

If you are calling **out-of-hours**, please phone **01483 444627** and leave a message on our answer phone. We will pick this up the next working day. Alternatively, you could fill in our **online enforcement form** which can be found on the planning enforcement pages of our website.

If you would like to write to us, please write to:

Planning Enforcement
Guildford Borough Council
Millmead House
Millmead
Guildford
GU2 4BB

For general information on **planning**, please phone planning enquiries on 01483 444609 or email planningenquiries@guildford.gov.uk



Guide to planning enforcement



A guide for anyone who would like to know:

- about planning enforcement;
- how our planning enforcement service operates;
- how the team enforce planning and advertisement control;
- how to contact our planning enforcement team to report a suspected breach of planning control.

www.guildford.gov.uk

April 2007

Introducing this guide

This guide explains how we enforce planning law within the borough of Guildford. You will find this guide useful if you:

- would like to contact us about a suspected breach of planning control within the borough;
- would like to check whether you are breaking planning control law on a building or piece of land that you own, rent or lease;
- have been contacted by our Planning Enforcement team about a possible breach of planning control on a building or piece of land that you own;
- would like to display an advertisement and need guidance;
- are interested in how planning law is enforced within the borough.

If you are interested in enforcement guidelines on **high hedges**, please see our separate leaflet '**Guide to High Hedges**' for more information.

Notes about this guide

Planning law is often complicated and the following information can only be a guide to our enforcement service. It is not intended to be a definitive guide to planning law. Please phone, email or write to us for more detailed information on planning and planning enforcement using the contact details on the back page of this guide.

For the purposes of this guide, the term '**developer**' refers to the person or people carrying out the suspected unauthorised development of a site and against whom enforcement action may be taken.

Explaining planning enforcement

In the United Kingdom, planning laws are used to control development of our urban and rural environments. These laws regulate the use of land and buildings in the public interest.

In most cases, when someone wants to develop a piece of land or a building - including changing its use - they will need to apply to their local planning authority for permission to do so.

A breach of planning control occurs when someone develops a site without the planning permission they need or they fail to comply with the conditions of a planning permission. Development without planning permission is '**unauthorised development**'.

Or, you can phone the Ombudsman's advice line on 0845 602 1983. You can get Ombudsman complaint forms, including versions in large print, from the Ombudsman's website at www.lgo.org.uk and from our offices.

Please see our leaflet, '**Giving us feedback**', for more information about Guildford Borough Council's complaint procedure.

Any other questions?

Please give us a call on 01484 444628 if you have a more detailed question about our enforcement service or a specific concern about a site.

Alternatively, please view the following websites for general planning and planning enforcement information.

The Planning Inspectorate

www.planning-inspectorate.gov.uk

For online appeal publications including.

- Making your Enforcement Appeal
- Guide to taking part in Enforcement Appeals
- Guide to taking part in Advertisement Appeals
- Guide to making your Lawful Development Certificate Application or Appeal
- Guidance notes for making a Listed Building Consent or Conservation Area Consent appeal

The Department for Communities and Local Government (DCLG)

www.communities.gov.uk

Directgov – 'Straight through to Public Services'

www.direct.gov.uk

The Planning Portal

www.planningportal.gov.uk

Office of Public Sector Information

www.opsi.gov.uk

What is a Discontinuance Notice?

Even if an advert has deemed consent, if we consider that it is having a negative impact on the local area or it is a danger to the public, we can serve a Discontinuance Notice. However, we will only serve this notice if we cannot negotiate with the advertiser to remove the advert or to stop using the site for advertising.

The notice will require the advertiser to stop displaying the advert or using the site for advertising. It will state when the notice comes into effect and the period within which the display or use must stop. It will also give reasons for serving the notice. We will make sure that the advertiser, the landowner and anyone who occupies the land receives copies of the notice.

Anyone who receives a discontinuance notice has a right of appeal before it takes effect. If the appeal fails, the display must stop on the date set out in the appeal decision.

Complaints about our enforcement service

You should write to or email the Head of Planning Development Services first of all, who will aim to send you an acknowledgement within three working days and a fuller reply within 10 working days.

If you are not satisfied with this response, you will need to write to the Director for Planning and Development, who will aim to send you an acknowledgement within three working days and a fuller reply within 10 working days.

If you are not satisfied with this response, you will need to write to the Chief Executive, who will aim to send you an acknowledgement within three working days and then a fuller reply within 10 working days.

If you are not satisfied with our response, you will need to write to the Local Government Ombudsman.

Once you have been through our complaints procedure, you can write to the Ombudsman. The address you will need to write to is:

Local Government Ombudsman
10th Floor Millbank Tower
Millbank
London
SW1P 4QP

As the local planning authority, we have the power to take enforcement action against anyone who is in breach of planning control. However, enforcement is a complicated area. Enforcement officers must consider government advice, previous decisions of the courts and the Human Rights Act when deciding what action to recommend and take.

Government guidelines on enforcement

Government guidance recommends that enforcement action should only be taken when unauthorised development is unacceptable on planning grounds. In each case, a local planning authority must decide whether it is '**expedient**' to take enforcement action. This means that we should only take action when it is appropriate to do so and in the public interest.

Government advice is for enforcement officers to use persuasion and negotiation as a first step in all but the most serious situations. This approach often proves to be the quickest and most effective way of resolving a matter.

Our planning enforcement service

At Guildford, we have a planning enforcement team that is committed to protecting the character of the borough. Our enforcement officers investigate situations where they suspect there is a breach of planning control. They consider each case individually and decide whether it is expedient or possible to take enforcement action. The decision to take enforcement action will be made jointly by Planning Development Services and Legal Services.

In line with government advice, we always try to settle matters by negotiation and agreement and without the need for formal action. However, we will recommend decisive enforcement action to stop unauthorised development where this is appropriate.

The enforcement team also has a compliance officer. This officer carries out selective investigation of particular sites to see if developers are complying with planning conditions and any legal obligation relating to the planning permission. The compliance officer also checks whether a developer is taking the required action to sort out a breach of planning control after formal enforcement action has been taken.

Your involvement in planning enforcement

Your help is vital to the success of our planning enforcement service. Our small team of enforcement officers cannot monitor the whole borough, 24 hours a day, looking for breaches of planning control. They rely on the public as well as parish and borough councillors to be the local eyes and ears in the community.

Everyone who lives and works in the borough has a role to play in planning enforcement. Using our website, you are able to view all planning applications and decision notices in every Guildford parish. You are in a unique position to know the daily activities in your area, and let our enforcement team know about any suspected breaches.

When planning permission is needed

You will generally need planning permission for the development of buildings and land in the borough. The term development covers a number of physical changes to land and buildings which include:

- building new properties;
- building or engineering work to existing properties;
- changing the use of land and buildings.

Separate but complementary controls exist for alterations and extensions to Listed buildings and for the display of advertisements.

When there is a breach of planning, Listed building or advertisement control

There are six main situations when a developer is considered to be in breach of one of these controls.

- 1 They are developing a site without the planning permission they need.
- 2 They have permission to develop a site but they are not complying with the conditions set out in the planning permission or they are not following the approved plans.
- 3 They are carrying out external or internal works to a Listed building without consent (they don't have Listed building consent).
- 4 They are displaying a sign or an advert without consent (they don't have advertisement consent). This is an immediate criminal offence.
- 5 They are felling or carrying out works to a tree without permission and, either the tree is protected by a Tree Preservation Order (TPO), or it is in a Conservation Area and appropriate notice has not been given.

There are standard conditions that are used to control the display of all adverts.

- 1 They must have the permission of the site owner, including the local council on council-owned and highway land.
- 2 They must not block the view of road, rail, waterway or aircraft signs.
- 3 They must be kept clean and tidy and in a safe condition.

Do I need consent to display advertisements?

Yes, unless the Town and Country Planning (Control of Advertisements Regulations 1992) (as amended) states otherwise.

What will happen if I don't have consent for an advert?

We can take legal action against anyone who has displayed an advert 'illegally'. In other words, they have displayed an advert without the necessary consent.

Displaying an advert illegally is an offence and a conviction could lead to a maximum fine of £2,500.

If adverts are illegally 'fly posted', we can also take legal action. Although there is no formal definition of fly posting, it is generally taken to mean the display of advertising material on buildings and street furniture without the permission of the owner and against the advertisement regulations.

In practical terms, fly posting can be divided into three broad types, each with particular characteristics and problems of control.

- 1 Adverts for local events, often photocopies, which are put up in large numbers on a regular basis. They may be attached to lamp posts, railings and street furniture, or pasted onto buildings.
- 2 Posters advertising the products of large organisations and put up by professional poster companies. They are often pasted on vacant buildings and signal control or telecoms boxes.
- 3 Posters displayed by pressure groups. These are generally ad hoc and sporadic with no clear pattern to their location.

If the fly-posted adverts identify the person or organisation benefiting from the advert, we will write to them and give them 48 hours notice to remove the adverts. If they do not remove them, we may take legal action.

- Where permission has not been given, is the development broadly acceptable in planning terms?
- If there is a breach of planning control, is the matter serious enough to justify formal enforcement action?
- Where the development is having a negative impact on the local area but it can be controlled by enforcement action, what is the most appropriate action to take?

When a decision has been made as to what action to take, the officer will contact the person who made the complaint. The officer will explain the outcome of the initial investigation and any action that is being taken.

How long will it take to deal with the complaint?

We receive on average 850 complaints each year and several hundred general enquiries. Some complaints will be more urgent than others and will be given a higher priority.

Our enforcement team aim to process each complaint within 8 weeks. However, some complicated complaints cannot be dealt with in this timescale. For example, a complaint might involve lengthy negotiations with a developer. If formal action is taken, enforcement notices cannot come into force until at least 28 days after they have been served. Any appeal against a notice will obviously delay this.

Advertisement enforcement

Displaying advertisements in the borough

What is an advertisement?

The advertisement control system covers a very wide range of adverts and signs. Adverts can include:

- posters and placards
- fascia, projecting, pole and canopy signs
- advance, directional and traffic signs
- place name signs
- estate agents boards
- flag advertisements
- price displays
- models and devices
- captive balloon advertisements (not balloons in flight)

- 6 They are demolishing a building in a Conservation Area without the consent they need.

How we deal with a suspected breach of planning control

For each suspected breach, we will first of all need to decide whether formal enforcement action is the most appropriate form of action to take. The fact that there is a technical breach of planning control is not sufficient reason for us to take formal enforcement action.

If negotiations with a developer are unsuccessful, we may have no alternative but to recommend formal enforcement action. If this is the case, we will recommend the type of formal enforcement action that is most appropriate for the breach.

If we consider that planning permission might have been granted for the unauthorised development, we will encourage the developer to make a '**retrospective application**'. A retrospective application is a planning application that is submitted after the work has started. Rather than carrying out lengthy and potentially expensive enforcement action, submitting a retrospective application is often a more positive and cost-effective way of dealing with the situation. We deal with retrospective applications in exactly the same way we deal with any other application for planning permission.

How we take formal enforcement action

Enforcement action involves '**serving notice**' on a developer who is in breach of planning law. There are a number of notices that we can serve, depending on the nature of the breach and what we are trying to achieve from taking the action. All of the notices require a developer to take some action to remedy the situation and they impose penalties if this does not happen. For example, we may ask for the unauthorised work to be demolished. We can take legal action if a developer fails to meet the terms set out in a notice.

Planning Contravention Notice (PCN)

We serve this notice when we want to find out more information about a suspected breach. The information helps us decide what action to recommend. We will ask for information about the ownership of the land, the use of the land and any operations and activities being carried out on it. This notice is an information-gathering exercise and the notice gives an opportunity to explain why there is no breach of planning control.

We allow 21 days for the developer to provide us with this information. If we don't receive it in this time, we can take legal action.

Enforcement Notice (EN)

We will serve this notice:

- to stop development or operations that do not have planning permission or are in breach of their planning permission; or
- to impose conditions on a development or operation.

The notice will state clearly what action we require the developer to take to correct the situation. The notice will come into effect on the date stated in the notice.

The developer can appeal against the notice to the Planning Inspectorate before it takes effect. If a developer submits an appeal, they do not have to take the actions set out in the notice whilst the appeal is being considered. However, if the developer does not take the required action within the timescale given and they have not appealed, **or** their appeal was rejected, we can take legal action. If a developer does not comply with an Enforcement Notice, this is an offence and a conviction could lead to a maximum fine of £20,000. More serious cases may be heard in the Crown Court where the level of fine is unlimited.

Stop Notice (SN)

If we consider that any unauthorised development may cause long term and severe damage to the local area and needs to be dealt with straight away, we may serve a Stop Notice. This notice requires a developer to stop work immediately.

We can only serve this notice once we have served an Enforcement Notice.

A **Temporary Stop Notice** can be served without the need for an Enforcement Notice. This temporary notice takes effect immediately from the time and date it is served. It lasts for 28 days from this date.

Breach of Condition Notice (BCN)

This notice may be used when the developer is not complying with one or more conditions of their planning permission. As with the Enforcement Notice, this notice will state clearly what action we require the developer to take to remedy the situation. It will come into effect 28 days after it is served.

A developer does **not** have the right to appeal against a Breach of Condition Notice. This is because there was a right of appeal against the conditions when the planning permission was given.

Will my complaint be confidential?

Yes, your personal details will be treated as confidential. Without your permission, your name and address will not be given to the person or company you have complained about.

In certain serious cases when we take enforcement or legal action, we may ask you to help us by providing evidence at an appeal or in court. Before this happens, the officer you've been dealing with will ask if you're happy to do this.

What happens if I make an anonymous complaint?

As a general rule, we do not deal with anonymous complaints. The only time that we might investigate an anonymous complaint is when we suspect that a serious breach might be taking place. For example, unauthorised work on a Listed building.

Once I've made my complaint, what happens next?

We will send you an acknowledgement letter within two working days of receiving your complaint. The letter will give you a reference number and the name and contact details of the investigating officer.

In the first part of the investigation, the officer will establish the exact site location and check planning history and planning policies for the site.

Based on this office-based investigation, the officer will decide whether a site visit is necessary. In most cases, a site is inspected and the officer takes any necessary measurements and photographs. This visit will take place within 10 working days of receiving the complaint. For serious suspected breaches, such as unauthorised work to Listed buildings and tree felling, we will visit the site immediately.

Under various laws, enforcement officers have the right of entry onto all non-residential land and buildings. They must give 24 hours notice to an owner if they want access to a residential property. When they visit a site, our enforcement officers will always identify themselves and explain the reason for their visit.

What issues need to be considered before action is taken?

The investigating officer will consider a number of questions before they recommend a particular course of action. These include the following:

- Does the suspected unauthorised development need planning permission or any other permission?
- Has planning or any other permission already been given?

- If the inspector supports the appeal and rejects the notice, then we cannot take any further action.
- If the inspector dismisses the appeal and supports the notice, the developer must carry out the actions set out in the notice. The period for carrying out these actions begins from the date of the appeal decision.
- The inspector may vary the notice, for example, to allow the developer more time to take the action.

We can only take legal action after the notice has come into effect and the developer does not meet the terms set out in the notice.

If you would like more information about appealing against an enforcement notice, phone the Planning Inspectorate on 0117 372 6372, log on to their website at www.planning-inspectorate.gov.uk or write to them at:

The Planning Inspectorate
 Temple Quay House
 2 The Square
 Temple Quay
 Bristol
 BS1 6PN

Reporting a suspected breach

How do I report a suspected breach of planning control?

If you are concerned about building work, a change of use to a building or an advertisement, you can phone, email or write to us, or fill in an on-line form. Please turn to the back page of this guide for our contact details.

We prefer it if you to write to us, giving as much detail as possible about the suspected breach of planning control. Evidence, such as photos, is always helpful. When you write, please include the following information.

- Your name, address and telephone number.
- The location and exact address (if you know it) of where the suspected breach of planning is taking place.
- The landowner's or occupier's name (if you know it).
- What the unauthorised development is.
- How the unauthorised development is affecting you and other residents in the local area.
- The date you first saw the unauthorised development, operation or advert.

If a developer does not comply with a Breach of Condition Notice, this is an offence and a conviction could lead to a maximum fine of £1,000.

Section 215 Notice

This notice is used when land and buildings are not being properly maintained and we consider that their condition is having a negative effect on the local area and nearby residents. We will serve this notice on the owner or occupier of the land requiring them to tidy and maintain it to an appropriate standard. We will give them a minimum of 28 days to take this action.

An owner or occupier does have the right to appeal to the courts against a Section 215 Notice. If they do not comply with this notice, this is an offence and a conviction could lead to a maximum fine of £1,000.

Injunctions

We can apply to the courts for an injunction to stop an actual or alleged breach of planning control. Injunctions are used in urgent cases where irreversible damage is being caused by a breach of planning.

A person who breaches an injunction is in contempt of court. They can be sent to prison and have an unlimited fine imposed on them.

Direct Action

In exceptional cases, where there is a breach of planning, and the terms of a notice have not been complied with, we may decide to take 'direct action'. Direct action describes a situation when we use enforcement powers to enter a site to carry out works required by an enforcement notice (or we employ others to do this on our behalf). For example, employing building contractors to demolish a building or to remove materials from a site.

Prosecution

Most breaches of planning control are not criminal offences. They only become offences after a notice has been served and not complied with.

However, we can take formal legal action against any developer who is:

- carrying out certain works to a Listed building;
- displaying advertisements without consent; or
- carrying out works to a protected tree.

These three activities are criminal offences.

When we cannot take enforcement action

We cannot take planning enforcement action if:

- planning permission is not needed; or
- the work is permitted by planning law.

Many minor building works, including extensions to residential properties, can be developed without the local planning authority's permission. These works are called '**permitted development**' as they benefit from a blanket planning permission given by central government.

The following are examples of activities that are not normally breaches of planning control. Under planning law, it is unlikely that we can take any planning enforcement action.

- Disagreements between neighbours over boundaries and other general neighbour disputes.
- Ownership and party wall issues.
- Building regulation and structural issues.
- Smell, noise and general pollution issues.
- Any operations taking place on a public highway, including commercial vehicles parking in residential areas or on grass verges.
- Operating a business from home where the residential use remains the main use and there is no negative impact on the local area.
- Clearing undergrowth and trees from land (if the trees do not have tree protection orders on them).
- Parking a caravan within the residential boundary of a property provided that it is, for example, only stored or used as an extra bedroom.

If the officer decides that there is no breach of planning after their initial investigation, the Principal Planning Enforcement Officer will close the case.

Please see the contact list below for those questions or issues that our enforcement team cannot deal with.

- Contact our **Planning** team on 01483 444609 for advice on a business being operated from home.
- Contact our **Parks and Countryside** team on 01483 444715 or 444718 for advice on all borough-owned trees and woodland.

- Contact our **Building Control** team on 01483 444680 for advice on building regulation, structural and party wall issues.
- Contact our **Environmental Health** team on 01483 444371 for advice on smell, noise and general pollution issues.
- Contact **Surrey County Council** on 08456 009 009 for advice on:
 - highway, traffic and parking issues.
 - trees and undergrowth on or overhanging a public highway or pavement.

Immunity from enforcement action

There are certain situations where breaches of planning are immune from enforcement action. We do not have the power to take enforcement action against a developer in the following four circumstances.

- 1 When an unauthorised building or operational development has been substantially completed for four years or more.
- 2 When an unauthorised change of use from a building to a dwelling-house has been in place for four years or more.
- 3 When an unauthorised change of use to a building or piece of land was made ten years ago or more.
- 4 When conditions of a planning permission were breached ten years ago or more.

In these cases, our enforcement team cannot take enforcement action.

If the owners of land or property think that a breach of planning control has become immune from enforcement action, they may apply for a '**Lawful Development Certificate**'. This certificate is a legal document that confirms the use, operation or activity on the site, as long as no further changes are made. Please contact our enforcement team for more information about these certificates.

Appealing against enforcement action

Anyone who has an Enforcement Notice or a Stop Notice served on them has the right to appeal to the Planning Inspectorate.

An inspector will investigate the case and decide whether the appeal should be supported or dismissed. The requirements of the notice are suspended during the appeal process. If a public inquiry is needed, an appeal against an enforcement notice may take up to a year to be heard.