

FINAL DRAFT**Rother District Council - Local Enforcement Plan****Introduction**

1. This document sets out Rother District Council's (RDC) approach to planning enforcement for all those who interact with the service, whether that be those affected by development, or those undertaking development. The Council is committed to, and recognises the importance of, providing an effective planning enforcement service. The Council has officers assigned to investigate reported breaches of planning control together with monitoring new developments.
2. Rother is an attractive and safe place to live. It benefits from a blend of some of the most beautiful countryside and coastline in South East England and contains the historic market towns of Battle and Rye, the Victorian/Edwardian seaside town (and administrative centre) of Bexhill and many picturesque villages. Rother has a number of Conservation Areas and approximately 2,200 listed buildings. The importance of the environment is evidenced by the extent of the district, some 83%, designated as protected 'National Landscape' (Area of Outstanding Natural Beauty) while a further 7% of the district not in the National Landscape is nationally or internationally designated for its nature conservation value.

Purpose of planning enforcement

3. The English planning system regulates the use and development of land in the public interest. Local Planning Authorities have discretionary power under the Town and Country Planning Acts to take enforcement action where unauthorised development has taken place.
4. Where development is undertaken without permission, fair and effective planning enforcement is essential to protect the quality of the natural and built environment and the quality of life for people who live, work and enjoy visiting Rother. Planning enforcement should ensure fairness within the planning system, by effectively tackling unauthorised development that causes harm. This helps maintain public confidence in the planning system.

What is a breach of planning control?

5. A breach of planning control includes building or engineering works being undertaken without planning permission, material changes of use of land or buildings without planning permission or the failure to comply with conditions imposed on a planning permission. Breaches of planning control are not a criminal offence, but failure to comply with an Enforcement Notice or a Breach of Condition Notice is however, a criminal offence.
6. Unauthorised works to listed buildings, unauthorised works to or felling of trees protected by a Tree Preservation Order, unauthorised display of advertisements and the unauthorised demolition of buildings or unauthorised works to trees in a conservation area are criminal offences.
7. It is important to note that listed building consent is required for any works to a listed building that would affect its character as a building of special architectural

or historic interest, whether internal or external, and not just works to those items specifically mentioned in the building's listing. It is a criminal offence to carry out or require someone else to carry out unauthorised works to a listed building.

The Council's approach to planning enforcement

8. Councils do not automatically enforce against every planning breach, nor is there any expectation that they should do so. The planning enforcement system is not punitive, and the existence of a breach is not, in itself, a good reason to take enforcement action. The National Policy Planning Framework states that local planning authorities should act proportionately in responding to suspected breaches of planning control. The Council's approach to planning enforcement will always be commensurate with the seriousness of the breach.
9. Formal action against a breach of planning control is the last resort, and the Council will normally give those responsible an opportunity to put things right. In nearly all circumstances, except the most serious, negotiations will be sought rather than formal enforcement action, subject to a reasonable time frame. Where there are serious harmful effects, protracted negotiations will not normally delay formal action.
10. The Council will take robust enforcement action where necessary, but enforcement action will only be taken where the breach on which it is based would warrant a refusal of planning permission and, where it is considered not to be worthwhile or in the public interest, enforcement may not be pursued. The Council will not take enforcement action solely to 'regulate' development that is otherwise acceptable.
11. Where it is appropriate, and in the public interest, the Council will take proportionate action to secure compliance with planning legislation. This may include the service of formal enforcement notices or prosecution.
12. In the event a planning application is refused, or a formal Enforcement Notice is issued, an appeal can be made to the Planning Inspectorate. If the Council's actions are considered unreasonable or legally unsound then its decisions can be overturned by the Planning Inspectorate or the Courts, and the Council can be ordered to pay costs. Planning enforcement therefore can take time due to the need for thorough investigation, the legal processes involved, the nature of the breach, the site and the people involved.

Prioritisation of enforcement cases

13. All complaints are investigated, unless they are found to relate to matters outside of planning control. However, it is neither practicable nor a good use of finite public resource to investigate every complaint with equal priority and intensity. Our resources are directed to the breaches of planning that cause the greater planning harm. For example, the potential permanent damage to a listed building will have a greater priority than a new shed in a residential garden.
14. On receipt, all breaches of planning control will be prioritised as detailed below, based on the seriousness of the breach and the level of harm caused. The priority afforded may change following an initial site visit or at any other time during the investigation, if for example new information comes to light.

15. The Council will depart from the below prioritisation only where it considers that there is good reason to do so.

Priority 1: Site visit carried out as soon as possible and in any case within 2 working days

- Immediate works to harm or damage the following designated heritage assets: listed buildings, scheduled monuments, registered parks and gardens and registered battlefields
- Substantial demolition in a conservation area
- Felling or damage to trees subject to a Tree Preservation Order or trees within a conservation area
- Works that compromise highway safety
- Any unauthorised development, advert or breach of condition which is causing irreparable public harm or danger; including pollution or environmental harm

Priority 2: Site visit carried out within 5 working days

- Stationing new residential caravans in the countryside
- Starting work on a site without discharging pre-commencement conditions
- Unauthorised development which would adversely affect the character / appearance of a conservation area and/or setting of a listed building
- Works resulting in landscape or ecological harm to sensitive designations (e.g. the High Weald National Landscape or habitat sites)
- Unauthorised development causing harm to residential amenity
- Breaches of planning conditions and legal agreements resulting in serious harm to neighbours, affected parties and/or the environment
- Unauthorised development that is nearing immunity from enforcement action
- Historic works that have already harmed or damaged a heritage asset where there is no suggestion that these works are ongoing or likely to commence again
- Unauthorised change of use to the detriment of neighbouring amenities
- Ongoing development unlikely to be granted planning permission without substantial modification

Priority 3: Site visit carried out within 20 working days (where a site visit is considered necessary after a review of the evidence provided by the complainant)

- Display of advertisements
- Minor variations from approved plans
- Unauthorised development which would be likely to receive planning permission if a planning application were to be submitted
- Minor breaches, for example, unauthorised satellite dishes/telecommunication equipment on residential premises, new residential boundary treatments and sheds in residential gardens
- Untidy land
- All other breaches of planning control

16. The Council has a responsibility to ensure that public resources are used efficiently. Where officers can find no evidence of a breach of planning control the investigation will be closed and no further action will be taken. Such cases

will not be reinvestigated unless the person reporting is able to provide more substantive evidence of the alleged breach of planning control.

Reporting a breach of planning control

17. The public play an important role in bringing suspected breaches of planning control to the Council's attention. Breaches of planning control should be reported online at: [Alleged Breaches of Planning Control – Rother District Council](#)
18. You can contact a Planning Enforcement Officer by telephone at 01424 787620 or by email at planning-enforcement@rother.gov.uk. However, all complaints must be submitted via the online form above. Utilising our online form ensures that we have as much information as possible such as a description of the alleged breach, the date the activity started (is it happening now / is it getting worse?), the site address, a description of the 'harm' being caused (e.g. noise, privacy) and the name, address and telephone number of the complainant.
19. All investigations are dealt with in the strictest confidence and details of the person making the enforcement complaint will remain confidential. However, the nature of the alleged breach is not confidential. Be aware that in the relatively rare cases where a complaint is progressed into a court of law you may be required to provide evidence.
20. If you are concerned about providing your name and address, you should contact your local District Ward Councillor or Parish / Town Council who may agree to act on your behalf.

How we will deliver the Planning Enforcement service

21. We will:
 - Investigate all alleged breaches of planning control brought to our attention through the online reporting form given above. Anonymous complaints will not be investigated, other than at the sole discretion of the Council.
 - Register and record all enforcement complaints received, with an acknowledgement receipt being issued within 5 working days. We will provide complainants with the contact details of the officer dealing with their enforcement complaint.
 - Retain the confidentiality of complainants.
 - Prioritise cases as per the prioritisation schedule above.
 - Provide an update at key stages in the investigation and when significant progress has been made. Whilst updates will be given at key points, repeated requests for updates should be avoided and are unlikely to be responded to.
 - We will inform complainants in writing where we find no breach of planning control. We may refer you to alternative services to address the issue in certain instances.
 - Work to advise and assist with compliance, seeking solutions with all parties.
 - Deal with all enquiries in a fair and equitable manner and treat all parties with dignity and respect.
 - Take into account the circumstances of the case and the degree of harm (or potential harm). We will also take into account the impact on the wider public interest when considering appropriate action.

- Provide proportionate and clear reasoning as to why we have decided to take or not take enforcement action in all cases. This includes writing to complainants where a decision has been taken to close an investigation without action, together with an explanation why.
- We will write to complainants if a breach of planning control has been resolved.
- Pursue a breach of planning control to a suitable conclusion, where considered appropriate to do so.
- Where a planning enforcement issue gives rise to widespread community interest the Council will focus case updates through a nominated single point of contact (such as a Parish Councillor), rather than sending out updates to numerous individuals.

Planning Enforcement Investigations

22. We receive, on average, 400 planning enforcement complaints per year. Some of these complaints do not need further investigation. This may be because we identify that planning permission already exists for the work, or that planning permission was not required or that the matter is not a breach of planning control.
23. Planning enforcement can be a lengthy and complex legal process. We are unable to give an average time for dealing with a complaint. Whilst the basic process followed in a planning enforcement investigation remains the same in each case, the time taken for satisfactory resolution can vary considerably from one complaint to another depending on the site, people involved, and the type of breach reported. Sometimes, a breach of planning control is resolved quickly (e.g. following warning letters being issued) whilst in other cases the breach may not be resolved without formal enforcement action. When formal action is taken, the person against whom the action is taken may choose to appeal and appeals to the Planning Inspectorate or to the Courts can take many months. The timescales of the Planning Inspectorate or the Courts are not within the Council's control.
24. Some of the factors which can be perceived as a lack of action by interested parties during an enforcement investigation can include:
 - Continual negotiation in order to resolve the matter
 - Awaiting the submission of a retrospective planning application or awaiting the decision from a submitted retrospective planning application
 - Gathering of evidence (which can be time consuming)
 - Personal circumstances of the person(s) who the complaint has been raised against
 - Time periods of compliance once a notice has been served
 - Awaiting the results of an appeal against formal notices
 - Legislative procedures and time scales with Court proceedings

Decision making about enforcement cases

25. The enforcement option(s) chosen will be proportionate to the nature of the breach of planning control and the harm caused by it. When pursuing enforcement action, we prioritise:
 - Protecting residential amenity in order to protect and improve the quality of life of Rother's residents and communities.

- Conserving and protecting heritage assets in order to safeguard Rother's exceptional heritage and historic environment.
 - Protecting the environment from harm in order to protect Rother's landscape and countryside (including the High Weald National Landscape), to meet sustainability and climate objectives and to protect biodiversity.
26. A decision whether to take formal enforcement action is based upon the following criteria:
- The merits of each case.
 - The policies, aims and objectives of the adopted Local Plan (and Neighbourhood Plan where relevant).
 - Relevant Government policy and guidance.
 - The significance of harm caused.
 - Whether it is proportionate or in the public interest to take enforcement action in respect of the above factors.

What if you are contacted by the Council about a breach of planning control?

27. If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who has made it) and have the opportunity to explain your side of the case. Where possible, your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work or use. A reasonable period of time will be allowed for you to do this. The Council will ordinarily give you a chance to put matters right before taking formal action but, if the breach is causing serious harm, formal action will not be delayed by protracted negotiation.
28. In some circumstances you may be invited to submit a retrospective planning application if it is considered by officers that permission might be granted.
29. You may be served with a 'Planning Contravention Notice' that requires you to provide information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the Council can determine whether a breach of planning control has taken place, and whether formal enforcement action is appropriate. The legal implications of not completing and returning the Notice will be explained to you. Failure to respond to a Planning Contravention Notice is a criminal offence.
30. When necessary, warnings about unauthorised development will be issued in writing. There may also be a verbal warning. If you are issued with an Enforcement Notice or a Stop Notice, the Notice will include the precise details of the breach, the reasons for the action, the steps required to address the issue, the time period for compliance and the consequences of any failure to comply.

Types of enforcement action

31. There are a wide range of formal enforcement tools available to the Council to remedy breaches of planning control, with prosecution, injunctions and 'direct action' being the most serious. Table One below provides an overview of the different types of formal enforcement action available to the Council (note that

enforcement powers in relation to the Community Infrastructure Levy (CIL) are not contained in the table below).

32. The Council will always choose an enforcement option that is commensurate with the breach of planning control to which it relates, and the degree of harm the unauthorised development is causing or is likely to cause. The most common types of formal enforcement action are Planning Contravention Notices, Enforcement Notices and Breach of Condition Notices.

Table One: An overview of formal planning enforcement tools in England

Type of formal enforcement action	Purpose
Breach of Condition Notice (BCN)	A legal notice requiring compliance with conditions specified within an (implemented) planning permission.
Direct action	Where an Enforcement Notice has not been complied with, the Council may enter the building/land to fulfil the requirements of the Enforcement Notice. The Council can recover from the owner of the land any expenses reasonably incurred in doing this.
Discontinuance Notice	A legal notice requiring the removal of an advertisement with deemed consent.
Enforcement Notice	To require steps to be taken to remedy a breach of planning control. Can require the removal of works, alterations to comply with a planning permission or the cessation of a use of land or buildings.
Enforcement Warning Notices	A legal notice that requires the submission of a planning application where there has been a breach of planning control, but there is a reasonable prospect that permission would be granted.
Injunctions	A legal order issued by the High Court stating that an unlawful act should not take place, or should be undone, or requiring a specified action. Can be used to prevent unauthorised development. Injunctions can only be used in a very limited number of specific circumstances.
Listed Building Temporary Stop Notice	A legal notice requiring unauthorised works to a listed building or works in breach of a condition on a listed building consent to cease. Can require works to stop for up to 56 days.
Planning Contravention Notice (PCN)	Requires persons to divulge information in respect of land and activities. This is often to determine if there is a breach of planning control and to inform the appropriate course of action. A PCN is not registered as a land charge and does not appear on RDC's enforcement register.
Planning Enforcement Order	The Council can seek a Planning Enforcement Order through the Magistrates' Court where development is deliberately concealed.
Prosecution	Prosecution can be pursued in relation to: Failure to comply with a legal notice (for example a Planning Contravention Notice, an

	Enforcement Notice, Section 215 Notice, Stop Notice). • Undertaking unauthorised works to a listed building • Unauthorised removal or works to a tree subject to a Tree Preservation Order or to a tree within a Conservation Area • Displaying an advertisement without express consent
Repairs Notice	A legal notice setting out the repairs needed to ensure the proper preservation of a Listed Building.
Section 215 Notice	A legal notice requiring improvements to a building or site when its condition is considered to adversely affect the amenity of the area.
Stop Notice/Temporary Stop Notice	A legal notice requiring the unauthorised activities to cease (but it cannot undo unauthorised building works that preceded the service of a Stop Notice).
Tree Replacement Notice	A legal notice requiring a replacement tree of a certain size and species to be planted in a particular location.
Urgent Works Notice	A legal notice enabling a Local Authority to carry out works urgently needed for the preservation of a listed building. The Council can recover from the owner of the land any expenses reasonably incurred in doing this.

Powers of entry

33. The Council's planning enforcement officers have powers of entry under the provisions of the Town and Country Planning Act (1990) to enter premises to investigate alleged breaches of planning control. Where site visits are made, and no occupier can be found at the time of the visit, officers have powers to inspect the land in their absence. Officers do not have powers to force entry into any dwelling house.
34. If, during a site visit, officers are refused entry onto land or buildings, the Council has the right to apply to the Magistrates' Court for a warrant to enter the property.

Enforcement register

35. The Council has a statutory duty to hold and maintain an enforcement register, which is provided online. This records, for public viewing, formal notices that have been served, for example Breach of Condition Notices, Enforcement Notices and Stop Notices. The statutory register excludes Planning Contravention Notices, and these are not published.

Prosecution

36. The carrying out of unauthorised development does not constitute a criminal offence, except in some instances of unauthorised works to listed buildings, unauthorised works to either trees subject to Tree Preservation Orders or trees within Conservation Areas and the unauthorised display of certain advertisements.

37. For all other breaches of planning control, a criminal offence only arises, in the majority of cases, when a formal enforcement notice has been issued, has taken effect and its requirements have not been complied with. Only when this stage has been reached can the Council commence prosecution action in the Courts for non-compliance with the requirements of the Enforcement Notice or Breach of Condition Notice.
38. In each case a decision to pursue prosecution action takes into consideration whether such action is in the public interest and, importantly, if it is proportionate to the nature and scale of the breach. In considering any prosecution the Council will pay full regard to the criteria set out in the Code for Crown Prosecutors issued by the Director of Public Prosecutions. In making a decision to prosecute two tests will be applied. The first test is consideration of the evidence. If the case does not pass the evidential test a prosecution must not go ahead no matter how serious the case is. The Council must be satisfied that there is sufficient, admissible and reliable evidence to provide a realistic prospect of conviction. If the evidential test is satisfied the second test will be considered, namely whether it is in the public interest to prosecute. A prosecution will only be taken if both tests are satisfied.
39. In order to deter others, the Council will generally publish information relating to any successful prosecution.

What Planning Enforcement cannot investigate

40. Planning enforcement cannot investigate the following (because they are not controlled by the Planning Acts):
- Boundary wall disputes and other land ownership issues. These are civil matters between the owners of the land and are outside of planning legislation.
 - Party Wall Act matters (the Act is outside of planning legislation and separate from obtaining planning permission or building regulations approval).
 - Issues relating to Legal covenants and deeds (these are a private matter between the signatories of the documents).
 - Disputes that relate to damage to, or reduction in value of, land or property.
 - Obstructions, parking, traffic enforcement and any other matters affecting the Public Highway (other than, in some cases, new vehicular accesses onto highways).
 - Graffiti, littering, fly tipping, abandoned vehicles.
 - Anti-social behaviour.
 - Dangerous structures or other health and safety issues on a building site.
 - Internal alterations within a non-listed building unless they relate to a material change of use, converting a single dwelling into separate residential units or would result in the breach of a planning condition.
 - Events/potential breaches that may occur in the future.
 - Odour/Pollution issues.
 - Clearing land of undergrowth, bushes and trees provided they are not subject to a planning condition or, in the respect of trees, they are not subject to a Tree Preservation Order or are not within a Conservation Area.