

DARTFORD

BOROUGH COUNCIL

Dartford Planning Enforcement Plan

2019

CONTENTS PAGE

1.0	Introduction
2.0	The purpose of planning enforcement
3.0	Breaches of planning control
4.0	What is NOT a breach of planning control?
5.0	Making a complaint alleging a breach of planning control
6.0	How the Council prioritises complaints
7.0	The investigation process
8.0	Powers of entry
9.0	The Regulation of Investigatory Powers Act 2000
10.0	Accuracy of Information
11.0	Possible outcomes of an Investigation
12.0	Formal powers
13.0	Compliance with formal enforcement action
14.0	Prosecutions
15.0	Proactive Compliance
16.0	Section 106 Agreements
17.0	Community Infrastructure Levy
18.0	What you can expect from the Planning Enforcement Service?
19.0	Data Protection
20.0	Freedom of Information
21.0	Review of this Local Enforcement Plan
22.0	Further Information

Dartford Planning Enforcement Plan 2019

1. Introduction

In February 2019, the National Planning Policy Framework (“the NPPF”) was updated to take account of changes within the planning system since the original framework was published in March 2012. Dartford Borough Council (as local planning authority) has reviewed and updated its planning enforcement procedures to reflect these changes.

Paragraph 58 of the NPPF states:-

“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 local enforcement plan describes the purpose of the Council’s planning enforcement service and how that service will be delivered to the residents of the Borough of Dartford. This local enforcement plan aims to provide an efficient enforcement service, which is focused on protecting the community against harmful development in a way that is clear, consistent and proportionate to the harm being caused by any breaches identified. In developing this local enforcement plan, the Council had regard to the [Regulators’ Code](#).

2. The purpose of planning enforcement

The planning system seeks to ensure that the right type of development happens in the right place at the right time without causing demonstrable harm to the local amenity. Through the implementation of local and neighbourhood plans, the planning system plays a key role in identifying:-

- a) what development is needed;
- b) where the development is needed;
- c) which areas need to be protected and/or enhanced;
- d) what type of development is considered suitable

The objective of effective planning enforcement is to address any harm caused by a breach of planning control rather than to punish those involved. Harmful development is that which has an unacceptable effect on public amenity or the existing use of land and buildings, which merit protection in the public interest.

The response to an alleged breach of planning control is at the discretion of the Council and will be related to the nature and degree of any demonstrable harm caused. Whilst in no way condoning breaches, the Council will not take enforcement action solely to regularise development, which is otherwise acceptable.

The key test in considering whether enforcement action is appropriate is:-

“If an application for planning permission had been made, would it have been refused, or only granted subject to controlling conditions?”

As referred to above, planning enforcement is a discretionary power that the Council will only use if deemed necessary. The Council will investigate alleged breaches of planning control to determine whether a breach has occurred, and if it has, to choose the most appropriate course

Dartford Planning Enforcement Plan 2019

of action to take to remedy those breaches. The onus is on a negotiated resolution of a breach, but where this cannot be achieved, or becomes protracted, the Council has at its disposal a wide range of enforcement powers, which can be used to remedy the harmful effects of identified breaches of control

3. Breaches of planning control

A breach is when the planning rules are broken. Normally, this is because new buildings are put up or the use of land is materially changed without planning permission. Common breaches include:

- Unauthorised works to protected trees
- Unauthorised works to listed buildings
- Failure to comply with a high hedges remediation notice
- Demolition in conservation areas without the necessary consent
- Illegal advertisements
- Unauthorised building works & material changes of use
- Untidy land & buildings which seriously harm the local amenity of an area
- Non-compliance with conditions attached to planning permissions
- Departures from approved details

Investigations into alleged planning control breaches are conducted in accordance with the relevant PACE Codes of Practice as set out in the Police and Criminal Evidence Act 1984 (as amended).

4. What is NOT a breach of planning control?

- disputes over private rights of way
- breaches of restrictive covenants referred to on property deeds
- disputes over boundaries or the ownership or control of land
- technical building issues relating to building standards or a building warrant
- matters relating to the management of a site or the behaviour of contractors
- parking disputes regarding contractor vehicles
- road safety matters
- reporting abandoned vehicles
- environmental or building safety
- boundary or party wall disputes

These are classed as private matters between the parties involved. If disputes cannot be resolved through agreement between the parties, independent advice should be sought from the Citizens Advice Bureau or a solicitor.

5. Making a complaint alleging a breach of planning control

The Council relies on members of the public, town and parish councils and other parties to bring suspected breaches of planning control to its attention. Anyone who suspects a breach of planning control, is encouraged to initially check the [Public Access for planning](#) to ascertain whether a permission or consent has been granted for the property, and if so, to view the approved details and conditions. Details of conservation areas, listed buildings and protected trees, together with a wide range of planning information relating to individual properties, can also be accessed via a [My Property](#) search on the Council's website.

Dartford Planning Enforcement Plan 2019

If you can't access the Council's website, assistance can be provided please call our Customer Services on 01322 343434.

Complaints relating to planning enforcement matters should be submitted in writing via the form on the Council's website: [Report a Planning Breach](#).

The Council will make reasonable adjustments to assist complainants if they have a disability that prevents them from making their complaint in writing. Please contact Planning.enforcement@dartford.gov.uk.

If a disability prevents you from making your suggestion or complaint in writing, you can call our Customer Services on 01322 343434. We welcome calls via [NGT Relay](#)

As a minimum, the following information should be provided:

- Name, address, telephone number and e-mail address;
- A precise description of the suspected breach and site address;
- Other relevant background information, such as photographs;
- The harm caused by the suspected breach;
- The action the Council is being asked take.

Anonymity makes it more difficult for the Council to properly investigate and understand complaints, and to provide appropriate responses or redress. The Council may record and investigate anonymous complaints, but it encourages names and addresses, so it can report back (see 'Confidentiality' below).

Complaints will be acknowledged in writing, within 3 days of receipt, giving contact details for the enforcement team. If we cannot deal with a complaint we will, if appropriate, forward it to the relevant Council department, or the relevant external agency, or advise you of the relevant body you should contact.

Complainants will be updated in writing, of key stages/events in the investigation e.g. the decision on action, submission of a retrospective application, or the authorisation of enforcement action. If the Council concludes that there is no breach or decides not to take action the reasons will be clearly explained to complainants.

The Council will ensure that voluntary resolution of a breach does not become unreasonably protracted, and will set and monitor agreed and specified timescales for action.

Anonymous complaints: these will only be accepted in exceptional circumstances, where the information provided clearly describes the suspected breach and demonstrates an unacceptable effect on public amenity or the existing use of land and buildings.

Repeat complaints: these will only be investigated where new information is submitted or it is demonstrated that a change in circumstances has occurred since closure of the previous case.

Confidentiality: The identity of the person making the complaint is normally kept confidential, unless the Council is required to release it by law. If a case proceeds to an appeal or a prosecution and if the complainant's evidence is part of the case, then anonymity cannot be guaranteed.

6. How the Council prioritises complaints

Complaints are investigated in the order of priority. If a breach is identified, the timescale for resolution is likely to extend beyond the periods referred to below. This can be several months or years, if formal notices are served and legal proceedings ensue.

Complaints are prioritised in accordance with demonstrable harm and the public interest. The priority status of a registered complaint may change following investigation.

Category 1: High priority

This covers suspected breaches of planning control, where irreversible and serious damage to the environment or public amenity, would result and likely to include:

- unauthorised works to listed buildings;
- unauthorised works to protected trees;
- unauthorised works to protected hedgerows;
- demolition works in a conservation area;
- serious traffic safety hazards;
- contamination and or pollution;
- unauthorised caravan sites or other development where there is actual or imminent residential occupation;
- extensive development in the countryside;
- works on development sites in breach of conditions which seek to protect trees; ecology, archaeology or another irreplaceable asset.

On being made aware of a suspected breach, the Council will aim to investigate and reach a decision on the expediency of taking enforcement action, within 5 working days (of the date it becomes aware of the breach).

Category 2: Medium priority

This covers less immediate, yet still serious and harmful breaches and likely to include:

- building work in progress;
- activities causing serious harm (i.e. affects more than one person, creates a highway or other hazard/danger);
- non-compliance with planning conditions, particularly, pre-commencement conditions;
- conditions which cannot be addressed at a later date (e.g. slab levels).

On being made aware of a suspected breach, the Council will aim to investigate and reach a decision on the expediency of taking enforcement action, within 10 working days (of the date it becomes aware of the breach).

Category 3: Low priority

This covers breaches that are likely to remain stable and that are unlikely to give rise to any severe or lasting harm to amenities and likely to include:

- unsightly sites;

Dartford Planning Enforcement Plan 2019

- erection of satellite dishes;
- erection of fences;
- completed Minor building works;
- unauthorised display of advertisements;
- non-compliance with certain planning conditions.

On being made aware of a suspected breach, the Council will aim to investigate and reach a decision on the expediency of taking enforcement action, within 25 working days (of the date it becomes aware of the breach).

7. The investigation process

The purpose of the investigation is to collect all relevant facts to establish whether a breach of planning control has occurred and if so, the nature and degree of harm caused by that breach.

The investigation will, in most instances, involve an initial desktop exercise including:

- research of the planning history of the site;
- identification of any special designations or planning constraints e.g. listed buildings, tree preservation orders;
- where applicable, the search of other Council or publicly held information;
- speaking to the person responsible for the suspected breach;
- liaising with other Council departments and external agencies (where applicable).

Enforcement officers will only visit a site when the information required cannot otherwise be collected through a desktop exercise, or when a site visit will assist in reaching a planning judgement. Joint site visits with other Council departments and external agencies will be undertaken, when deemed appropriate.

Enforcement officers will work closely with other parts of the Council and all relevant external agencies to share information and to ensure that best use is made of the available powers.

8. Powers of entry and associated powers are important tools that facilitate the protection of the public from harm, enable the effective investigation of offences and allow for the necessary enforcement of the law.

The Council has certain legal rights of entry when investigating breaches of planning control. These rights are exercised by enforcement officers, duly authorised in writing by the Council, to enter land.

Entry to land can be demanded as 'of right', however, the Council will aim to give reasonable notice of intended entry. When entry is required to a building used as a dwellinghouse, the Council must give not less than 24 hours' notice of intended entry.

The Council will obtain a warrant from the Magistrates' Court:

- if entry is refused;
- where no response is received by the Council to its notice of intended entry;
- in cases of urgency.

Enforcement officers will aim to ensure their site visits are thorough the first time round. Repeat visits will only be made, if circumstances have changed or to check compliance.

9. The Regulation of Investigatory Powers Act 2000 (RIPA) is concerned with the regulation of surveillance by public authorities in the conduct of their legitimate business. In the context of planning control, the Council can use directed surveillance only for the purpose of preventing and detecting conduct, which constitutes one or more criminal offences which are punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months of imprisonment.

Covert surveillance is defined in RIPA as any surveillance which is carried out in a manner calculated to ensure that the persons the subject of the surveillance, are unaware that it is or may be taking place. Surveillance includes monitoring, observing or listening to persons, their movements, their conversations, or other activities or communication.

Dartford Planning Enforcement Plan 2019

RIPA provides for the **authorisation** (by a Magistrate) of covert surveillance where that surveillance is likely to result in the obtaining of private information about a person (see the [Council's Policy Statement - Regulation of Investigatory Powers Act 2000 \(RIPA\) \(as amended\)](#)).

General observation forms part of the everyday activities relating to planning enforcement. Enforcement officers might overtly observe and then visit premises as part of their enforcement role. Such observation may also involve the use of equipment, merely to reinforce normal sensory perception, such as binoculars, or the use of cameras, where this does not involve systematic surveillance of an individual. Sometimes, in order to assess the nature or degree of harm caused, enforcement officers may also need to visit the complainant and/or adjoining neighbours. These general observations are not constrained by RIPA.

Low-level activity such as obtaining information via the DVLA or from HM Land Registry as to the ownership of a property, will not usually be constrained by RIPA.

In some cases, enforcement officers may need to rely on complainants to collect evidence in the form of 'daily diary sheets'. RIPA will not usually apply where complainants are asked to keep diaries of incidents relating to an alleged breach. However, in certain circumstances, a RIPA authorisation may be required, if it is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation).

The internet and in particular, social networking sites, can provide useful information for enforcement officers carrying out investigations. However, such use may potentially fall within the definition of covert directed surveillance. This is likely to result in the breaching of an individual's Article 8 rights under the European Convention of Human Rights (the right to privacy). Repeat viewing of 'open source' sites may constitute directed surveillance on a case by case basis e.g. if someone is being monitored through their Facebook profile for a period of time and a record of the information is kept for later analysis, this is likely to require a RIPA authorisation.

10. Accuracy of Information

Effective enforcement action relies on accurate information about an alleged breach of planning control. In many instances, comprehensive information about the planning history of the site and the alleged breach of control is readily available from the Council's own records, site visits and other publicly available information.

The Council may serve a section 330¹ **requisition for information**, to require information about interests in land.

Where the required information relating to an alleged breach cannot be collected by the means referred to above or voluntarily from the person suspected of the breach, the Council will consider the issue of a **Planning Contravention Notice** requiring the recipient to provide information about the alleged breach of planning control – such as when a building was erected, or what it is currently used for (a Planning Contravention Notice is not available for use in respect of suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees).

¹ Town and Country Planning Act 1990 (as amended)

Dartford Planning Enforcement Plan 2019

A Planning Contravention Notice may only be served when it appears to the Council, that a breach of planning control may have occurred.

Any factual information given in reply to a Planning Contravention Notice will be part of the relevant information the Council will examine in deciding whether a breach of control has occurred and, if so, what action may be appropriate to deal with it. The information may support a decision that enforcement action is appropriate or it may reveal a different use or activity from what had been suspected or it may show that there is no breach of control. If the reply to a Planning Contravention Notice creates doubt about the use of the land, or any activity taking place on it, a site inspection will usually be essential to resolve the doubt and ensure that any subsequent enforcement decision is well-founded.

The Council may also use a Planning Contravention Notice to invite its recipient to respond constructively to the Council, about how any suspected breach of planning control may be satisfactorily remedied.

It is an offence for any person served with a Planning Contravention Notice:

- to fail to reply to it within 21 days;
- to continue to fail to provide the required information;
- to knowingly or recklessly making false or misleading statements in response.

The Council will consider prosecution as soon it has evidence of an offence. When investigating the facts, prior to initiating any legal proceedings, the Council will have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984 with regard to the cautioning of alleged offenders.

11. Possible outcomes of an Investigation

Once a complaint has been investigated and all relevant information collected, the Council will decide on the course of action to be taken. In doing so, it will take into account all relevant legislation, national planning guidance as well as local planning policies and guidance. As referred to above, enforcement is a discretionary power and any action will be considered against tests of wider public interest and fairness.

No breach is established because the alleged breach has not occurred or has ceased, or it is permitted development under planning legislation, or has planning permission, or it is outside the jurisdiction of planning control. Where it is considered that the matter falls within the control of another Council service such as Environmental Health (licensing, noise and pollution) or Kent County Council (waste, minerals, highways), the complaint will be forwarded accordingly.

The development is immune from enforcement action and therefore lawful for planning purposes, because it has existed for a certain period of time:-

- four or more years: for building works, starting from the time they were substantially completed and also the use of a building as a dwelling;
- ten or more years: for all other developments, including breaches of planning conditions on extant permissions.

Where there is doubt about the length of time involved, applications may be made to the Council for a formal determination through the certificate of lawfulness process.

NB: There is no period of immunity for breaches of listed building control.

Dartford Planning Enforcement Plan 2019

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement (see above) 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.

Within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the Council's knowledge, the Council may make an application to the Magistrates' Court for a Planning Enforcement Order. A copy of the application will be served on the owner and occupier of the land and on anyone else with an interest in the land, which, in the Council'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 has a right to appear before, and be heard by, the Court hearing the application.

If the Magistrates' Court makes a planning enforcement order, subject to waiting 22 days beginning with the day on which the Court's decision to make the order is given, the Council may at any time with a period of 12 months, take enforcement action in respect of the apparent breach, or any of the matters constituting the apparent breach.

There is a breach, but it does not cause harm - The fact that a breach has occurred does not automatically mean that formal action will be required. Some breaches of planning control are so minor that they are of no consequence, or do not cause any harm, so that if an application were to be submitted it would be unconditionally approved. In these instances, the Council will use its discretionary power not to take further action as it would not serve a useful purpose or be a good use of its resources.

Retrospective planning applications - In circumstances where the Council considers that a retrospective planning application is the appropriate way forward to regularise a breach of planning control, except for those cases where it is considered that there is no prospect of permission being granted, the owner or occupier of the land or other interested party will be invited to submit an application within the timescales stipulated by the Council as follows:

- undertake to the Council within 14 days of the date of its invitation, that a retrospective planning application will be submitted within a further 28 days or within such other timescale agreed with the Council e.g. the submission of an application may take more than 28 days where there is a need to engage an agent to draft plans and provide supporting information.

If an undertaking is not received, or the application is not submitted by the target date without a satisfactory explanation, the Council will consider the expediency of taking enforcement action.

If officers feel confident that retrospective planning permission will not be granted, they are unlikely to suggest the submission of a retrospective planning application. However, if an application is submitted, the Council is bound to make a decision and may postpone enforcement action while the application is assessed.

It is important to note that:

- although the Council may invite an application, it cannot be assumed that permission will be granted;
- an enforcement notice may also be issued in relation to other elements of the unauthorised development.

Planning considerations taken into account by the Council are in the context of the public interest and not personal or private interests. Where applicable, the Council will impose conditions to address the identified harm.

Dartford Planning Enforcement Plan 2019

A retrospective planning application allows for the planning merits of the breach to be fully and openly considered, in the same way as an application for proposed development. In addition, it provides an opportunity for local residents and the parish/town council to make its views known and for those views, together with any technical comments received, to be taken into account in the determination of the application.

If the application is approved, the development becomes authorised and no further action is required.

A person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event. This can either be by means of a retrospective planning application or by means of an appeal against an enforcement notice on ground that planning permission ought to be granted or the condition or limitation concerned ought to be discharged (the ground (a) appeal).

The Council may decline to determine a retrospective planning application if an enforcement notice has previously been issued. No appeal under ground (a) may be made if an enforcement notice is issued within the time allowed for determination of a retrospective planning application.

Informal resolution - in securing the co-operation of the owner, occupier of the land or any other interested party in agreeing a strategy acceptable to the Council to secure compliance with planning control, simple discussion and negotiations to find a solution, can lead to a quicker and more advantageous resolution, than the use of formal powers.

The Council considers that informal resolution can benefit from its [pre-application advice](#) service, which offers a written response. Advice given by officers does not indicate any formal decision by the Council and is given without prejudice to the consideration of a planning application.

Formal Enforcement Action will be considered where:

- informal discussions/negotiations have been unsuccessful;
- officers feel confident that retrospective planning permission will not be granted;
- planning permission, including retrospective planning permission, has been refused.

In all cases of formal enforcement action, the action taken will be proportionate to the breach and the harm caused and the key question is whether planning permission, if sought, would be refused or only granted subject to conditions to control any actual or potential harm. Enforcement officers will closely liaise with planning officers.

In high priority cases (see section 6 above), the Council will consider urgent enforcement action in order to prevent further harmful activity.

Temporary Stop Notices allows the Council to act very quickly to address some breaches of planning control, such as unauthorised activities, where it is expedient to do so. Temporary Stop Notices may prohibit a range of activities, including those that take place on the land intermittently or seasonally e.g. requiring an activity to cease, or reduce or minimise the level of activity. The 'immediate' cessation of activities will provide for the shutting down and making safe of an activity.

A Temporary Stop Notice may not prohibit the use of a building as a dwelling house.

On being satisfied that there has been a breach of planning control and that 'it is expedient that the activity which amounts to the breach is stopped immediately', the Council may serve a Temporary Stop Notice, prohibiting only what is essential to safeguard amenity or public

Dartford Planning Enforcement Plan 2019

safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area. The Temporary Stop Notice will require the immediate cessation of the works or use, for a period of 28 days, to enable the harm to be assessed and an informed decision to be taken by the Council, on further action.

Before deciding to serve a Temporary Stop Notice, the Council may choose to discuss, whenever practicable, with the person carrying on the activity whether there is any alternative means of operation, which would overcome the objections to it in an environmentally and legally acceptable way.

It is an offence to contravene a Temporary Stop Notice and the Council will consider prosecution as soon it has evidence of an offence. When investigating the facts, prior to initiating any legal proceedings, the Council will have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984, with regard to the cautioning of alleged offenders.

Direct action - the first resort for compliance with an enforcement notice is for the landowner or other responsible party to comply with the notice. If they chose not to do so, despite being given very clear extended deadlines by the Council to carry out the requisite work themselves, the Council has the power to take direct action i.e. to enter the land and take the steps required by the enforcement notice.

Direct action may be taken in circumstances where the Council considers it to be a necessary and proportionate response to the harm caused by the breach of planning control and where the Council is satisfied that taking direct action will not have a disproportionate impact upon affected individuals or communities. Direct action may be taken either in isolation of or in conjunction with prosecution/injunction action.

In light of the social, physical and financial issues surrounding the use of direct action, the following provides details of the procedure/considerations for undertaking such action and the process by which the Council will recover the costs of this action.

1. Before deciding on direct action, an assessment will be undertaken as to its appropriateness and viability. The main considerations include:
 - the level of harm caused by the breach of planning control and its impact on surrounding occupiers and communities;
 - the personal circumstances of any persons likely to be affected by taking direct action;
 - whether the Council's homelessness duties to persons affected by taking direct action are engaged;
 - an assessment of the overall cost of taking direct action and the prospects of recovering the costs incurred;
 - any risks to the health and safety of Council employees, contractors, the owner and/or occupier(s) of the property and/or any other party that may be affected by undertaking direct action;
 - any other considerations including the Council's reputation, or its current priorities with regards to its authority to take direct action.
2. Where direct action is likely to affect an individual's home, business or livelihood, the Council will give at least 28 days' written notice of its intention to take direct action. In exceptional circumstances, it may not be appropriate for the Council to give advanced notification.

Dartford Planning Enforcement Plan 2019

3. Where applicable, the Council will liaise with other services including the police, bailiffs and/or a locksmith.
4. Only those works necessary to fulfil the requirements of the enforcement notice will be undertaken by the Council.
5. Recovery of costs:
 - the Council will take all reasonable steps to recover from the landowner, the expenses incurred in taking direct action (the expenses recoverable will include such sums as the Council considers to be reasonable in respect of its establishment charges)²;
 - the expenses recoverable will be entered as a charge against the land, in the Register of Local Land Charges - the charge will take effect on the date the Council completes the direct action (this charge is binding on successive owner(s) of the land to which the enforcement notice relates, until cancelled by the Council);
 - an invoice will be sent to the landowner;
 - if the invoice is settled in full, within the period specified by the Council, or within such other period as may be agreed with the Council, the charge in the Register of Local Land Charges will be cancelled;
 - if the invoice is not paid in full within the period specified by the Council, or within such other period as may be agreed with the Council, the matter will be pursued as a debt in the courts;
 - If the debt remains unpaid, the Council will consider registering the charge with HM Land Registry.

12. Formal powers

There is a range of formal powers available to the Council, to be used at its discretion, depending on the circumstances of a particular case. In most cases, there is a right of appeal by the recipient of a notice, either to the Planning Inspectorate or through the Courts. A summary of the main powers is listed below:-

Planning Contravention Notice:	Requires information to be submitted in respect of suspected unauthorised development (see section 10 above).
Temporary Stop Notice:	Requires the immediate cessation of specified activities for a period of 28 days to enable investigations and negotiations to take place and, if appropriate, further action will be taken (see section 11 above).
Breach of Condition Notice:	To secure compliance with conditions attached to a planning permission.
S.215 Notices:	Used to address unsightly land issues, where this has a negative effect on the wider area.
Enforcement Notice:	Specifies the steps to be taken to address a breach of planning control and breaches of listed

² Section 36 - Local Government Act 36 - An establishment charge is the reasonable charge that a local authority incurs for administering the direct action procedure

Dartford Planning Enforcement Plan 2019

	building control (known as a Listed Building Enforcement Notice).
Stop Notice:	Can be used with an enforcement notice to bring about an immediate cessation of activity.
Planning Enforcement Orders:	Where there is evidence that a breach has been deliberately concealed (see section 11 above).
Prosecutions:	A failure to comply with one of the above notices is a criminal offence.
Injunctions:	Used as a pre-emptive measure in exceptional circumstances to prevent unauthorised development taking place.
Article 4 Directions:	Restricts the scope of permitted development rights in relation to either a particular area or site, or a particular type of development anywhere in the Borough of Dartford. Where an article 4 direction is in effect, a planning application may be required for development that would otherwise have been permitted development. Article 4 directions are used to control works that could threaten the character of an area of acknowledged importance, such as a conservation area.
Urgent Works' Notices:	To secure the preservation of an unoccupied listed building, by securing works urgently necessary to keep it wind and weatherproof, safe from collapse, or secure from theft or vandalism.
Repairs Notices:	To secure the preservation of a listed building by requiring works necessary to address its poor state of repair.
Replanting Notices:	To require the planting of trees or hedgerows which have been removed without consent.
Advertisement Control:	Advertisement control is secured by a prosecution of the offence of displaying an unauthorised advertisement.
Unauthorised works to listed buildings, trees and hedgerows:	A criminal offence, reflecting the fact that the harm caused is often irreparable. In addition to the Council's ability to require remedial works, there is also the option of a criminal prosecution.
CIL Stop Notice	To require development/ activity to cease where the Community Infrastructure Levy has not been paid (see section 17 below).

13. Compliance with formal enforcement action

Formal enforcement action usually involves a requirement to carry out certain steps to remedy a breach within a specified period. The Council will monitor and seek compliance. An extension of time for compliance will only be granted where the Council is satisfied that there are genuine reasons why compliance has not been achieved, such as weather conditions, personal circumstances or other matters outside of the individual's control.

Where an extension of time is granted, a phased timetable for compliance will be agreed with the individual and monitored by regular site visits, if necessary. On being satisfied that compliance has been achieved, the Council will confirm this in writing to the individual concerned and where applicable, complainants and other interested parties. Conversely, where compliance has not been achieved, the Council will consider what action it should take, having regard to the following:

- 1: A prosecution for failing to comply with the terms of a notice;
- 2: Undertaking direct or default action (the Council has the power to enter the land and carry out the steps set out in the notice and recharge the cost of doing so);
- 3: The obtaining of an injunction to require compliance with the terms of a notice.

In most cases, Option 1 will be pursued, following a formal taped interview under caution, in accordance with the relevant PACE Codes of Practice, as set out in the Police and Criminal Evidence Act 1984 (as amended).

14. Prosecutions

It is not the function of the Council to decide whether a person is guilty of a criminal offence, but to make an assessment about whether it is appropriate to present a case for the court to consider. The Council's assessment of any case is not in any sense a finding of, or implication of, any guilt or criminal conduct. A finding of guilt can only be made by a court.

The Council will use its discretionary powers in deciding whether to prosecute and it will have full regard to the [Code for Prosecutors](#). The more serious the offence, the more likely it is that a prosecution will be recommended in order to protect the public interest and the local amenity.

The following factors will be taken into account when arriving at a decision whether to instigate a prosecution- all material and relevant facts will be taken into consideration:

- Is there sufficient evidence to provide a realistic prospect of a conviction and is a conviction likely to result in a significant penalty?
- The seriousness of the offence and the significance of the harm caused, including whether any feature altered or destroyed can be replaced, remediated against or replicated.
- Whether the offence is a result of a deliberate, reckless or negligent act or alternatively, whether it is the result of a genuine mistake or misunderstanding.
- Has the alleged offender offered or taken appropriate remedial action?
- Are there grounds to believe that the offence is likely to be continued or repeated e.g. is there a history of persistent breaches?
- The offence, although not serious in itself, cumulatively causes serious harm.
- Where appropriate, the age and evidence of the state of health of the alleged offender.
- For breaches of advertisement control - has the Council refused or, if consent were sought, would refusal be a likely outcome?

Dartford Planning Enforcement Plan 2019

In support of a prosecution and/or direct action, the Council will seek an order to recover its costs. Where there is evidence that the alleged offender has accrued significant financial benefit from the breach of planning control, the Council, in conjunction with a prosecution, will consider making a Court application, under the Proceeds of Crime Act 2002 (as amended), for the recovery of any financial gain.

15. Proactive Compliance

In addition to reacting to complaints concerning suspected breaches of planning control, a proactive approach can prevent some breaches from occurring or lead to their early detection before they have become fully established. The Council recognises the importance of compliance with planning permissions and other consents. The Council also recognises where failure to comply with the approved details and/or the conditions imposed on a planning permission can undermine the very reasons for granting permission or imposing planning conditions. As such, the Council does not condone significant breaches of planning control and will actively pursue such breaches to a suitable conclusion, in order to protect the local amenity and maintain public confidence in the planning system.

How will the Council monitor and secure compliance on planning permissions?

- On decision notices, we will identify those conditions which need to be met, prior to commencement, and those that require action before or on completion and/or occupation;
- In our dealings with developers and their agents, we will work proactively to ensure compliance with approved details, conditions and s106s. In particular, when determining applications to discharge conditions and/or non-material minor amendments, we will remind developers of any conditions which remain outstanding;
- We will liaise across other Council services, in particular those relating to building regulations, street numbering and council tax concerning the information they hold on the commencement, completion and occupation of developments;
- On selected cases, we will compare the approved planning details with those submitted with the subsequent building regulation application to ascertain consistency;
- We will visit identified sites to confirm compliance with approved details and conditions and where necessary, liaise with Building Control officers, on selected cases, to gain the benefit of their periodic site inspections as a development progresses;
- In the case of conditions which cannot be retrospectively met, such as those relating to archaeology, ecology, trees or slab levels, we will consider using Temporary Stop Notices to prohibit further activity, unless immediate appropriate remedial action is taken by the developer;

If a negotiated resolution cannot be reached, we will make use of breach of condition notices and/or enforcement notices and/or prosecution, where necessary, to secure compliance with planning conditions and approved details.

16. Section 106 Agreements

Planning obligations under Section 106 of the Town and Country Planning Act 1990 (as amended), commonly known as s106s agreements or S106s, are a mechanism which make a development proposal acceptable in planning terms, that would not otherwise be acceptable. They are focused on site-specific mitigation of the impact of development. S106s are often referred to as 'developer contributions'.

If the s106 is not complied with, it is enforceable against the person that entered into the obligation and any subsequent owner. The s106 can be enforced by injunction.

Dartford Planning Enforcement Plan 2019

In case of a breach of the obligation, the Council can take direct action and recover its expenses.

Unless specified in the s106, there is no requirement for the person that entered into the obligation to notify the Council of the various stages of the development or for any associated checks by enforcement officers. Whilst the onus for compliance is on the person that entered into the obligation, proactive action by the Council will encourage and enable compliance to ensure that the development remains acceptable, leading to a reduction in the number of complaints. In order to achieve the long-term aim, this may result in an agreed extension to the required compliance period.

In order to be proactive, the Council operates a risk-based approach in deciding where resources are to be targeted to ensure that they have the maximum effect.

Priority will be given to the following:-

- Where significant works to listed buildings are involved;
- Off-site and on-site works required with regard to the public health, highway safety and amenity of residents.
- Obligations relating to ecological issues
- Non-compliance once the development has been completed¹⁶

17. Community Infrastructure Levy

The Community Infrastructure Levy (CIL) is a charge on new development, to contribute to funding infrastructure within the Borough of Dartford. Normally, this requires planning permission from the Council (as local planning authority), the Planning Inspectorate, or the Secretary of State on appeal. CIL may also be payable on permitted development and development which is the subject of a lawful development certificate, depending on the circumstances.

The Council is the 'levy charging authority' and the 'collecting authority'.

For further details on when CIL is payable and non-chargeable (exempt) developments, see the [Ministry of Housing, Communities and Local Government guidance](#).

CIL (as set out in the liability notice), is payable on commencement of development.

Anyone involved in a development may take on the liability to pay e.g. the developer who has applied for planning permission or the development's major landowner. Where no one has assumed liability to pay the CIL, the liability will automatically default to the landowner(s) and payment becomes due as soon as development commences.

Liability to pay the CIL can also default to the landowner(s) where the collecting authority has been unable to recover the CIL from the party that assumed liability for the CIL, despite the collecting authority making all reasonable efforts. In the circumstance, the collecting authority may issue a default liability notice on the landowner(s).

A **reminder notice** may be served by the collecting authority, on the party liable for the CIL, at any time after the CIL becomes due.

Dartford Planning Enforcement Plan 2019

Enforcement measures – CIL non-payment³ - The collecting authority has a broad set of enforcement powers. It is for the collecting authority to determine what, if any, enforcement action should be taken to ensure payment.

Where there are problems in collecting the CIL, the collecting authority may impose a **surcharge(s) and interest**.

In cases of persistent non-compliance, the collecting authority may take more direct action to recover the amount due.

Stop Notice - Where development has started and the CIL has not been paid and it is considered expedient to prohibit the continuance of the development or any specified activity on the site until payment is made, a Community Infrastructure Levy Stop Notice (**CIL Stop Notice**) may be served by the collecting authority.

Before serving a CIL Stop Notice, the collecting authority will first issue a written warning (a **warning notice**) to the person liable to pay the amount, the landowner(s), occupiers and all those who the collecting authority considers will be affected by the CIL Stop Notice. The collecting authority will also display the warning notice on the site.

If the amount due remains unpaid, the collecting authority will issue the CIL Stop Notice which will prohibit development with immediate effect.

The CIL Stop Notice has effect from the date specified in the notice, until the date it is withdrawn by the collecting authority, on receipt in full, of the unpaid CIL.

The CIL Stop Notice does not prohibit any works which are necessary in the interests of health and safety.

It is an offence to contravene a CIL Stop Notice (which includes causing or permitting the contravention). The collecting authority will consider **prosecution** as soon it has evidence of an offence. When investigating the facts, prior to initiating any legal proceedings, the collecting authority will have regard to the provisions of sections 66 and 67(9) of the Police and Criminal Evidence Act 1984, with regard to the cautioning of alleged offenders.

Injunction - The collecting authority may apply to the County Court or High Court for an injunction if it considers it necessary or expedient to restrain any actual or apprehended breach of a CIL Stop Notice.

Applying for a Liability Order - The collecting authority may, after issuing a reminder notice to the party liable for the CIL, apply to a Magistrates' Court to make a liability order. The Court must make the liability order if it is satisfied that the CIL has become payable and has not been paid. The collecting authority may seek to recover its costs in obtaining the liability order.

Distress (asset seizure) – Where a liability order has been made, the collecting authority may levy the CIL by distress and/or sale of goods of the debtor against whom the liability order was made. Asset seizure includes land, but excludes any clothing, bedding, furniture, household equipment or provisions which are necessary for satisfying the basic domestic needs of the debtor and his family.

Commitment to Prison - Where one or more of the enforcement measures referred to above have been exhausted and the collecting authority can demonstrate that recovery measures

³ Community infrastructure Levy Regulations 2010 (as amended)

Dartford Planning Enforcement Plan 2019

have been unsuccessful, it may apply to the Magistrates' Court for the issue of a warrant committing the debtor to prison, for up to 3 months.

Applying for a Charging Order - Where a liability order is made and more than £2000 of CIL is still owed, then the collecting authority may apply to the Magistrates' Court for a charging order on assets e.g. land owned by the debtor or such other assets as defined in section 2 of the Charging Orders Act 1979.

Insolvency - Where a liability order has been made against a debtor who is an individual, the amount due is deemed to be a debt for the purposes of section 267 of the Insolvency Act 1986 (grounds of creditor's petition).

Where a liability order has been made against a debtor which is a company, the amount due is deemed to be a debt for the purposes of section 122(1)(f) (winding up of companies by the court) or, as the case may be, 221(5)(b) (winding up of unregistered companies) of the Insolvency Act 1986.

Recovery in a court of competent jurisdiction - As an alternative, where CIL is not paid and a liability order has not been made, the collecting authority may recover the amount due in the County or High Court.

Enforcing as a Local Land Charge – Subject to prior written notice to the debtor, including site notices etc. and the consent of the County Court to enforcement of the CIL debt by a local land charge, where the CIL owed exceeds £2000, the collecting authority may secure payment by way of a local land charge over the debtor's land, as an alternative to pursuing distress (assets seizure) or a charging order against the debtor.

18. What you can expect from the Planning Enforcement Service?

In General

- Everyone (complainants and those persons suspected of a breach) will receive the same standard of courteous and impartial professional service at all times;
- We will deal with breaches of planning control in a manner reflecting the degree of harm caused and in accordance with the priorities set out above;
- Proven breaches which cause significant harm will be vigorously pursued, and where necessary, we will take formal action appropriate and commensurate to the breach and follow this through to a suitable conclusion.

Persons suspected of a breach of planning control

- We will write to the owner/occupier/interested party and state clearly the alleged breaches of planning control that have been identified, the options available, the timescales involved to resolve breaches and what will happen if compliance is not achieved;
- We will give the owner/occupier/interested party an initial opportunity to resolve matters through negotiation, unless the breach is causing such harm that immediate formal action is warranted;
- Where we invite an application and it is submitted within the timescale set, we will usually place formal enforcement action on hold pending its determination. Under some circumstances, formal enforcement action will be pursued if deemed necessary, even if an application for retrospective application is made;
- We will advise the owner/occupier/interested party in writing when a decision is taken to authorise formal enforcement action;

Dartford Planning Enforcement Plan 2019

- We will be open to meaningful negotiations to remedy a breach even after formal enforcement action has been commenced.

We are committed to improving our performance, dealing promptly with any enquiries and we welcome any feedback, suggestions, concerns or difficulties about the service being communicated to us, by contacting Planning.enforcement@dartford.gov.uk

If you wish to complain about our service, we encourage you to use our formal [complaints process](#). Although you can approach the [Local Government and Social Care Ombudsman](#) at any time (in writing, by email, telephone or text), you must first give us a chance to answer your complaint.

If a disability prevents you from making your suggestion or complaint in writing, you can call our Customer Services on 01322 343434. We welcome calls via [NGT Relay](#)

19. Data Protection (applying the General Data Protection Regulation)

We need to collect your personal information to carry out our planning control functions. Most of the personal information we hold about you is provided by you.

For more details on the types of information we collect and your rights, please see our [Corporate Privacy Notice](#) and our [Privacy Notice for Planning Services & Planning Policy](#).

20. Freedom of Information

When dealing with a request for information on an enforcement file, the Council will have regard to the Information Commissioner's guidance '[Access to information held in complaint files.](#)'

21. Equality Act 2010

The Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The Council will have full and proper regard to the Equality Act 2010 when investigating complaints against a breach of planning control and when undertaking formal enforcement action.

22. Review of this Local Enforcement Plan

The Council will review this plan yearly, or make in-year amendments, if necessary, in response to customer feedback, changes in legislation/case law, national enforcement guidance and the Council's procedures, taking into account experience and feedback on its performance.

Comments on this document are welcome and will be considered as part of the ongoing review process. Any comments should be emailed to Planning.enforcement@dartford.gov.uk

23. Further Information

- (a) Further information on the Council's planning process such as how to make a planning application, planning policy etc., can be accessed via its [website](#).

[Planning Access](#) is the Council's on-line statutory planning register.

Dartford Planning Enforcement Plan 2019

- (b) The [Planning Portal](#) provides information on the planning system, latest government policy etc., with links to other related web sites.
- (c) The [Royal Town Planning Institute](#) (the professional body for Town Planners) provides planning guidance, information on planning consultants and on the Institute's Planning Aid service and links to a number of related sites.

Translation and Alternative Format Strapline for
Dartford Borough Council Published Material

If you or anybody you know requires this or any other council information in another language, please contact us and we will do our best to provide this for you. Braille, Audio tape and large print versions of this document are available upon request.



Tel: 01322 343434



Calls are welcome via NGT Relay

ਪੰਜਾਬੀ Punjabi	தமிழ் Tamil	Polski Polish	česky Czech	简体中文 Mandarin	Français French
01322 343610	01322 343611	01322 343612	01322 343613	01322 343614	01322 343615