

Eden District Council

DRAFT LOCAL PLANNING ENFORCEMENT PLAN APRIL 2017

CONTENTS

1. Introduction	3
2. Is planning permission required?	6
3. What is planning enforcement?	7
4. What is the purpose of planning enforcement action?	8
5. Who can report a breach?	10
6. What action can the Council take?.....	11
7. What you can expect.....	14
8. What if someone complains about you	17
9. Prosecutions and Direct Action... ..	18
10. Monitoring Planning Conditions and Planning Obligations (section 106 agreements)	19
11. Enforcement of Advertisements, Listed Buildings and Protected Trees	22
12. Conclusion	24

1. Introduction

1.1 This policy aims to help you get the best out of our Planning Enforcement Service. It sets out the main service areas and explains how Eden District Council carries out its planning enforcement activities.

1.2 Eden District Council's administrative area is divided between three Local Planning Authorities (LPAs). The Lake District and Yorkshire Dales National Park Authorities are responsible for the planning functions, including enforcement, within their respective boundaries. Outside these boundaries it is the Council's responsibility and this plan relates to that area.

1.3 Eden District is mainly rural in character but there is continuing growth in the main town of Penrith and to a lesser extent in the other towns and villages that make up Eden District. The district has attractive rural landscapes that intermingle with historic villages and towns many of which contain listed buildings and conservation areas. There is pressure for residential development, so the Council has to take great care in balancing the need to protect the environment from the harmful effects of unauthorised uses and development while promoting growth.

1.4 The Council is not responsible for waste and minerals. The National Parks and Cumbria County Council are the respective Waste and Mineral Authorities. We will pass complaints regarding these activities to the appropriate Authority for their action.

1.5 National guidance on planning enforcement is given in the National Planning Policy Framework ("NPPF") and National Planning Practice Guidance ("NPPG").

1.6 Paragraph 207 of the 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 proportionately 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.

1.7 More detailed advice is provided in the NPPG which has a chapter on enforcement that can be accessed here <https://www.gov.uk/guidance/ensuring-effective-enforcement>. The document is regularly updated to ensure it complies with any changes in planning law and its interpretation.

1.8 To paraphrase the NPPG action should be taken by the Local Planning Authority only when it is **expedient** to do so, and that enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits, and advises that planning permission may be granted retrospectively to regularise development already carried out. For it be

expedient to take action it ultimately means the Council has to be satisfied that harm¹ is being caused by the breach.

1.9 In taking enforcement action for breaches of planning control, the Council must have regard to the Government's Enforcement Concordat and the Regulatory Compliance Code. The Council must also act within the principles of the Human Rights Act 1998 and The Equality Act 2010 and ensure that unlawful discrimination is eliminated, and all action is taken in a fair and consistent manner.

1.10 The Council's Planning Enforcement Team operates within the Government guidance and tries to resolve problems through negotiation under most circumstances, leaving prosecutions or direct action as a last resort. However, the Council will use the powers of formal enforcement action where it is expedient to do so.

1.11 Although we aim to deal with and close the majority of enforcement cases as soon as possible, some cases can take a considerable time to resolve, for example due to full investigation, negotiation or formal enforcement action. Also there is the right of appeal against an Enforcement Notice that would further delay matters, as action is held in abeyance pending the outcome of the appeal.

1.12 The Council aims to raise the profile of planning enforcement, because an effective enforcement function is essential to a credible planning service.

1.13 Planning Enforcement is part of the Council's Development Management service to promote quality buildings and environments in accordance with Government policies and the Council's development policies as detailed in the Eden District's Core Strategy (2008) and draft Local Plan (2015). The Council seeks to take a pro-active approach and to use enforcement powers as part of co-ordinating environmental improvements. This pro-active approach will be taken when resources allow.

What we aim to do

1.14 Eden District Council aims to provide a high quality re-active and pro-active approach to planning enforcement within the resources available. The Council currently receives in excess of 150 complaints a year requiring re-active response. The Council aims to provide the principles of good enforcement as follows:

- Investigate reported breaches of planning control and monitor development for compliance in accordance with its Local Enforcement Plan;
- Investigations will be carried out proportionately in relation to the breach of planning control identified;
- Keep all parties personal details confidential at all times, unless required to disclose as part of court proceedings;
- Actively pursue a complaint to an expedient conclusion;

¹ See paragraph 4.7 for definition of harm

- In cases where there may be a technical breach of planning control but the public harm caused is insufficient to warrant formal action notify all parties of the reason for not taking formal action and close the case;
- Provide owners/developers with an opportunity to alleviate a breach of planning control where the breach is not causing immediate harm, allowing them the opportunity to resolve the matters of concern before pursuing the matter through the courts or by direct action.
- where it is considered appropriate and expedient to do so having regard to the provisions of the development plan and any other material considerations, formal action will be taken and will be followed up by legal action where necessary

Building Control

- 1.15 Building control is dealt with separately to planning control and is not included in this plan. Building control operates under its own legislation, the Building Control Act and Approved Documents. Building Control also checks that dangerous structures are made safe and that demolitions are carried out in as safe a manner as possible. Checks can be made between the plans submitted for building control and the approved plans for planning permission to ensure that there are no major discrepancies between the proposals on the plans.
- 1.16 If you have any queries that relate to Building Control then please contact our building control department at building.control@eden.gov.uk

2 Is Planning Permission Required?

2.1 Planning enforcement can only be considered in most instances where the Building Work or Material Change of Use being undertaken requires planning permission. An initial investigation by a planning officer will determine this.

2.2 Certain types of building works or changes of use are defined as 'permitted development' meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the Town and Country Planning [General Permitted Development] Order 2015.

2.3 If you wish to seek our help in establishing whether a proposed building project requires planning permission or not then we provide a planning advice service that provide written advice on whether works require planning permission and, if planning permission is required, whether planning permission would be forthcoming if a planning application was submitted. For more information please visit <https://www.eden.gov.uk/planning-and-building/planning/before-making-a-planning-application/pre-application-planning-advice-for-householders/>)

3 What is Planning Enforcement?

3.1 Nevertheless most building/ engineering work and changes in the use of land or buildings need planning permission from the Council. Sometimes development is carried out without planning permission or does not properly follow the detailed plans or comply with conditions which have been approved by the Council. Cases such as these can cause serious harm to the way in which people live. Residents and businesses have a right to expect that harmful activities are dealt with effectively.

3.2 Other situations that can be considered for planning enforcement include:

- Land that is in a poor condition and appearance that has a negative impact on the surrounding area (“Untidy Land”)
- Unauthorised display of advertisements.
- Unauthorised works to protected trees.
- Unauthorised work to buildings listed as being of special architectural or historic interest.
- Unauthorised demolition of certain buildings within a Conservation Area.

3.3 The term used to describe such cases is, ‘breach of planning control.’

4 What is the purpose of Planning Enforcement Action?

4.1 Planning laws 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.

4.2 Carrying out work or changing the use of land or buildings without planning permission is not a criminal offence. In most instances the Council will provide owners/developers with an opportunity to alleviate a breach of planning control over a set period of time where the breach is not causing immediate harm. This will provide developers/owners to attempt to resolve the matter by either applying for retrospective planning permission or reducing the harm caused by the breach. After a set period of time if the breach has not been resolved the Council will make a decision on whether to take formal enforcement action and what action that will entail.

4.3 However when serious harm is being caused, the Council will take firm action and there will be little opportunity for the owner/developer to alleviate a breach before formal enforcement action commences.

4.4 If formal action is required by the Council it will be proportionate to the actual breach of planning control.

4.5 The Council must operate its planning enforcement activities in accordance with this policy and the wider Council Planning Policies and national planning policy. This means that in most instances:

- The Council must decide whether the breach of planning control unacceptably affects the amenity of the area.
- Action should not be taken **just** because development has started without planning permission.
- The Council does not always have to take action but the particular circumstances of the case **must** always be considered.
- It is not normal to take formal action against a minor breach of control that causes no real harm.

4.6 **But:**

- Enforcement action will be taken quickly when it is necessary.

What is 'harm?'

4.7 Harm resulting from a breach of planning control could concern amenity or highway safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows for example. Harm to the visual amenity of an area could occur for example through unauthorised work to: - a listed building, demolition within a Conservation Area or work to a protected tree. If there is not enough harm being caused then it is not in the public interest for the Council to pursue a breach of planning control further in most instances. In assessing any harm

officers will refer to the development plan and any other material planning considerations. If the breach is unlikely to be granted planning permission or would only be acceptable if subject to planning conditions then it is likely to be considered harmful and planning enforcement action will be taken.

4.8 Once the alleged breach has been investigated and it has been established that harm is being caused, action may then be taken.

4.9 This harm would **not**, for example include:

- loss of value to a neighbouring property,
- competition to another business,
- loss of an individual's view or trespass onto someone else's land.
- Violation of other legislation that is not part of planning law legislation
- Personal issues with neighbours;
- Private property rights and covenants.

4.10 It may be possible to address issues such as these by way of civil action although this is a matter for the individual to pursue and is not an area where the Council would be involved.

4.11 Where a breach involves the commission of a criminal offence such as the display of an illegal advert the Council will first write to you to require the removal of the advert and you will be given a short period of time to do so. A failure to remove the advert may result in the Council prosecuting you for the display of the advert and you will have to attend the Magistrates Court to answer a summons. If this is not the first time the Council have had to contact you regarding the offence you may not be even provided with the opportunity to remove the advert once more.

5 Who can report a breach?

5.1 Anyone who believes that a breach of planning control has occurred can make a report. All reports should be made in writing. The method which allows us to investigate the matter the fastest is by completing our online form at <https://selfservice.eden.gov.uk/renderform.aspx?t=162&k=322123F02FBBB71CE941B240AD994161859DF430> . This ensures the planning officer has detailed information to assist them in their investigation as quickly as possible. If you prefer to write by letter (Mansion House, Penrith) or e-mail (planning.services@eden.gov.uk), we will need all the information included in the online form and we will have to contact you back for further information before the investigation commences. The Enforcement Team can also be contacted by telephone between 10am and 1pm on week days (01768 817817), and especially if the potential breach is urgent, for example relating to a listed building or protected tree. You will be asked for the same information so that the form can be completed.

5.2 The information that we will require includes:-

- Location of the alleged breach
- Details of the alleged breach / unauthorised activity
- Date the alleged breach/unauthorised activity first commenced
- Name and address of the person/company carrying out the alleged breach/unauthorised activity (if known)
- Name Address, Telephone number and email address of complainant (to remain confidential)
- An explanation of the harm that it is causing the complainant specifically, and the area generally (photographs can be included to show what you mean)
- Any other relevant information e.g. previous complaints made on this site (attach further details if necessary)

5.3 Please note that the Council do not investigate anonymous complaints unless there are exceptional circumstances, such as works being carried out to demolish a listed building or unauthorised works to a TPO

5.4 Where a retrospective application for planning permission is made to regularise unauthorised development, publicity and consultation will be carried out, and people given the opportunity to comment before a decision is taken.

PLEASE NOTE

All initial complaints are dealt with in confidence and details of the complainants will not be made known without their agreement. However, the substance of the complaints themselves is not confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action and you will need to consider whether you are willing to actively assist the Council by collecting evidence and acting as a witness at an appeal or in Court. The Council's Planning Officer will explain what may be required in these cases.

6 What action can the Council take?

6.1 The Council will first determine whether it is appropriate to take enforcement action by establishing whether a breach of control has occurred. In cases where the situation is unclear a 'Planning Contravention Notice' will be served on the owner and/or occupier of the property to obtain the facts.

6.2 Where a breach of control has taken place the Council will then make an assessment of the harm caused by the breach of control.

6.3 The developer or owner of the property that is in breach of planning control will, in most circumstances, receive correspondence from the Council setting out the breach and setting out the period of time to must remedy the breach.

6.4 If the developer or land owner seeks retrospective planning permission or pre application advice through our planning advice service any decision on whether formal enforcement action should be taken or any deadline that has been imposed on them to remedy the breach will be deferred until they have received their advice or decision notice in most circumstances. This is because the advice provided or decision given will impact on what the owner wishes to do next or whether a breach still exists. However where immediate harm is being caused enforcement action might be taken regardless of any planning application or request for pre application advice.

6.5 If the owner/developer fails to remedy the breach the Council will then make a decision as to whether to take formal enforcement action. Whether action is taken depends on the type of breach and any tests that need to be satisfied before taken action. The table below set out our common planning enforcement powers, the test that is applied, what the effect of the action is and whether there is a right of appeal. Please note this table is not an exhaustive list of the powers that the Council has in dealing with planning enforcement matters.

Summary of enforcement powers

Type of breach	Legal notice	Test as to whether action to be taken	Result of legal notice	Right of appeal
Unauthorised development or material change of use	Enforcement Notice	Is it expedient to take action? (expediency is judged in reference to both local and national planning	Recipients must comply with the requirements of the notice within a set period of time after which if the	Yes Appeal must be made to the Planning Inspectorate prior to the notice coming into

		policies and any other material planning considerations)	notice has not been complied a criminal offence is committed and Council may prosecute and/or carry out direct action	effect. A period of at least 28 days is provided
	Temporary Stop Notice	Is the breach causing immediate harm or likely to cause immediate harm and it is expedient to take action	Recipients must comply with the notice immediately or criminal offence is committed	No
Non-compliance with planning condition	Breach of Condition Notice	Has there been a breach of the planning condition (it does not need to be assessed whether it is expedient but it is the Council's discretion whether a notice is issued)	Must comply with the notice within a set period of time (at least 28 days) or the recipients commit a criminal offence	No
Untidy Land	Section 215 notice	Does the condition and appearance of the land have a negative impact on the local amenity	Recipients must comply with the requirements of the notice within a set period of time after which if the notice has not been complied a criminal offence is	Yes Appeal must be to the Magistrates Court prior to the notice coming into effect. A period of at least 28 days is provided

			committed and Council may prosecute and/or carry out direct action	
Unauthorised work to listed buildings.	Immediate Prosecution or Listed Building Enforcement Notice	Have works being carried out to a listed building that impacts on its character and appearance of a building of architectural and historical interest	Unauthorised works are already a criminal offence but if the notice is not complied with it also provides the Council with the option of carrying out direct action as well	Yes Appeal must be made to the Planning Inspectorate prior to the notice coming into effect. A period of at least 28 days is provided
Unauthorised display of advertisements.	Prosecution Or Section 225A Notice	Have advertisements being erected that should have first received advertisement consent	Displaying unauthorised adverts is already a criminal offence but notice gives the Council the powers to remove the advert too.	Yes Appeal must be to the Magistrates Court prior to the notice coming into effect. A period of at least 22 days is provided

6.6 In the most serious of cases, the Council may also consider serving a Stop Notice or may apply to Court for an Injunction to prevent further harm being caused. This action requires the people responsible to stop specified activities.

6.7 Appeals to the planning inspectorate are normally dealt with by an exchange of letters known as written representations. More serious or complex cases can be dealt with by an informal hearing in front of an Inspector or at a Public Inquiry.

6.8 It should be noted that as well as investigating reported breaches of planning control we also actively undertake certain specific projects, when resources allow, for example untidy properties in town centres and taking action to promote environmental improvements. Such projects are also prioritised in accordance with the severity of their environmental impact.

7 What you can expect

7.1 Written complaints will normally be acknowledged within 3 working days of receipt. The acknowledgement will set out which officer is dealing with your report and their contact details.

7.2 Every report of a breach of planning control is different but within two months of receipt of your report it is anticipated that the officer will have investigated whether a breach of planning control exists and will explain to you what happens next. During this period the officer is likely to have checked the Council's records, visited the site and checked planning legislation to establish whether a breach exists or not. If there is no breach there will be an explanation as to why this is the case and the file will be closed. If there is a breach you will be informed what happens next and provided with approximate timescales of any planned action.

7.3 As set out earlier we can not always take action just because there is a breach and if this is the case you will be informed of the reasons why the Council can not take action prior to the file being closed.

7.4 Where action can be taken the owner/developer will be initially contacted in writing and the officer will explain the breach and provide them with a set period of time to remedy the breach of planning control. This period of time will normally be a period of two months but it will depend on the nature of the breach. At the end of this period if the breach has not been remedied the Council will decide what action needs to be taken, if any. Any set time that the owner/developer has been given to remedy the breach will normally be paused if during this period they seek either pre application advice or retrospective planning permission as set out in paragraph 7.4.

7.5 If this approach fails, the Council will then consider taking planning enforcement action. The Council is committed to using all powers it has under planning law when necessary and therefore will consider serving legal notices, prosecutions, entering land and taking direct action, seeking injunctions and any other powers available so long as those powers are proportionate to the breach of planning control that has been established.

How long will it take?

7.6 Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. If a person decides to appeal against an enforcement notice; this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases. However it is expected most cases should be closed within 6 months of being opened and all but a very few should remain open after 12 months.

7.7 Under Town and Country Planning legislation there are time limits with regard to when enforcement action can be taken. Development involving the erection of a building or structure or the change of use of a building to a dwelling is immune from enforcement action after four years from the breach of planning control. All other

changes of use of land or buildings and breaches of conditions are immune from enforcement action after ten years from the breach of planning control (where continuous). There are no time restrictions to the issue of Section 215 (untidy land) Notices or action against unauthorised works to a listed building.

7.8 The planning officer will provide you with updates at the key stages of the file progressing which can include:-

- Whether a breach has been established
- Whether the Council can take action
- If an owner/developer has been told to voluntarily remedy the breach within a set period of time
- If a legal notice has been issued and the dates relating to that notice
- If an owner/developer has appealed any notice served
- The outcome of any appeal
- If the Council has issued a summons to prosecute an owner/developer
- The outcome of any prosecution
- If the Council decides to take direct action against the owner/developer
- When a breach has been remedied
- When the file has been closed

What to do if something goes wrong

7.9 If you feel that there is unreasonable delay, or an error in the way in which an enforcement investigation is being carried out, you should contact the Planning Services Development Manager at planning.services@eden.gov.uk They will investigate the matter, review the circumstances and advise you within 14 days about what action, if any, will be taken. If a matter requires further investigation, you will be advised of this at the time.

7.10 If you are still dissatisfied with the service, then you can make a formal complaint – details of the procedure for which will be provided to you. Please note that the complaints procedure does not apply to matters which are directly related to a Council or committee decision or where there is a legal remedy or appeals process. For example if you disagree with a Council decision not to take further action against a breach of planning control as the breach is not considered harmful then a formal complaint would be the incorrect way to challenge this decision. The legal remedy in this instance would be a Judicial Review. However if you became frustrated with the speed of any investigation then a formal complaint would be appropriate.

7.11 If you made a formal complaint but remained dissatisfied with the outcome of any investigation, you may complain to the Ombudsman and information on how to do this will be given to you by the Council. The Ombudsman will not normally deal with a complaint unless it has first been through the Council's own complaint procedures and deals only with aspects concerning the conduct of the investigation.

7.12 We always welcome constructive criticism and any ideas on how we can improve Council services and at the outcome of our planning enforcement investigation we will encourage you to provide us with honest anonymous feedback. Any feedback is greatly appreciated and assists us improving the service we provide.

8 What if someone complains about you?

8.1 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it), and may have the opportunity to explain your side of the case.

8.2 If you are not involved, no action will be taken against you. If you are involved, the planning officer will in most circumstances advise you of the details of the breach and provide you with the opportunity to put it right.

8.3 Please note that if you want advice about which is the best way to remedy the breach or whether a retrospective planning permission could be granted you must seek advice through the Council's planning advice service (<https://www.eden.gov.uk/planning-and-building/planning/before-making-a-planning-application/pre-application-planning-advice-for-householders/>). This is because it is deemed to be unfair for you to receive advice that other members of the public have to pay for just because you have breached planning control.

Our advice can be tailored to your needs which could range from:-

- providing an informal opinion as to whether the breach is likely to gain retrospective planning permission
- Detailing any elements of the breach which may need to be changed to increase the chances of the breach gaining retrospective planning permission.
- Actions required to remove and/or resolve the breach of planning control .Is there an alternative solution which would suit all parties.

8.4 Your co-operation will be sought to correct the breach and a reasonable period of time will be allowed for you to do this so long as the breach is not causing immediate harm.

8.5 In some circumstances you may decide to submit a retrospective planning application, as an attempt to regularise the breach of planning control

8.6 If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance.

8.7 You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you.

8.8 If you are in any doubt about what is expected of you and decide not to receive formal advice from the Council then we strongly recommend that you seek independent legal advice as to do nothing could result in you receiving a criminal record, a fine or a bill for works that the Council had to carry out on your behalf.

9 Prosecutions and Direct Action

9.1 We can commence Court proceedings if a legal notice has not been complied with or works have been carried out to listed buildings, protected trees or constitute the display of unauthorised advertisements. We will apply two tests in cases where a prosecution appears likely, consideration of which will be done in consultation with our legal advisors: -

- The evidential test. We will not start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and that there is a reasonable prospect of conviction.
- The public interest test. We will only bring a prosecution where this is in the public interest, and other methods of seeking compliance with a Notice have failed. Court proceedings can take a considerable time, and further action may still be required to seek compliance with a Notice. A prosecution may be the Council's last resort, as the Council aims to resolve the breach of planning control and the harm this has caused to the neighbourhood, and not just to seek to punish those responsible for the breach of control.

9.2 Direct Action will be our preferred method over prosecutions in most instances. The benefit of taking direct action over prosecuting is that it ensures the breach is remedied. When we decide to take direct action the Council, or contractors on our behalf, enter the land and carry out the requirements that were stated in the legal notice. Following the completion of the works we will seek to recover our reasonable costs from the landowner/developer. Where we cannot immediately recover costs we will register a charge on the property with the Land Registry.

10. Monitoring Planning Conditions and Planning Obligations (section106 agreements)

Conditions on Planning Permissions

10.1 Planning permission may be granted subject to certain conditions. Some of these may require that details or action be taken before any development takes place. These are pre-development conditions. Others may require action at a later stage during development or when development is complete. It is important that these conditions are complied with and discharged at the appropriate time in order that the permitted development proceeds in accordance with the approved plans and details. The reason the Council does this is because if planning conditions are not complied at the correct time then when a property is sold in the future the non compliance of a planning condition can at best lead to delays in the sale of the property and, at worst, lead to the collapse of the sale if it is discovered that old planning permissions have become null and void.

10.2 The Council's Enforcement Team will pro-actively monitor pre-development conditions on residential developments. Other conditions will be monitored re-actively, that is when we receive complaints that a condition may have been breached. The Council will monitor compliance with conditions as follows:

Pre-development conditions

10.3 These conditions require details or action before any work commences on the development. Failure to comply with pre-development conditions before development commences may invalidate the planning permission and/or lead to enforcement action. Case law has defined two types of pre-development conditions:

- Conditions Precedent: where failure to discharge these conditions before starting development means that they can never be discharged, e.g. demolishing a building before undertaking a bat survey and devising appropriate mitigation if necessary; and
- Ordinary Conditions: which may state that details should be submitted before commencement but can still be discharged after commencement, e.g. submission of landscaping details and those approved details to be implemented in the first planting season after completion of the building works.

10.4 If there are outstanding pre-development conditions then we will take action as follows:

- If the outstanding details can be approved without invalidating the whole planning permission, then we will require that these be submitted within a certain time. The developer will be informed that any further work would be at risk until these details are approved. If no details are submitted then we may serve a formal notice, usually a Breach of Condition Notice or Temporary Stop Notice, to ensure compliance.

- If it is considered that the pre-development condition is a Condition Precedent, then it cannot be discharged retrospectively; this means that the planning permission does not authorise the works and we may require all further works to cease on site until a new planning application is received, granted and appropriate conditions discharged. A Temporary Stop Notice followed by an Enforcement Notice and Stop Notice may also be served to ensure that no further work takes place, if it is considered expedient to do so.

10.5 Usually developments require building regulation approval as well as planning permission. From building control records we can check when certain developments have started, where the Council is carrying out the Building Control Service. Where an Approved Inspector is used for the Building Control Service we would check on site for works commencing. We will check that all pre-development conditions attached to the planning permission have been discharged and complied.

Conditions to be discharged during development

10.6 Compliance with conditions will be monitored as development progresses either by the case officer or the Enforcement Team to ensure that work progresses in accordance with approved plans and details. For example approval of materials and landscaping schemes.

Conditions following completion

10.7 Once the development is complete, monitoring of conditions would usually be as a result of a complaint received, for example that hours of operation of the approved business are not in accordance with the hours permitted by a condition to the planning permission. This would be investigated as an alleged breach of planning control and may lead to a Temporary Stop Notice, Breach of Condition Notice or Enforcement Notice being served.

10.8 If a decision is required as to whether a development is lawful, and has been built in accordance with a planning permission, an owner or occupier can apply for a Certificate of Lawful Development, which if granted would prove lawfulness.

Planning Obligations (section 106 agreements)

10.9 Planning obligations are Planning Agreements or Unilateral Undertakings that relate to a development and aim to make the development acceptable in planning terms. These are also known as Section 106 Agreements and are made between the Local Planning Authority and a developer. Unilateral undertakings are made by the developer. Both aim to make proposed development acceptable and accord with planning policies. Such obligations may restrict development or use of land, may require certain operations to be carried out, or may require payments to be made to the Authority.

10.10 The Council monitors the planning obligations to ensure that operations are carried out and payments made within the required timescales. Planning obligations run with the land so if the terms of an obligation are not complied with any enforcement action may be taken against persons acquiring an interest in the land.

Should there be a breach of a formal obligation there are three methods of enforcement open to the Council:

- We can apply to the Court for an Injunction. The Council must prepare a high level of evidence to convince a judge that an injunction is necessary. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment. However please note that if the legal agreement was to provide a contribution towards affordable housing our only remedy will be to seek an injunction and therefore if you do not pay any instalments once prompted the Council will have little choice but to seek an injunction.
- We can enter the land to complete works and will seek to recover costs where certain operations or works have not been carried out, but must give at least 21 days notice of our intention.
- We may place a charge on the land in order to assist the Council in proceedings to recover costs incurred.

11. Enforcement against Advertisements, Listed Buildings and Protected Trees

Advertisements

11.1 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 2007. Advertisements are divided into three main groups: -

- Those advertisements that the regulations exclude from local planning authority direct control.
- Those that have 'deemed consent' so that the planning authority's consent is not required provided the advertisement meets certain criteria.
- Those for which the local planning authority's express consent is always needed.

11.2 The rules are complicated and seek to control amongst other things the height, size and illumination of advertisements; advertisers should seek professional advice before displaying their adverts. This advice can be provided from our planners through our planning advice service (<https://www.eden.gov.uk/planning-and-building/planning/before-making-a-planning-application/pre-application-planning-advice-for-householders/>). Our advice can confirm whether consent is required, whether consent is likely to be granted and liaise with other bodies where necessary such as Cumbria Highways.

11.3 It is an offence to display an advert without the proper consent required and it is open to the Council to take a prosecution in the Magistrates Court for an offence under the Planning Acts and Advertisement Regulations. An advert that has been displayed for more than ten years is immune from enforcement action but could be subject to a discontinuance notice.

11.4 The planning enforcement team will pro-actively target unauthorised roadside advertising, where we will seek to remove unauthorised advertisements adjoining the roads within Eden District outside the National Parks and which are causing harm to the amenity or public safety of the area and have a significant adverse visual impact.

11.5 The Council will in most instances provide the business with the opportunity to remedy the breach if it is a first offence. The business might seek pre application advice or advertisement consent during any set period provided to them to remedy the breach. An application to display an advertisement is decided in the interests of amenity and public safety. The continued display of an advertisement without consent, or after consent has been refused, may well result in prosecution. On conviction a fine may be imposed by the Court with an additional daily fine on conviction of a continuing offence.

11.6 The Council can remove or obliterate any placard or poster displayed illegally. We are required to give at least two day's notice in writing, or other appropriate

format, to anyone we can identify as being responsible for displaying unauthorised placards or posters that it is our intention to do this. The Council can also remove advertisement display structures providing it has first served a section 225A Notice ("Removal Notice").

Listed Buildings

11.7 The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Listed Buildings and Conservation Areas legislation.

11.8 It is an offence under the legislation to carry out unauthorised works to a listed building which would affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a substantial fine, and/or a term of imprisonment. There is no time limit upon the Council to pursue Listed Building Enforcement Action.

11.9 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal to the Planning Inspectorate but failure to comply with the Notice is an offence, which is liable to a substantial fine on summary conviction.

11.10 Often people can get confused whether certain types of building works require listed building consent or whether the land that they are considering carrying out works is listed due to its close proximity to listed buildings. We always recommend to seek advice using our planning advice service to avoid inadvertently committing a criminal offence (<https://www.eden.gov.uk/planning-and-building/planning/before-making-a-planning-application/pre-application-planning-advice-for-householders/>).

Protected Trees

11.11 Under the Town and Country Planning legislation the local planning authority has the right to make provision for the preservation of trees in their area by making Tree Preservation Orders. Any unauthorised works to such protected trees is an offence, which is liable, on summary conviction, to a substantial fine under the legislation.

11.12 Certain trees in Conservation Areas are also afforded a degree of protection under the planning legislation. Unauthorised work to and/or removal of such trees constitutes an offence. However the Council will exercise discretion in deciding whether or not it is appropriate to pursue prosecution.

11.13 In addition to the criminal penalties for unauthorised works to protected trees, the landowner is also under a duty to replace a protected tree that has been removed. If this is not complied with the Council may serve a Tree Replacement Notice requiring a new tree to be planted or the Council may do the work and recover costs from the landowner.

12 Conclusion

12.1 It is the Council's policy to provide a reliable, efficient and good quality corporate planning enforcement service, maximising the use of the resources available. The Planning Services Team will respond to complaints received, investigate, and take appropriate action having regard to material planning considerations. When resources allow, the planning enforcement team will also take a pro-active approach and use enforcement powers to seek environmental improvements.

12.2 The Planning Services Team can be contacted at Mansion House, Penrith CA11 7YG, telephone 01768 817817 or email planning.services@eden.gov.uk