of whether the unauthorised activities are causing harm to the environment or amenity of the area. Therefore enforcement action is discretionary and each case must be assessed on its own merits.

Guidance from Central Government is that enforcement action should be a last resort and that councils are

expected to give those responsible for a breach of planning control the opportunity to put matters right or to seek to regularise the breach before resorting to serving a formal notice. Any such service of a formal notice must be proportionate and commensurate with the breach of planning control.

This means that the district council may not take formal enforcement action in all cases where a breach of planning control has been identified.

It is part of the normal duties/responsibilities of the Investigating Enforcement Officer and with the Area Planning Officer or Planning Services Manager to ensure decisions not to pursue formal enforcement action can be properly justified having regard to the Local Enforcement Plan and the Development Plan (SWDP). If someone is dissatisfied with the decision making they can proceed to follow the Council’s Corporate Complaints Procedure, link provided as follows:

http://swict.malvern hills.gov.uk/sw2formscac/mhdc_complimentsandcomplaints.jsp

If someone is not satisfied with the response they receive, they can take their complaint to the Local Government Ombudsman. The Ombudsmen is unlikely to consider a complaint unless it has already been fully investigated by the Council. The Local Government Ombudsman can be contacted at:

Local Government Ombudsman
PO Box 4771 Coventry CV4 0EH
www.lgo.org.uk Telephone: 0300 061 0614
(Monday to Friday 8.30am to 5pm)

What can you expect if you report an alleged breach of planning control?

We will:-

- Investigate all alleged breaches of planning control reported to the Council either in writing, by e mail, by telephone or in person;

How to report an alleged breach of planning control



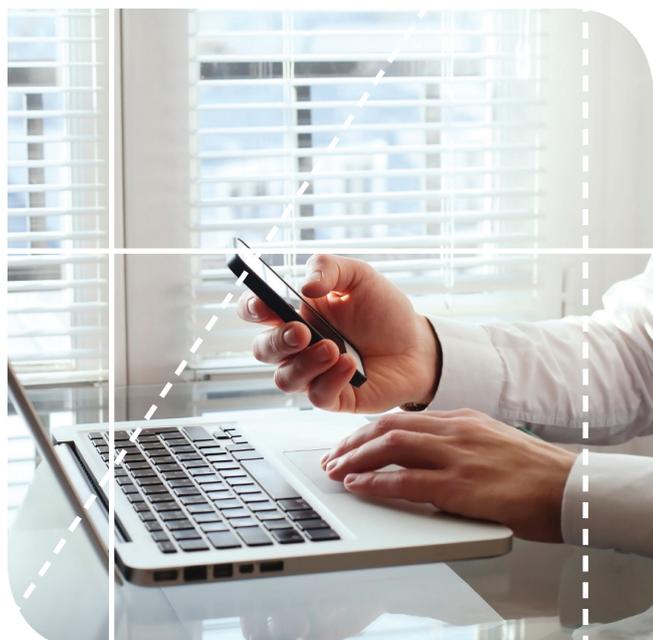
The council considers in the region of 250-300 complaints each year alleging breaches of planning control. In order that you complaint can be dealt with as soon as possible it is important that you provide us with as much information as you can. Below is a list of the type of information that would assist us in dealing with your complaint:-

- Keep your personal details confidential at all times, unless required to disclose as part of court proceedings;
- Register your complaint where possible within 5 working days and provide you with an acknowledgement and reference number with a named officer as the main point of contact;
- Keep you informed of the progress of the case and of any decisions made with regard to whether the district council is to take action and if any, what action will be taken and the likely timescales involved;
- Actively pursue your complaint where it is in the public interest to do so;
- In cases where there may be a technical breach of planning control but the harm caused is not sufficient to warrant formal action we will notify you of the reason for not taking formal action and close the case;
- Where appropriate we will negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of successful resolution.
- Your complaint will be:-
- Given a priority based on the councils published priority table which is contained in this Plan;
- Investigated and a site inspection undertaken in line with the published timescales, where possible, contained in this Plan;
- Pursued until such a time that the matter is satisfactorily resolved, regularising the breach or if the development is found to be lawful or until a decision is taken that it is no longer expedient to pursue the matter;
- In the event that a formal notice is served and not complied with, the case to which your complaint relates may be pursued through to the Magistrates Court or higher court where necessary.

- An accurate description of the location or address for the particular site;
- A detailed description of the activities taking place that are cause for concern; and identification of the harm being caused.
- Names, addresses and phone numbers of those persons responsible for the alleged breach or the land owners (if known);
- The date and times of when the alleged breach first took place and details of any subsequent times;
- Your name and postal address and an e mail address if you have one;

Complaints about alleged breaches of planning control will be accepted by either:-

- E-mail;
- letter;
- telephone ; or
- Personal caller provided the complainant provides their name, address and telephone number.



Anonymous complaints will not normally be investigated unless clearly relating to a matter of public interest. The district council determines whether the alleged breach merits investigation. Complainants who do not wish to give their personal details will be advised to contact either their Local Ward Member or their Parish Council who may be prepared to raise concerns on behalf of an individual. Personal details provided by a complainant will be kept confidential and will not be disclosed unless required to do so as a result of any formal Court proceedings.

Vexatious or malicious complaints

The district council recognises that, on occasion, a complainant may feel that a complaint has not been resolved to his/her satisfaction. However, in a minority of cases members of the public pursue their complaints in a way that is unreasonable.

To address such matters the council has produced a [Management of unreasonable complainant behaviour policy](#). (Click on the above link to obtain the form).

This policy is designed to help manage unreasonable complainant behaviour, prevent duplication and abortive work by employees, and protect the Council's employees from harassment and harm.

How will we prioritise your complaint?

In order to make the best use of the resources available to the district council it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. This will initially be decided by the district council following receipt of the complaint however may be subject to change following a site inspection or when further information comes to light.



Priority Categories

Level	Initial assessment of harm caused	Examples of types of case	Time for investigations to commence
A	Severe, irreversible and usually ongoing/progressive	<ol style="list-style-type: none"> 1. Breaches of Listed Building control caused by ongoing work 2. Removal of hedgerows/works to trees which are protected by Tree Preservation Orders/within Conservation Areas 3. Damaging works to Sites of Special Scientific Interest (or other nationally or locally designated sites of nature conservation) 4. Unauthorised encampments 5. Unauthorised development / advertisements which gives rise to a potential risk to public safety 	Within 1 working day
B	<p>Ongoing work which may cause significant and progressive harm to the area if not addressed swiftly.</p> <p>Operations or uses that cause local harm or loss of amenity, or significant detriment to the amenity of neighbours. Includes on going building works</p>	<ol style="list-style-type: none"> 1. Excavations which could have a nature conservation or landscape impact 2. Large scale building works causing significant loss of amenity. 3. Noise and odour issues causing loss of amenity, resulting from development or from Breaches of condition. 4. Ongoing building works, including extensions 	Within 5 working days
C	<p>No significant harm or impact limited to adjacent properties and reversible.</p> <p>Completed works & operations.</p> <p>Issues unlikely to be a breach of planning control</p>	<ol style="list-style-type: none"> 1. Other advertisements (no known or potential harm to public safety) 2. Domestic extensions and outbuildings. Most breaches of planning conditions where likely to be resolved without formal action. 	Within 10 working days

What are the possible outcomes of an investigation?

No breach established – Following a site inspection it may be found that there is no breach of planning control because for example the unauthorised use has ceased or the development is permitted development.

There is a breach of planning control but not considered expedient to pursue – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and minor technical breaches may not be considered

expedient to pursue as they may be considered to be de minimis for example too minor to warrant the time and expense involved in pursuing them.

The development is immune from enforcement action and thus lawful - This is when the unauthorised development or unauthorised change of use has occurred over a long period of time without being brought to the attention of the Council. There are certain time limits involved in relation to operational development (4 years) and changes of use (10 years), however for further details please contact the enforcement team who will be happy to advise you if you think this may apply to you.

Negotiations take place to find a solution – In accordance with Government guidance the first priority is to try and resolve any breaches of planning control

through negotiation. Only when such negotiations fail to secure a solution should formal action be considered. The Council will however try to avoid negotiations becoming protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

Invite a retrospective application – Please see below

Retrospective Planning Applications



In accordance with Government advice the council will firstly seek to negotiate a solution to any confirmed breach of planning control. By entering into negotiations with the parties involved, a solution may be found which could involve the cessation of any unauthorised change of use or building operations, the removal of any unauthorised building works or items constituting a material change of use of land, or the remedy for a breach may be best achieved by the submission of a retrospective planning application.

The submission of a retrospective application may be appropriate where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies

or where a development may be made acceptable by way of the imposition of conditions.

Minor or technical breaches of planning control may not be pursued in the event that a retrospective application has been requested and not submitted or where it is not considered expedient to do so.

Under Enforcement

The Council may decide not to require action be taken to remedy the whole of a breach of planning control. This is known as “under enforcement”.

Where an enforcement notice identifies a breach of planning control which could have required any buildings or works to be removed, or an activity to stop, but has stipulated some lesser requirements, and all the requirements of the notice have been complied with, then planning permission is deemed to be granted for those remaining operations or use (Section 173(11) of the Town and Country Planning Act 1990).

Whether a particular notice “could have” required something is contingent upon the terms of the alleged breach of planning control set out in the notice.

Formal Action

The Council has a range of formal powers under the Town and Country Planning Act that it can use to remedy breaches of planning control. The more common forms of enforcement action are listed below:

- The service of a Planning Contravention Notice (PCN) – Section 171(c) enables the service of a notice requiring persons to provide information in relation to land or activities on land where a breach of planning control is suspected
- The service of a Request for Information (RFI) – Section 330 enables a notice to be served requesting

details to be provided of any owners, occupiers or any other persons with an interest in the land

- The service of an Enforcement Notice – Section 172 enables the service of a notice which requires specific steps to be undertaken to remedy the breach of planning control
- The service of a Breach of Condition Notice (BCN) – Section 187(a) enables the service of a notice to secure compliance with conditions imposed on a planning permission
- The service of a Stop Notice (SN) or a Temporary Stop Notice (TSN) - Section 183 and Section 171(e) enables the service of a notice requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above
- The service of a Section 215 Notice – Section 215 (s215) of the Town & Country Planning Act 1990 (the Act) provides a local planning authority (LPA) with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of their area is being adversely affected by the condition of neighbouring land and buildings, they may serve a notice on the owner requiring that the situation be remedied. These notices set out the steps that need to be taken, and the time within which they must be carried out. LPAs also have powers under s219 to undertake the clean up works themselves and to recover the costs from the landowner.
- The use of s215 by LPAs is discretionary and it is therefore up to the LPA to decide whether a notice under these provisions would be appropriate in a particular case, taking into account all the local circumstances. LPAs will need to consider, for example, the condition of the site, the impact on the surrounding area and the scope of their powers.
- In addition to the above further action is available by way of the service of injunctions, the taking of direct action to remedy a breach or to instigate prosecution proceedings for non-compliance where it is deemed necessary to do so.

The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence and with the

Criminal Procedures and Investigations Act 1996 and Section 222 of the Local Government Act 1972, when carrying out prosecutions.

What happens if an allegation is made against you?

If a complaint is received that affects you then the first thing that will happen is either you will be contacted (where your details are known to the Council) or the site in question will be visited by an enforcement officer. The purpose of this visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification.

If there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation.

You will be given a reasonable period of time (subject to the nature of the breach) to resolve the breach(es) of planning control. If compliance is not secured through negotiations or the submission of a retrospective planning application formal action may be instigated.

Proactive Compliance

In addition to the service's role in reacting to complaints regarding alleged unauthorised developments or breaches of condition, the district council carries out some proactive monitoring of developments to ensure compliance with conditions, planning permissions and other consents. It should be noted that it is the responsibility of individual developers to comply with the conditions imposed on any planning permission or

consent or with any terms identified in legal agreements, such as Section 106 agreements. However, failure to comply can affect not only the quality of the environment in the district or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission or other consents in the first instance.

Proactive monitoring will encourage and enable compliance with conditions to ensure that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. By carrying out proactive compliance monitoring in this way the number of retrospective enforcement complaints received can be managed.

Where necessary:

Problematic sites such as those involving significant level changes, or contamination will be monitored. In these cases decisions will be taken on a case by case basis and the decision to pursue any breaches found during inspections will be informed by the overarching framework for decision making as set out in this Plan. Any other developments may be inspected from time to time to ensure compliance.

Benefits of Proactive Compliance



The benefits of proactive compliance can be felt by the council, community and the development industry. By being proactive, the council can be aware of identified sites and can try and prevent major problems occurring. For the community this means that the council can be confident that requirements and conditions within agreements and permissions or consent will be complied with ensuring a high quality of built development, while being efficient with our resources and reducing any potential harm caused as a result of the development. For the development industry, there are benefits in raising the profile and need to comply with requirements and conditions to ensure future conveyance requests and solicitors queries can be dealt with. A clear process of compliance can only aid these future requests.

Voluntary Start Notices



A developer is not required by law to notify the Local Planning Authority (LPA) before development for which planning permission has been granted is commenced. As such there is no comprehensive method of checking if conditions, especially pre-commencement conditions, have been complied with.

Whilst it may be possible to cross reference Building Control commencement reports this is time consuming and relies on the report being accurate; where a private building inspector is used then this may not show up on any report.

The district council sends voluntary start notices to applicants/ their agent where planning permission has been granted and where that permission contains conditions that control the development whilst it is being carried out.

Power of entry onto land

Section 196(a) of the Town and Country Planning Act (as amended), the Planning (Listed Buildings and Conservation Area) Act 1990 and Part 8 of the Anti-Social Behaviour Order Act 2003 gives planning officers working for the district council the power to enter land and/or premises at all reasonable hours in order to undertake his/her official duties. Wilful obstruction of a person exercising a right of entry is an offence.

The above does not allow the admission to any building used as a dwelling house to be demanded as a right by virtue of the aforementioned legislations unless twenty four hours prior notice of the intended entry has been given to the occupier of the building.

Performance Monitoring and Reporting

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 elected members of the council on a monthly basis.
- Report the outcome of all enforcement appeals to elected members of the council

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 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 for example as part of a request for information under the Freedom of Information Act or Environmental Information Regulations, we may have to reveal that there is an on-going investigation.

Other Contacts and Sources of Advice



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 and they will not be able to express an opinion on any development that they intend to consider formally at a later stage.

You may also find that your local Parish or Town Council

have information or knowledge of development that has taken place. Other sources of advice and guidance include private planning consultants and Planning Aid who may be able to provide you with free, professional and Independent planning advice.

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

Procedure. If you remain unhappy then you may write to the Local Government Ombudsman who may investigate your concerns however please note that the Local Government Ombudsman will only investigate to establish if the Council are guilty of maladministration. The Local Government Ombudsman does not have powers to make the district council take formal enforcement action when it has previously decided not to.

Complaints about the service



If you are unhappy about the level of service you have received from the Planning Enforcement Team or how the process has been managed then you may firstly discuss your concerns with the Planning Services Manager or take it further through the Council's Corporate Complaints



Contact Details Planning Enforcement Team

Planning Services
Malvern Hills District Council
Council House
Avenue Road
Malvern
WR14 3AF

Phone: 01684 862151

Email: planningenforcement@malvernhills.gov.uk



MALVERN HILLS DISTRICT COUNCIL

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Designed and Produced by Document Services, MHDC