

Swindon Borough Council

**Enforcement Policy for Planning
Enforcement**

October 2022



Swindon Borough Council Enforcement policy for planning enforcement

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1. Introduction

The Council Plan 2022 - 2025 sets out the Vision for Swindon and the Priorities we are committed to deliver for our residents and the Borough. It also gives details of the Pledges we have made to achieve the Vision and an overview of how we will do this. The Council Plan sets out six priorities as:

- Priority 1 Build an economy that works for you
- Priority 2 Protect and enhance our heritage, culture and leisure facilities
- Priority 3 Deliver sustainable growth
- Priority 4 Equip all young people with the education and skills they need
- Priority 5 Make Swindon greener and more sustainable
- Priority 6 Make Swindon safer, fairer and healthier

The planning process contributes to ensuring that these priorities are delivered. To support this it is essential that we have an effective and proportionate planning enforcement process in place.

This Enforcement policy for planning enforcement sets out how Swindon Borough Council will respond to planning enforcement requests to help meet the council priorities and deliver in the vision for Swindon which is:



This Policy is written in line with the requirements of the Town and Country Planning Act 1990 and the National Planning Policy Framework (NPPF) – the statutory framework that planning enforcement operates under.

The planning enforcement team investigate and take action against possible breaches of planning control. Planning enforcement is a vital part of the planning process. It is a very complex area

because the Town and Country Planning Act seeks to strike a balance between the freedom of owners to use or alter their property as they wish, with the need to safeguard the amenities of an area against significant and irreparable harm. The planning enforcement activities should be carried out in an equitable, efficient and consistent manner, setting out standards for the level of service and performance our customers should receive.

There are two important principles that form the basis of planning enforcement:

- A breach is not a criminal offence, except for unauthorised works to listed buildings, illegal advertisements, works to protected trees and hedgerows. In addition, a criminal offence will arise in situations when a formal Notice has been served and has not been complied with.
- It is at the Council's discretion whether action will be taken. Many breaches may be unintentional and any action proposed must be in proportion to the alleged offence

2. The purpose of planning enforcement

Planning enforcement ensures that where harmful development is carried out without planning permission, it is remedied, either by its removal or its modification.

Effective enforcement is important to:

- tackle breaches of planning control which have an unacceptable impact on the amenity of an area or are otherwise seriously contrary to planning policy;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

The planning enforcement service is concerned with resolving serious breaches of planning control. There must be harm to public amenity, safety or the environment for enforcement action to be justified. The Council cannot take enforcement action, simply to remedy a breach of planning control, if that breach is considered acceptable or insignificant in planning terms.

Enforcement action is discretionary, the existence of a breach is not in itself always a good reason to take enforcement action.

Government guidance requires Local Planning Authorities (LPA's) to act proportionately in responding to suspected breaches of planning control.

When it is technically possible to take enforcement action the Council is required to decide whether such formal action would be 'expedient'; this means that formal action is discretionary and all the relevant planning circumstances must first be considered. In considering "expediency" the decisive issue is whether the breach would unacceptably harm public amenity.

Any enforcement action should be proportionate to the breach. This duty means that we would not be acting correctly if the Council enforced against every breach of planning control in the Borough. There will be cases where there is a breach of planning legislation but the breach or harm is so minor that action cannot be justified i.e. it is not expedient to pursue the case.

Government advises that formal action against a breach of planning control should be the last resort and that local planning authorities should first give those responsible an opportunity to put things right. Swindon Borough Council's approach will always be appropriate and proportionate with the

seriousness of the breach. In situations when there are serious harmful effects, protracted negotiations will not normally be allowed to delay formal action.

Whilst the Council, has a duty to investigate allegations of planning breaches, enforcement powers are discretionary. It is therefore foreseeable that some complainants will be disappointed with the outcomes where it is not considered expedient to take enforcement action.

The planning system is designed to achieve a balance between competing demands in the public interest and enforcement of planning control. It reflects this by focusing on proportionate resolution rather than punishing those who have undertaken unauthorised work.

For the reasons detailed above, enforcement action can take a long time because of:

- the need for thorough investigation
- the complex legal processes involved
- the nature of the breach
- the site location
- the people involved

3. Decision Making Timescales

At Swindon borough Council we aim to achieve a decision on whether enforcement action is likely within 6 weeks of the matter being brought to our attention.

4. What we will investigate

Planning law defines development as either

- Operational Development – this is anything built on, over or under land, and would include a new house, roads, sewers, embankments and some forms of demolition
- or
- Material Change of Use – this is any change of use of a building or land and would include for example the sub division of a single dwelling house to self-contained flats.

Breaches of planning control can include:

- Unauthorised building or engineering works
- Change of use of land without consent
- The display of unlawful advertisements
- Unauthorised work to a listed building
- A building not built in accordance with the planning permission (approved plans)
- The breach of conditions attached to a planning permission or listed building consent
- The unauthorised demolition of structures in a conservation area
- Unauthorised works to protected trees (tree preservation order or trees within a conservation area)
- Failure to comply with a section 106 deed
- Untidy Land

5. What we won't investigate

The council will not investigate:

- A development that is permitted development under the Town and Country Planning (General Permitted Development Order)
- Internal work undertaken to a non-listed building
- The parking of commercial vehicles on the highway, in residential areas or on a grass verge
- The obstruction of a highway or public right of way
- The clearing land of overgrowth, bushes and trees, provided they are not subject to planning protection.
- The operation of a business from home where the residential use remains the primary use and there is no adverse impact on neighbours.
- Any boundary disputes
- Trespassing on land
- Matters controlled by other legislation or through agencies such as Building Regulations, Nuisance, Highway Authorities or the Environment Agency
- Health and safety issues
- Development that is not expedient to enforce against

6. Making a request for service

A request for service can be made online via the Council's website (Jadu form), by email, phone, letter or in person at the Council Offices.

So that requests can be dealt with efficiently it is important that as much of the following information is provided:

- The address or location of the land or building
- A full description of what the activity is (what has happened and what is taking place?)
- When the activity started
- The approximate dimensions of any building works
- Names, addresses and telephone numbers of any owners, occupiers or builders involved
- Details of any problems caused, such as noise, traffic or smells
- Details of the impact on you (what harm has/is being caused?)
- If you think a building or land is being used in a way that is not allowed, you must tell us how often it is used and when it is being used. We may ask you to keep a log sheet after you have contacted us to formally record the impact

If the information initially provided is insufficient we will ask for additional information before investigating the breach.

In accordance with the General Data Protection Regulation (and Data Protection Act 2018), Freedom of Information Act 2000 and Environmental Information Regulations 2004, the Council will not disclose any information relating to the identity of a complainant. However, as any occupiers of land or buildings close to the breach of planning control will usually be the most affected, it is possible that an individual subject of an investigation will make their own assumptions as to who may have informed the Council.

The Council recognises that delays can be a source of considerable frustration for complainants and although it is not always possible to anticipate the timescale for resolution of a case, affected parties will be kept informed of significant developments throughout the course of an investigation.

7. How we will investigate the matter

Allegations about suspected breaches of planning control will be investigated thoroughly and accurately.

We follow the principles of good enforcement set out within the Local Government Concordat, and the principles contained within the "[Regulators Code](#)" this is a legal framework for how regulators should engage with those they regulate

The five principles of good regulation are:

1. Transparency
2. Accountability and Openness
3. Proportionality
4. Consistency
5. Targeted (at cases where action is needed)

There are many different types of action available to planning enforcement when dealing with breaches of planning control. These may include:

- Informal Remedy
- Service of Statutory Notices, such as an Enforcement Notice
- Breach of Condition Notice or Stop Notice
- Simple Caution
- Injunction
- Prosecution and Confiscation
- Invite and application/regularisation
- Planning Enforcement Order
- No further action

More details about enforcement action is provided in Appendix 1.

The integrity of the process depends on the Council's readiness to take proportionate enforcement action when it is required. Local planning authorities have the primary responsibility for taking whatever enforcement action is necessary within their area. The Council will exercise its planning enforcement powers rigorously when it is considered expedient to do so.

This means that any action taken must be in the wider **public interest** and the action must be **proportionate** to the level of the breach.

This is assessed by undertaking a thorough investigation and consideration of the relevant facts in each case. Our consideration will be no different to those when considering the merits of an application for planning permission before the development started. For example if a development would have received planning permission, it will not be enforced against simply because it was carried out before planning permission was granted. The owner/developer would be asked to make a retrospective planning application within a specified time.

Formal enforcement powers will not be used against trivial or technical breaches of planning control which cause no harm and are not in the public interest

The Council will always aim to remedy the breach before considering taking enforcement action, unless the breach is extremely serious. Officers will aim to negotiate a solution in the first instance.

Formal action will be taken when:

- The breach presents significant harm to the amenity, or the existing use of the land and buildings merits protection in the public interest

Or

- Where attempts to negotiate regularisation of the breach have failed, and the harmful effects of the development require enforcement action to make the development acceptable

Or

- Where planning permission for the development has been refused and the development is not acceptable in terms of planning policies or other material considerations

Whilst SBC Councillors are encouraged to report breaches of planning control, it is for officers (or Planning Committee) to determine whether enforcement action is expedient. Further detail can be found in the Council's Scheme of Delegation.

8. Comments, Complaints and Compliments

In accordance with the Council's complaints and compliments procedure any person wishing to make a complaint or comment about the service they received or how their case was dealt with, they should contact the Council using the forms on the complains and feedback webpage https://www.swindon.gov.uk/info/20022/contacting_us/463/complaints_and_feedback

9. Physical and Verbal Abuse Towards Officers

The Council will not tolerate any physical or verbal abuse towards its officers and where necessary will use legal action to prevent abuse, harassment or assaults

10. Priorities

When complaints and enquiries are received in respect of alleged unauthorised development they will be prioritised according to the criteria set out in the table on page 9 below.

A case may be given a higher or lower priority once a site visit has been undertaken depending on the nature of the breach. The table below lists the prioritisation the Council will utilise and also details our response times.

<p>Priority 1</p> <p>Danger to the public</p> <p>Direct and potentially irreversible harm</p>	<p>Priority 2</p> <p>Significant or unacceptable harm on individuals or the environment</p>	<p>Priority 3</p> <p>Loss of amenity</p> <p>Other minor breaches of control which does not cause immediate/long term harm or loss of amenity.</p>
<p>Examples include:</p> <ul style="list-style-type: none"> • a breach resulting in a risk to public safety • unauthorised works to a listed building • unauthorised works to a protected tree 	<p>Example include:</p> <ul style="list-style-type: none"> • unauthorised building operation, such as residential or commercial extensions • a material deviation from an approved development • the change of use of residential property to a business. • significant breaches of conditions • unauthorised changes of use 	<p>Example include:</p> <ul style="list-style-type: none"> • an untidy site / building or any other minor breach which creates little or no harm to the amenity of the area. • unauthorised signage and advertisements • unauthorised fences, walls and gates
<p>We aim to visit 80% of these sites within 24 hours of the notification being registered</p>	<p>We aim to visit 90% of these sites within 10 working days of the notification being registered</p>	<p>We aim to visit 90% of these within 20 working days of the notification being registered</p>
<p>We aim to respond to all complainants within 28 days of receipt of their request for service with an update on the case</p>		
<p>We aim to reach a decision on 90% of cases within 6 weeks of receipt of their request for service</p>		

Appendix 1 Enforcement Action Descriptions

Planning Contravention Notice – this requires persons to provide information about activities on land. These notices are often served as a first step to gain information from the person carrying out the development and/or activity before determining whether other notices should be served. Failure to respond is a criminal offence and could result in proceedings in the magistrates' court.

Planning Enforcement Notice – this is a tool used to remedy a breach of planning control. It will specify what the alleged breach is, the steps that must be taken to remedy it, and a time period in which to carry out those steps.

Listed Building Enforcement Notice - this is the equivalent notice to the planning enforcement notice above but is related to listed building legislation

Breach of Condition Notice – this is used to require full or part compliance with the conditions on the grant of a planning permission.

Stop Notice/Temporary Stop Notice –these notices requires activities to stop immediately on the land and are most commonly used to deal with breaches of planning control that are seriously affecting the amenity of nearby residents or to prevent serious or irreversible harm to the environment. There are consequences that need to be considered when using these powers because on successful appeal the Council may be expected to pay for any losses of income resulting in the stopping of the activity.

Untidy Land (s.215) Notice – these are used where the condition of buildings or land causes serious harm to the amenity of an area. The notice requires the person served to remedy the condition of the land and buildings.

Planning Enforcement Order - This provision was introduced in the Localism Act 2011 which came into force in England and Wales in 2012. This measure is used where a breach of planning control has been concealed, and where the Local Planning Authority can show 'deliberate concealment' of a breach of planning control. The local planning authority may apply to the Magistrates Court for a planning enforcement order

Court Action

Court Injunction – Although these are rarely used, legal powers are available for the council to apply to the High Court or the County Court for an injunction to stop an actual or alleged breach of planning control.

Prosecution – the council can pursue prosecution proceedings against any person who carries out unauthorised works to trees that are protected by a Tree Preservation Order or are within a Conservation Area, unauthorised works to Listed Buildings, and certain unauthorised works of demolition works within Conservation Areas.

Offenders may be prosecuted for non-compliance with:

- Planning contravention notice
- planning enforcement notice
- listed building enforcement notice
- breach of condition notice

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- a stop notice
- a temporary stop notice
- untidy land S 215 notice
- obstructing an enforcement officer using a power of entry

Direct Action (with costs recovery) also known as works in default – failure to comply with the requirements of a Notice may result in the council using powers available to it to enter land and carry out such works that are required by an Enforcement Notice. All costs incurred in carrying out such works can be recovered from the landowner. Where costs are not recovered, they can be registered as a charge on the land.

Advertisements – the legislation which deals with advertisements is separate from that dealing with general planning matters. The display of an advertisement without formal consent is an offence, and the council does have the power to prosecute the person displaying it, if it considered that it harms the amenity of the area or public safety. There is no need for an enforcement notice, or similar, to be served. If a person is found guilty of an offence they would be liable to a fine.