

Agenda

Planning and Transportation Policy Working Group Meeting

Date: Thursday, 25 January 2024

Time 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT*

Membership:

Councillors Monique Bonney (Vice-Chair), Kieran Golding, Alastair Gould (Chair), Mike Henderson, James Hunt, Elliott Jayes, Richard Palmer, Julien Speed, Karen Watson, Mike Whiting and Tony Winckless.

Quorum = 3

Pages

Information about this meeting

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website on 24 January 2024.

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1. Emergency Evacuation Procedure

Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (a) The fire alarm is a continuous loud ringing. In the event that a fire

drill is planned during the meeting, the Chair will advise of this.

- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
 - (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
 - (d) Anyone unable to use the stairs should make themselves known during this agenda item.
2. Apologies for Absence
 3. Minutes

To approve the [Minutes](#) of the Meeting held on 23 November 2023 (Minute Nos. 428 - 434) as a correct record.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPis) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

Part A Report for Recommendation to the Policy & Resources Committee

5. Enforcement Local Plan - draft for consultation

5 - 30

Issued on Monday, 15 January 2024

The reports included in Part I of this agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact **DEMOCRATIC SERVICES** at democraticservices@swale.gov.uk. To find out more about the work of the this meeting please visit www.swale.gov.uk

**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

Planning and Transportation Policy Working Group	
Meeting Date	25 th January 2024
Report Title	Enforcement Local Plan – draft for consultation
EMT Lead	Emma Wiggins Director of Regeneration and Neighbourhoods
Head of Service	Joanne Johnson Head of Regeneration, Economic Development and Property and Interim Head of Planning
Lead Officer	Paul Casey Planning Enforcement Team Leader
Classification	Open
Recommendations	<ol style="list-style-type: none">1. That members consider the draft Enforcement Local Plan 2024 - 27 for consultation, and propose any relevant amendments.2. That members recommend the launch of a consultation period on the draft Plan.

1 Purpose of Report and Executive Summary

- 1.1 To seek input in the emerging Enforcement Local Plan and approve the launch of a consultation period.

2 Background

- 2.1 The current Planning Enforcement Strategy was adopted in 2021. This paper sets out plans to replace the document with an Enforcement Local Plan.
- 2.2 Plans are also in place to refresh the overarching Corporate Enforcement Strategy. Officers are ensuring there is dialogue between the two documents.

3 Proposals

- 3.1 That members consider the draft Enforcement Local Plan 2024 - 27 for consultation, and propose any relevant amendments.
- 3.2. That members recommend the launch of a consultation period on the draft Plan.

4 Alternative Options Considered and Rejected

- 4.1 Members could consider not consulting on the proposed policy. This would not accord with good governance or give interested parties an opportunity to

comment on the policy, make representations about it and improve it. Therefore, this option is not recommended.

- 4.2 Members could consider not refreshing the strategy until a later point. This is not recommended given the time officers have been able to invest, and the opportunity currently presented to align the Enforcement Local Plan with the Corporate Plan period.

5 Consultation Undertaken or Proposed

- 5.1 The draft Enforcement Local Plan will be considered by Planning and Transportation Policy Working Group, and subsequently by Policy and Resources Committee prior to consultation launch.
- 5.2 Consultees will include Ward, Parish, Town Councillors and members of the public. Promotion of the consultation will be supported by the Council’s Communications team.
- 5.3 Intended dates for the consultation period are 26th February 2024 – 21st April 2024.

6 Implications

Issue	Implications
Corporate Plan	The service is an important function to preserve the integrity of, and public confidence in, the planning system by ensuring that development accords with the rules. The draft Corporate Plan is currently out for consultation and the Enforcement Local Plan will reflect the corporate approach.
Financial, Resource and Property	The delivery and implementation of the Enforcement Local Plan is within in the allocated revenue budget.
Legal, Statutory and Procurement	The framework basis for enforcement is set out within the consultation draft.
Crime and Disorder	The Enforcement Local Plan will support the rectification of breaches, and on occasions dovetails with the work of other agencies, such as Kent Police.
Environment and Climate/Ecological Emergency	No implications identified.
Health and Wellbeing	No implications identified.
Safeguarding of Children, Young People and Vulnerable Adults	No implications identified.

Risk Management and Health and Safety	No implications identified.
Equality and Diversity	No implications identified.
Privacy and Data Protection	Data protection and privacy rules are set out in the consultation draft.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Draft Enforcement Local Plan

8 Background Papers

[Planning Enforcement Strategy 2021.](#)

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Enforcement Local Plan 2024

Planning Enforcement

Foreword by Cllr Tim Gibson, Leader of Swale Borough Council

SWALE ENFORCEMENT LOCAL PLAN

INTRODUCTION

The [National Planning Policy Framework](#) says in Paragraph 59 that

“Effective enforcement is important to maintain 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. They 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 appropriate”

This Enforcement Local Plan will, in accordance with the NPPF, set out how the Council will approach enforcement, how and when action will be taken, and the occasions when action will not be taken.

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Foreword by Cllr Tim Gibson, Leader of Swale
Borough Council (tbc)

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1.INTRODUCTION

1.1 Importance of an Enforcement Local Plan

This Enforcement Local Plan (ELP) is being produced in line with the recommendation in the National Planning Policy Framework (NPPF) to ensure that enforcement remains a clear and transparent process serving the local community and ensuring proper planning borough wide. This ELP will guide how Swale Borough Council will approach and handle planning enforcement issues. It will set out what can and cannot be investigated, priorities for enforcement action, what courses of action are available, and will also set out targets for responding to enquiries at key stages within the enforcement process. This ELP will be reviewed on a four yearly basis – or more frequently as required - to ensure that it remains consistent with any changes in national guidance, policy and legislation and any changes to key Council documents such as the Corporate Plan.

1.2 Principles of Planning Enforcement

Planning enforcement aims to investigate planning breaches where development has been carried out without the benefit of the necessary planning permissions. Swale Borough Council adheres to the principles of good enforcement which include:

- **Proportionality** – enforcement action will be proportionate to the risks and seriousness of any breach including any actual or potential harm caused by the breach and the economic impact of averting the breach. Priority will be given towards unauthorised development that is causing immediate, serious, and irreversible harm. Swale Borough Council will consider a full range of enforcement powers which includes negotiation and retrospective planning applications. Where appropriate, formal action will be taken.
- **Helpfulness** - where it should be possible for all breaches of control to be quickly remedied, officers will give developers or landowners the opportunity to quickly rectify matters. Correspondence will identify the officer dealing with the matter and will provide contact details. Abusive language or behaviour will not be tolerated.
- **Targeting of enforcement action** – we will focus enforcement action on the most serious cases with the greatest potential to cause harm and will recognise that it is not possible to prioritise all issues of non-compliance or take action against breaches that are considered to cause little or no harm.
- **Consistency** – consistency does not mean uniformity; however, a similar approach will be taken in similar circumstances with the appropriate exercise of professional judgement.
- **Transparency of how enforcement operates and what can be expected** – where non-compliance has been identified, officers will state what must be done to remedy the breach, clearly explaining the reasoning behind the decision, giving reasonable timescales for compliance and providing clear guidance on the next steps if those in breach do not comply. To improve transparency and accountability, Swale Borough Council’s website will be further developed to show formal enforcement actions being taken and the progress being made. A copy of the enforcement register and an enforcement notice search facility will be added to the planning applications website.
- **Accountability for actions** – enforcement officers will abide by the Enforcement Local Plan at all times during their working practices.

2.0 BREACHES OF PLANNING CONTROL

2.1 What is a breach of planning control?

“The carrying out of development without the required planning permission or failing to comply with a condition or limitation subject to which planning permission has been granted.”(s.171A)

Development carried out without planning permission is not ordinarily a criminal offence. There are exceptions for Listed Buildings, trees subject to a Tree Preservation Order (TPO) and advertisements displayed without consent. All other development only becomes a criminal offence if there is non-compliance following formal enforcement action. The 1990 Act defines formal enforcement action as the issue of an enforcement notice or the service of a breach of condition notice.

2.2 Types of Development

All development as defined by reference to Section 55 of the 1990 Act requires planning permission. There are two main types.

‘Deemed’ planning permission

Some types of development can be carried out without having to apply for written planning permission, and this is referred to as ‘Permitted Development.’ In these circumstances legislation is deemed to have granted planning permission if certain criteria are met as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (As amended). In addition the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (As amended) grants deemed consent for advertisements that satisfy the relevant criteria and conditions.

‘Express’ planning permission

All development that is not granted consent by deemed planning permission requires ‘express’ consent from the local planning authority. This requires a formal written planning application. Most planning applications are subject to public notification to nearby residents, relevant consultees and Parish or Town Councils, and are available for comment from any member of the public. More information about this process is available on the Swale Borough Council website.

2.3 Immunity from enforcement

Section 171B of the 1990 Act restricts the Council's ability to take enforcement action after certain periods of time have lapsed. These time periods are dependent on the type of breach. After the specified period, development without planning permission becomes lawful and therefore enforcement action cannot be taken.

- For building, engineering, mining or other operations, action cannot be taken after **four** years beginning with the date on which operations were substantially completed.
- For a change of use of a building to a single dwelling house, action cannot be taken after **four** years beginning with the date of the breach.
- For any other breach, action cannot be taken after **ten** years beginning with the date of the breach, including a continuous breach of planning conditions.
- There is no time limit in respect of listed buildings and enforcement action can be taken at any time.

The landowner has the option of applying for a certificate of lawful development to regularise the development.

The serving of an enforcement notice in respect of a particular development 'stops the clock' in relation to the time limit.

These circumstances do not, however, apply if the development was deliberately concealed (see 2.4 below).

2.4 Concealment

The Localism Act 2011 introduced section 171BA into the 1990 Act. This power permits the Council to take enforcement action against deliberate concealment of breaches of planning control after the usual time limit for enforcement action has expired. The Council can, within six months of a breach coming to their attention, apply to the magistrate's court for a planning enforcement order. If such an order is granted by the magistrates, this allows the Council an additional twelve months in which to take enforcement action

2.5 Expediency

Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what action should be taken to remedy the breach and whether it is considered expedient to do so. One of the options is to invite a retrospective planning application. This enables the development to be assessed on its merits taking into account local planning policies and any other material considerations. If an application is not submitted or submitted and refused it is then at the Council's discretion to use enforcement powers. In accordance with section 172 of the 1990 Act 'expediency' is a test of whether the unauthorised development is causing serious harm and is assessed with reference to national and local planning policies and to any other material considerations (eg, amenity, design) to justify formal action.

If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, taking formal enforcement action would be unlikely. Taking enforcement action must be in the public interest.

Enforcement action will not be taken simply because a breach has occurred or to punish those responsible for the breach regardless of whether the breach was carried out deliberately or in ignorance.

It will still be in the owner's best interest to regularise the breach. This can be a serious issue when it comes to selling or re-mortgaging a property, as evidence to show permission has been obtained for all extensions and alterations is often required by the purchaser's solicitor or the mortgage company.

Decisions to take enforcement action under the current scheme of delegation or not to take any further action will be relayed to local ward members, Planning Committee Chair and Vice Chair.

3.0 REPORTING ALLEGED BREACHES

3.1 Reporting a breach

Anyone concerned about a development or activity they believe may be unauthorised, is encouraged to report this directly to the Council. The easiest way to report a breach is through the online form at www.swale.gov.uk/planning-and-regeneration/planning-breaches-and-enforcement/enforcement.

Before submitting a complaint, customers are advised to check whether the particular development or activity already benefits from planning permission. This information can be found on the Council's website at <https://pa.midkent.gov.uk/online-applications/>.

Complaints will be investigated in accordance with the Planning Enforcement Priorities at Appendix 2. Anonymous complaints or complaints with limited or incorrect details will not normally be investigated, however, officers have full discretion in this regard and will make an informed choice whether to investigate based on the nature of the complaint. This is to ensure that public resources are not spent unnecessarily investigating hoax or malicious complaints and due to the importance of being able to fully assess the impact of the development on the complainant as part of the investigation.

The subject of a complaint will be public information; however, the identity of the complainant will be kept confidential. It is possible that the person who is the subject of the complaint may draw their own conclusions about the source. In some cases, a court may declare that personal information has to be made available; however, this is very unusual. If the case is referred to another department within the Council personal information will be passed on but would remain confidential.

Swale Borough Council cannot investigate a complaint based on speculation, information or suggestion regarding what may be planned and where no actual breach of planning control has taken place.

3.2 Types of development that will be investigated

There are a number of matters that do not fall within planning control and therefore no planning enforcement action can be taken. Often this is where other legislation covers and controls the matter, such as Highway, Environmental Health and Building Control or external organisations such as the Health and Safety Executive or Police

The following are examples of what the planning service can investigate:

- Carrying out development where no planning permission has been sought.
- Carrying out development which deviates from that which has been granted planning permission.
- Breach of conditions which were imposed under an existing planning permission.
- Unauthorised change of use
- Unauthorised display of advertisements
- Unauthorised works to a Listed Building
- Unauthorised works to a protected tree

- Unauthorised works in a conservation area or a protected area such as an Area of Outstanding Beauty
- Derelict buildings and untidy residential properties (condition adversely affects the amenity of the area)
- Unauthorised works to protected trees and hedgerows.

3.3 What we cannot investigate

- Internal works unless they relate to Listed Buildings
- Obstruction of highway, parking of vehicles on the road or grass verges
- Matters controlled under building regulations such as dangerous structures
- Private issues between neighbours (that don't involve material planning considerations)
- Opposition to business competition
- Non-material planning considerations such as loss of property value or loss of view
- High hedges
- Noise, Smoke, dust or vibration unless it is in breach of a planning condition
- Land ownership or boundary issues
- Party wall disputes
- Blocking of designated rights of way
- Breaches of property deeds or covenants
- Damage to property
- Health and safety and site security
- Untidy land, for example an unkempt lawn where there is a minimal effect on amenity

Matters relating to the highway and public footpaths are dealt with by Kent County Council.

Reports about noise, smoke and dust should be reported to Environmental Health.

Boundary issues and party wall disputes are private matters.

Concerns about Health and Safety and site security should be reported to the Health and Safety Executive (HSE)

Dangerous structures are inspected by STG Building Control Partnership

On receipt of reports which relate to any of the above, advice on how to contact the correct department or agency will be given, but if the report suggests that there is an immediate threat to health and safety of the public we will endeavor to contact the relevant authority on behalf of the complainant.

Other works that are not classed as breaches of planning control:

- Clearing of land of vegetation unless it is the subject of a planning condition or protected under a Tree Preservation Order

- Fences or other means of enclosure adjacent to the highway 1m in height or 2m in all other cases unless permitted development rights have been removed , subject of an Article 4 Direction or a Listed Building
- Parking of a caravan within a residential property if it is used incidentally or ancillary to the main dwelling.
- Conversion of garages or outbuildings to residential if is they are used incidentally or ancillary to the main dwelling.
- Operating of business from home where the residential use remains the main use and there is no serious harmful impact on neighbouring amenity.

If a sufficiently harmful breach of planning control is confirmed then officers will initially try to resolve the issue through negotiation and informal action, however, in some cases due to the level of harm it may be considered appropriate to take immediate formal enforcement action, without any initial contact with the contravener.

3.4 Information needed

In order to investigate an alleged breach, it is important that the Council has as much information as possible. Breaches can be investigated more rapidly when sufficient information is provided up-front. To ensure that relevant information is included in a complaint, this list highlights the key pieces of information that should be submitted to aid the investigation:

- An accurate address of the site including the postcode; if the address is unclear or the site is particularly unusual, an annotated map of the site may be more appropriate or customers can provide an exact location using what3words at www.what3words.com;
- The enforcement complaint; a detailed description of the development or activity.
- If available, approximate dimensions of the development.
- Any other information to assist the enquiry; a 30-day log of activities if it relates to a change of use complaint, photos of the development/ proof of use;
- If possible, name and address of person/company involved in suspected breach
- Approximate time when the suspected breach commenced and if necessary, the stage of building works.

4.0 ENFORCEMENT POWERS AND PROCESSES

4.1 Site visits and rights of entry

An officer will initially carry out desktop research to establish the fact of the complaint and determine whether a site visit is necessary. Not every site that is the subject of a complaint will need to be visited. A visit will only be made to establish facts and investigate the matter further. The officer will, wherever necessary, take measurements and photographs of the development and activity taking place.

There are situations where more than an initial site visit would be required to evidence a breach such as an alleged change of use. In most cases, if a visit is required an officer will visit the site under investigation within five working days of receiving the complaint, unless it relates to a Listed Building or TPO which we will aim to visit within two working days. If the allegation relates to minor breaches such as A-Boards or advertisements an investigation will be started within 10 working days. Due to the nature of planning enforcement work, most site visits will be made without prior arrangement.

Planning Enforcement Officers will carry approved identification which will be produced for inspection on request. The Council's Planning Enforcement Officers have extensive powers of entry which allow them to investigate planning enforcement enquiries. It may also be necessary for the officer to bring third parties onto the land to assist or advise them in carrying out their duties. Where entry is refused, a warrant to enter the land may be obtained. Prosecution will also be considered where there is deliberate obstruction of the officer carrying out their duties. Abusive or threatening behaviour towards staff will not be tolerated and will be logged and reported to the Police.

4.2 What is considered?

Whilst establishing whether enforcement action should be taken, a number of elements are considered, including but not limited to:

- Whether the complaint relates to a non-planning matter.
- Whether the enquiry falls within the Council's planning boundaries
- Whether the alleged breach falls within the constraints and conditions of permitted development and is therefore lawful development.
- How long the development/change of use has been present.

After considering all these factors, if it is considered that there has been a breach of planning control officers will then establish whether it is expedient to act upon the breach. There may also be situations where another department within the Council is better placed to deal with the issue raised and in that case Planning Enforcement Officers will refer the complaint to the relevant department.

4.3 Formal Action

If a breach is deemed to be sufficiently harmful the Council will make every attempt to encourage those responsible for a breach to resolve the issue voluntarily. If informal negotiations have been unsuccessful, and the Council feels that the planning breach has significant harmful effects, formal enforcement action will usually be taken. There are numerous ways in which formal action can be taken, and this depends on the type, seriousness and harmfulness of the breach. In many circumstances dealing with planning enforcement can be a lengthy and complex process (see Appendix 1). Planning enforcement notices issued by the Council are kept on the Planning Register and are available to view by the public on request. They will shortly be available on the Council's website.

4.4 Appeals

Enforcement Notices can be appealed. Guidance on Enforcement Appeals can be found [here](#). Once an appeal has been submitted in respect of an Enforcement Appeal then any enforcement action must be suspended until such time as a decision is issued in relation to the appeal. If an appeal is not issued within the required time period (usually 28 days) the Enforcement Notice takes effect, and the subject of the Notice is required to comply with the requirements of the Notice.

Appeals on Enforcement Notices can be made on seven grounds as follows:

- Planning permission should be granted for the development
- There has been no breach of planning control
- The breach alleged in the Enforcement Notice has not occurred as a matter of fact
- It is too late for the Council to take action under the four- and ten- year rules
- The Notice was not properly served
- The requirements of the Notice are excessive

There is a role for people who are not one of the main appeal parties but are interested in the outcome. Neighbours and complainants are notified that an enforcement appeal is taking place but they will not be sent copies of representations made by the appellant, the Local Planning Authority and other interested parties. A letter is sent to these parties to inform them of the appeal, which contains information on where to inspect the appeal documents and how to make representations to the planning inspectorate.

Prosecution

Prosecution is a potential outcome of the enforcement process, and the Council will pursue a prosecution where circumstances warrant such action. Before commencing legal proceedings, the Council will need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. The Council will also seek to recover costs in connection with the enforcement action.

4.5 What happens if you are the subject of a complaint?

It is understood that in some cases a breach of planning control is not intentional and can be the result of a misunderstanding or being unaware of the planning requirements. If you are contacted about an alleged breach of planning control, you will be informed of what the allegation is, but not who made it.

If a breach is established, you will be clearly advised of the details of the breach and how to put it right. You will be advised not to do any more work and that any further work that is done would be at your risk as you may have to undo the work. Most breaches are resolved through negotiation and discussion, and we encourage you to cooperate positively. Do not delay in responding to our advice as it is in the interests of all parties if an identified breach can be addressed at an early stage.

If no positive progress is made, then the matter will be reported for enforcement action and formal notices may be served if it is expedient to do so. If you are served with a formal notice, you will be given the details of the breach, the reasons for the action, steps required to resolve the issue and a time period for compliance.

5.0 PERFORMANCE STANDARDS AND PRIORITIES

5.1 Priorities

The Council receives a large number of complaints of alleged breaches of planning control and therefore cases need to be prioritised based on level of harm. Resources need to be focused on the most serious breaches of planning control as these are likely to cause most harm to the public or the environment. Once a complaint has been received, the level of harm will be assessed by an officer.

In assessing the degree of harm officers will use a desk-based research approach; however, in some cases a site visit will be required to identify the breach if it cannot be established from desktop research, which will form the first stage of the investigation of the complaint.

Each complaint will be allocated a score to assess the level of harm and whether the harmful effects are escalating or stable, whether there is serious effect or harm to neighbours or residential amenity, where the development is located e.g., is it in an AONB, Conservation Area or flood risk area and so on.

This process will be subject to review and will:

- Determine whether a case can be closed without any further investigation. The complainant will be notified that the development causes insufficient harm to warrant any further action.
- Identify those cases that will score more highly, and which will need to be investigated further. Thus, ensuring that the most harmful cases are dealt with as soon as possible.

The score of an alleged breach may alter during an investigation and if circumstances change, or new information is obtained this will be reviewed. Where there is a change of use, a 30-day log will need to be submitted showing the activity before the case is investigated further unless substantial harm can be shown. If the person reporting the breach is unwilling to do this, then this may result in the Council not being able to pursue the investigation further due to there not being enough evidence.

All retrospective refused planning applications; Listed Building and Tree Protection Order complaints and complaints from Ward Members / MPs will automatically receive a full investigation.

5.2 Contacting the complainant and our performance standards.

Swale Borough Council recognises the importance of keeping individuals up to date with our progress. Some investigations can take longer than others due to lengthy and complex negotiations and / or statutory time periods in serving notices, appeals and prosecutions. Enforcement Officers will:

- Acknowledge complaints that are a potential breach within five working days, which will include the investigating officer's contact details.
- Provide a detailed response to the complainant within 21 working days. However, if a detailed response cannot be given then an update will be provided which will include a date by when the full response will be given.

Complainants are asked to wait to be contacted by the Enforcement Officer about the progress of an enquiry. To effectively focus on investigations, it will not be possible for the Enforcement Team to respond to complainant requests for updates outside of these times.

The performance of the Planning Enforcement function is monitored corporately on the basis of responding to at least 95% of all reports with a 5-day deadline. Following the detailed response within 21 days each case will be reviewed on a case-by-case basis based on the target dates for each step of action to be completed.

Key performance indicators for the service include:

- Number of complaints received and response times
- Number of complaints received where:
 - No breach is determined
 - Breach is resolved without resorting to formal enforcement action
 - Formal enforcement action is taken
- Number of Enforcement Notices/Stop Notices, Planning Contravention Notices, Injunctions and prosecutions issued
- Number of successful and unsuccessful enforcement appeals
- Outstanding cases (six months plus)
- 5 and 21 day deadlines
- Percentage of cases closed or actioned within 90 days

5.3 Monitoring of Sites

It is not possible to monitor all developments being carried out within Swale.

It is the responsibility of developers to comply with planning conditions and to determine when planning permission is required. The Council relies on public information, enquiries from Councillors, MPs and Parish Councils, and planning officers proactively monitoring sites to raise potential breaches of planning control. The Council informally monitors sites through site visits, and the planning enforcement team also relies on other Council departments to raise potential breaches.

Options available to tackle possible breaches of planning control	Brief explanation
No formal action	This is appropriate for when there is no breach of planning control or when the impact of the breach is not considered expedient for formal enforcement action.
Monitor site	This is appropriate for when further evidence or investigation is required to establish an alleged breach.
De-minimus	These are minor works that have been carried out, which are considered so minor that they would practically fall outside the scope of planning. Whether works are de-minimus is a decision made by the Council on a case-by-case basis.
Allow time to remedy	Time may be given to remedy the breach where there is no significant harm and it is not serious enough to warrant immediate action. Therefore the opportunity will be given to resolve the breach.
Retrospective planning application	A retrospective planning application allows for an application to be submitted after the development has been carried out. In some cases a retrospective planning application can be requested, when it is considered as an appropriate way forward to regularise the situation. A retrospective application is dealt with in the same way as any other planning application.
Lawful Development Certificate	A lawful development certificate application can be submitted to regularise the development/use after the expiry of time period for taking enforcement action.
Planning Contravention Notice (PCN)	A PCN is a discretionary procedure, and is a way for the Council to find out more information about an alleged planning breach to establish what, if any enforcement action should be taken. It usually involves a series of questions about operations being carried out, or about how the breach may be satisfactorily remedied. Failure to complete, or to provide false or misleading information is a criminal offence.
Section 330 Notice	Similar to a PCN, this notice is a way for the Council to find out more information about the occupier's interest in the land.

Planning Enforcement Order	A magistrates' court may only make this order. It can be made where a person has deliberately concealed an unauthorised development and enables the Council to take action withstanding the usual time limits that may have expired. This order is used to extend the amount of time the Council can take formal action, the 'enforcement year'. This gives the Council time to decide the most appropriate course of action.
Enforcement Notice	This is the most common type of notice and instructs the recipient to carry out steps to remedy the breach. The notice will specify what the alleged breach is, and prescriptive steps, with specific timescales, that must be taken to remedy it. Failure to comply with the requirements of an Enforcement notice within the time period given is a criminal offence.
Listed Building Enforcement Notice	This notice is similar to an enforcement notice, and will specify the unauthorised works to the relevant listed building. It can be served on its own, where listed building consent was required but not planning permission, and can also be served in conjunction with a Planning Enforcement notice.
Breach of Condition Notice (BCN)	A BCN may be served where there has been a breach of condition that is attached to an extant planning permission. It requires the recipient to comply with the specified planning conditions. Failure to comply with a BCN within the time period given is a criminal offence.
Stop Notice	A stop notice can only be served with an Enforcement notice and they aim to prohibit any or all of the activities which comprise the alleged breach. They are used when the Council feels that it is expedient that any relevant activity should cease before the deadline for compliance in the related notice.
Temporary Stop Notice	Temporary stop notices can prohibit a range of activities relating to a planning breach, if it is expedient to do so. Unlike a stop notice, a temporary stop notice can be issued immediately without having to wait for an enforcement notice to be issued. They expire after 28 days from issue.
Advertisements	The display of advertisements that do not meet the criteria set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 are illegal unless they have been granted express consent.
Discontinuance Notice	This notice can require that the display of a particular advertisement which has deemed consent is discontinued. This action may be taken if the Council feels that the advertisement causes substantial harm to the amenity of the locality or danger to members of the public.

Section 225 Notice	This notice enables the Council to require the removal of any placard or poster displayed illegally. The notice requires the owner or occupier to take specified measures to prevent or reduce the frequency of unauthorised advertisements in a specified time limit.
Section 215 (Untidy Land) Notice	This notice is served when land requires to be cleaned up because its condition adversely affects the amenity of the area. It can also require the demolition of derelict buildings. The notice sets out the steps needed to be taken and time limits in which they must be carried out.
Direct action	The Council has the option to take direct action to remedy a planning breach if an Enforcement notice or a section 215 notice has not been complied with. The Council may carry out works required in the notice and seek to recover those costs from the landowner.
Injunction	An injunction can be obtained if the Council need to restrain a breach of planning control, and it is considered expedient for any actual or apprehended breach of planning control to be restrained. This is done by applying to the High Court or County Court. An injunction is a last resort attempt, and will only be applied for if ordinary enforcement powers have been, or will be unlikely to stop unauthorised activities.
Enforced sale	An enforced sale is used when direct action has been taken and the Council is owed money for carrying out the work. If a charge has been placed on the property the Council has the ability to sell the property in order to recover its costs. This is a last resort and would only be used when other repayment methods have been exhausted.
Prosecution	The Council will consider commencing a prosecution in the Courts when there has been a failure to comply with any of the above notices and will recover costs.
Confiscation Orders under the Proceeds of Crime Act 2002 (POCA)	This is used when the defendant has benefitted financially from a breach of planning control and enforcement action has been taken. It allows the Council to bring an action to recover the money they have gained as a result of disregarding enforcement action.

Appendix 2 – Planning Enforcement Priorities (Initial Visit response times)

Category	Harm	Description	Visit Response times
Category 1	Serious Harm	Unauthorised demolition of Listed Buildings, ancient monuments and demolition of Locally Listed Buildings	1 day / same day
		Felling or lopping of a preserved tree or tree in a Conservation Area	
		Development or breach of conditions likely to cause serious harm or danger to people or amenity	
		Unauthorised work in a Conservation Area likely to lead to permanent harm	
		Where development has started and is subject to planning conditions relating to either contamination, archaeology, nature conservation or trees which are required to be agreed before development commences	
		Development which is unsafe and hazardous	
Category 2	Significant and widespread harm to local amenity	Unauthorised development causing significant or widespread harm	3 days
		Breaches of planning conditions causing serious nuisance to adjoining residents	
		Breaches of advertisement control causing a serious impact on amenity	
		Unauthorised pitching of caravans	
Category 3	Matters causing demonstrable harm or where timely		5 days
		Breaches likely to be resolved quickly by negotiation and/or the submission of a retrospective application	

	action is expedient		
Category 4	Other – including Breaches of a technical nature and not in significant conflict with planning policy	Breaches which are temporary and unlikely to result in any long-term harm Advertisements not otherwise included above Breaches of other planning conditions Other changes of use High Hedges	10 days

Contacting Swale Borough Council

The customer Service Centre deals with all enquiries across the Council, it should be your first stop when contacting us.

Call 01795 417850.

Copies of this report are available on the council website.

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