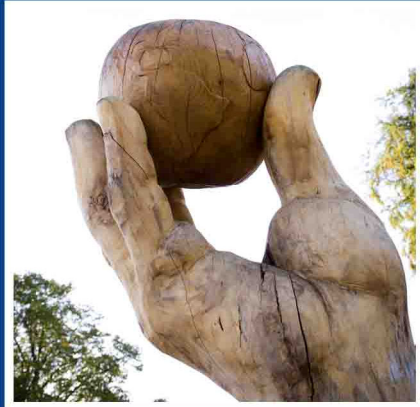




Planning Enforcement Policy

Draft 2 - May 2012



your council working for you

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1 **Introduction**

- 0.1. The Development Management section is responsible for the discharge of duties under the Planning Acts, including:
- Preparing and implementation of forward plans
 - Regulating and use of land
 - Preparing Development Plans
 - Determining planning applications
 - Formal enforcement of breaches of planning control
- 0.2. The need to ensure development proceeds in accordance with approved plans and in compliance with conditions imposed through planning permissions or obligations requires an effective enforcement service.
- 0.3. Effective enforcement is necessary to deliver high quality, sustainable development and to protect the integrity of the planning system for the proper planning of the District of South Kesteven.
- 0.4. An effective system of control requires strong powers of sanction against those who transgress regulatory provisions. The Town and Country Planning Acts contain extensive enforcement powers, and the District Council will not hesitate to resort to such powers where circumstances demand firm action.
- 0.5. However, the District Council will not take enforcement action on planning matters, for enforcement's sake. Enforcement action is a discretionary activity and will be invoked only where it proves absolutely necessary and only after all other avenues have been explored. Any action considered must also be in the public interest.
- 0.6. Formal enforcement action will be viewed as a last resort. Prevention is better than a cure. Education and information of the public in respect of planning regulations are seen as the most effective way to reduce the need to formally intervene in enforcing compliance with imposed controls.

2 Aims and Objectives

- 2.1. The aim of the Council's Enforcement Policy is to ensure effective compliance with planning and other associated legislation, which itself is aimed at regulating the development and use of land in the public interest. Development should conform to the provisions of the South Kesteven Core Strategy Plan.
- 2.2. The District Council shall seek to ensure by education, promotion, monitoring, negotiation and, where necessary and appropriate, legal measures, that the quality, character and appearance of the built and natural environment is protected and enhanced.
- 2.3. In the exercise of its enforcement powers, the District Council's objectives are to:
- Strike an appropriate balance between the planning and development needs and the demands of the population, and the need, through regulatory control, to protect and enhance the environment and regulate the development and use of land in the public interest.
 - Apply appropriate and proportionate remedies and wherever possible, without recourse to formal legal action wherever breaches of planning control do occur.
 - Promote the need to protect and enhance the built and natural environment and the need to conform to regulatory controls.
 - Allow acceptable development to take place.

3 Development Management Enforcement Policy

- 3.1. This policy document sets out the basic approach and principles to be followed by the authority in the discharge of its enforcement functions. In its preparation, account has been taken of procedural and policy advice as contained in Department of the Environment Circulars and Planning Policy Guidance Notes, and the Department of the Environment, Transport & the Regions document 'Enforcing Planning Control: Good Practice Guide for local planning authorities'.
- 3.2. This policy is intended to provide clear guidance to users of the planning system; members of the public, local businesses, elected members and service providers, about enforcement controls. It explains the powers available to the District Council to remedy breaches of planning control, and the steps involved in seeking to secure a satisfactory outcome to complaints lodged.
- 3.3. Allied to the policy, and observing the key principles of the policy, working procedures have been developed relating to the most frequently occurring areas of enforcement activity. By the nature of the work involved however, these procedures cannot cover every eventuality. In the absence of a defined procedure, the Council will discharge its enforcement activities in accordance with the general principles of this policy.
- 3.4. This policy shall be monitored and evaluated every 2 years to ensure that it is relevant and applicable to the needs of the organisation and its customers, and to ensure it is implemented in a fair and consistent manner.

4 Key Principles

4.1.1. The Council is a signatory of the Enforcement Concordat. This is a National Code of Practice for Enforcement which the Government recommends is adopted by Local Authorities. The Policy outlined in this document commits investigation and enforcement action on planning matters taken in South Kesteven to the Key Principles set out below.

4.2. Proportionality

4.2.1. **In the discharge of its enforcement powers the District Council shall seek remedies that are proportionate to the identified breach that has occurred, and limited to the measures necessary to rectify the identified breach.**

4.2.2. Proportionality means relating enforcement actions to the significance of the breach. Those whom the planning system is intended to protect, and those on whom it places duties, expect that any action taken by Planning Services to remedy a breach of control, should be proportionate to the seriousness of the breach of control that has occurred. In general, principles of proportionality are built into statutory regulatory controls, which are intended to safeguard against action on the part of the authority which exceed the measures necessary to ensure compliance. For example one of the grounds of appeal against a planning enforcement notice, is the ground that the steps required by the notice exceed what is necessary to remedy the alleged breach of control. In seeking enforcement remedies, remedial actions shall be commensurate with the breach that has occurred, and the harm that is considered to have arisen.

4.3. Consistency

4.3.1. **Wherever circumstances allow, consistency shall be observed in the investigation of alleged breaches of control, in the enforcement of planning controls, and in the exercise of its discretionary powers.**

4.3.2. Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends. Users and consumers of the planning system expect that enforcement procedures and actions will be consistently applied by decision makers and service providers. While it is unusual for any two breaches of planning control to be entirely similar, particular categories of breach and remedies will occur. It is a reasonable expectation that the District Council will approach such matters in a consistent fashion, albeit that the final outcome may be quite specific to the particular case in question.

4.3.3. In the interests of consistency, working procedures have been evolved for the main categories of enforcement investigation and control. These procedures adopt a structured approach to investigation, which ensures both consistency and transparency in procedures followed.

4.4. Transparency

- 4.4.1. **In the exercise of its enforcement functions, the District Council shall operate openly and transparently, ensuring that all parties understand the processes, actions and consequences of the Council's actions.**
- 4.4.2. Transparency means helping users and consumers of the planning system to understand what is expected of them, and what should be expected from the District Council as a decision maker and service provider. It means making clear to persons believed to have committed a breach of control what they are required to do and why, and, explaining to complainants what they can expect the District Council to do when they complain. Openness in the discharge of its enforcement functions enables the District Council to demonstrate its application of the other key principles of the Policy.
- 4.4.3. The keys to transparency are education and information. The District Council shall endeavour to ensure, through correspondence, verbal communication, and information booklets, those users of the system are able to fully understand the processes in which they have or may become involved.

4.5. Appropriateness

- 4.5.1. **In the exercise of its enforcement functions, the District Council shall seek remedies to breaches of control that are appropriate to the particular circumstances of the case, and appropriate in terms of its intended outcomes.**
- 4.5.2. Appropriateness means applying such enforcement measures to a breach of control as are relevant and necessary to remedy the breach of control that has occurred. It also means only taking formal actions when the circumstances of the case dictate that intervention is appropriate in the public interest. Remedial actions should be relevant, directly related to the breach that has occurred, and appropriate in all respects. Actions should directly address the breach of control, and overcome the planning harm that has arisen from the breach.

5 Breaches of Planning Control

- 5.1. A breach of planning control may include the following:
- Building works that do not have planning permission
 - Failing to comply with any condition or limitation, such as Section 106 Agreement, subject to which planning permission has been granted.
 - Unauthorised changes of use
 - Unauthorised works to Listed Buildings
 - Demolition work within conservation areas
 - Works to a protected tree or tree in a conservation area
 - Displaying adverts without consent
 - Neglecting land or property to the extent that it causes harm to local amenity.
- 5.2. In the vast majority of cases, it is not a criminal offence to carry out development without first obtaining planning permission. Only certain works constitute an immediate offence, carrying the risk of criminal sanctions. These include:
- Works to a Listed Building
 - Works to protected trees or trees within a conservation area
 - Removal of most hedgerows outside residential curtilages
 - The display of adverts
- 5.3. The carrying out of works or development without the prior approval of the District Council may be unauthorised and action may be taken against the person causing the breach and persons having an interest in the land. However, such action will only be considered when it is expedient to do so.
- 5.4. There are certain issues that the Council cannot take into account when assessing an alleged breach because they are not planning matters. These may include:
- Loss of value to property
 - Competition with other business
 - Trespass or boundary disputes
 - Breaches of a covenant
- 5.5. The list of above matters is not exhaustive. However, those mentioned are likely to be private civil matters in which the Council has no legal right of intervention.

6 Reporting Alleged Breaches of Planning Control

- 6.1. Enforcement enquiries are queries received relating to suspected breaches of planning legislation.
- 6.2. The Council relies mostly upon the public to report issues as the primary means of identifying potential breaches.
- 6.3. Other matters may be identified by Council officers during the course of their normal operations. These matters will be treated in the same way as if they had been made by a member of the public.
- 6.4. Enquiries about an alleged breach of planning control can be submitted to the Council in person, by telephone, letter, e-mail, fax or using the enquiry forms on our [website](#).
- 6.5. The Council cannot normally act upon anonymous enquiries other than in circumstances where there may be an immediate criminal offence, a threat to public safety or a clear, credible threat to the proper planning of the area. Any investigations into anonymous enquiries in these circumstances will be at the discretion of the Council.
- 6.6. Anybody who has a legitimate concern but wishes to keep their identity confidential to Council Officers may enlist the services of their local councillor to make a complaint on their behalf.
- 6.7. It is the Council's policy not to reveal the identity of an informant to an alleged offender. We may be asked to reveal the identity of an informant, but we will always apply the rights of the individual in accordance with the Data Protection Act 1998 and any other appropriate legislation.
- 6.8. The Council requires contact details from a complainant so that they may be kept informed of the progress of the investigation and approached for further information should this prove necessary.
- 6.9. Complainants should be aware however, any comments that they make specifically in response to a planning application arising from enforcement investigations will be available for the public to read.
- 6.10. The Council also monitor conditions imposed on permissions for some large or contentious development sites to ensure that relevant conditions are discharged at the appropriate times.
- 6.11. Planning Obligations such as Agreements made under Section 106 of the Town and Country Planning Act 1990 will be monitored to ensure the timely payment of developer contributions and accurate allocation of funds to relevant schemes.

7 Responding to Enquiries

- 7.1.1. When a valid enquiry is received, details of the alleged breach will be registered in the Development Management computer system.
- 7.1.2. This register will contain full details of the allegation and the particulars of the complainant and defendant. It will also be used to keep up to date records of investigations on an ongoing basis. Throughout the course of an enforcement investigation detailed records of the complaint, and any investigations, actions and outcomes will be maintained.
- 7.2. Our Commitment to enquirers
- 7.2.1. The Council will acknowledge any complaint in writing or by e-mail **within 3 working days** of the complaint having been received.
- 7.2.2. Investigations will begin straight away and the site will be inspected **within 10 working days** of the complaint having been received.
- 7.2.3. Priority will be given to urgent alleged breaches in order to minimise any immediate harm, such as where:
- Irreparable damage is being caused to a Listed Building
 - Work is being carried out to a protected tree
 - Demolition works within Conservation Areas
- 7.2.4. The Complainant will be informed of the outcome of any investigations **within 15 working days** of the complaint having been received.
- 7.2.5. Should the initial inspection prove inconclusive, an update of the current situation will be given at this point.
- 7.2.6. If the initial inspection reveals that there is no breach of planning control, the case will be closed and the complainant informed of the conclusion.
- 7.2.7. In investigating any alleged breach of planning control, The Enforcement team will consult other Council departments and Agencies that it is felt may have an interest in the allegation. Such departments may include:
- Building Control
 - Environmental Health
 - Housing Services
 - Lincolnshire County Council
 - Highway's Agency
 - Environment Agency
- 7.2.8. These departments/agencies may have powers to deal with the matter which may more effectively deal with the harm than planning enforcement powers. In such cases, the Enforcement team will liaise with these departments/agencies to agree the most suitable course of action.

8 Procedures for dealing with Breaches of Planning Control

8.1.1. If a breach of planning control is found as a result of investigating a complaint, the most appropriate course of action to achieve a satisfactory outcome will depend on the severity and seriousness of the breach.

8.1.2. After the first site visit, an initial assessment will be conducted to prioritise cases. This assessment will be carried out using the "Harm System".

8.2. The Harm System

8.2.1. This system is based on an assessment of the harm to the built and natural environment arising from an alleged breach of planning control and allows for a score to be given.

8.2.2. The scoring system is based on appropriate government guidance and gives due consideration to all relevant legislation. Each case will be scored following a set format in order to provide an equitable and consistent result.

8.2.3. All cases relating to refusals of retrospective planning applications, Works to listed buildings, hedge removals and works to protected trees will automatically receive a full investigation and will not be subjected to the scoring system.

8.2.4. Where a Breach of Planning Control scores 5 points or less, the complainant will be informed of the reasons for the decision and the case closed.

8.2.5. Where a Breach of Planning Control scores more than 5 points, the matter will be fully investigated and appropriate action taken.

8.2.6. The Harm System Assessment Form showing the scoring model can be found as Appendix 1

8.3. Breaches that ARE likely to receive planning permission

8.3.1. Following a full investigation of the case, where it is felt that the breach of planning control could be granted planning permission, the person causing the breach will be invited to submit a retrospective planning application for determination.

8.3.2. Upon receipt of any application, it will be published in accordance with the Council's Code of Practice, and third parties invited to comment.

8.3.3. The application may be decided at The Council's Planning Committee. A decision to refer the matter to a Planning Committee will be made in line with the Council's general policy for dealing with planning applications.

8.3.4. If the person causing the breach fails to submit a valid planning application, the matter will be discussed with the Planning Enforcement Officer,

Development Management Services Manager and The Council's Legal Services Team, with a view to decide whether the facts of the case are such that further action or no action is merited.

8.3.5. This scheme of delegation has been approved under delegated authority, which is part of the Council's Constitution. In doing so, regard shall be given to Government and local policy under the National Planning Policy Framework and South Kesteven Enforcement Policy Document, which states that enforcement action should not be used solely to "regularise" development which is acceptable on its planning merits, but for which planning permission has not been sought.

8.3.6. In considering any enforcement action, the decisive issue for the Local Planning Authority should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site).

8.4. **Breaches that are NOT likely to receive planning permission**

8.4.1. Where a breach of planning control has occurred which is in principle only likely to be acceptable subject to the imposition of certain controls or conditions, a planning application will be sought. Where such an application is not forthcoming, authority will be sought to initiate formal enforcement action to secure appropriate remedies or controls.

8.4.2. Where the works or development are unacceptable in planning terms, and unlikely to be capable of being rendered acceptable, the person causing the breach will be advised of the unacceptability of the works carried out and advised to cease operations, and to restore the buildings or land to their pre-existing state, or to a state consistent with any approval issued by the Council.

8.4.3. Whilst the person causing the breach will be advised they are at liberty to submit a retrospective planning application, they will also be advised that any such application would not be likely to be supported by Council officers.

8.4.4. The person causing the breach will be advised to cease operations immediately, and to restore the buildings or land to its pre-existing state, or to a state consistent with any approval issued by the Council. They will be advised that failure to respond within a defined time period (which will reflect the nature of the breach), will result in authority being sought to take formal enforcement action.

8.4.5. There will be consultation between The Planning Enforcement Officer, Development Management Services Manager and The Council's Legal Services Team should it be felt that formal enforcement action is required.

- 8.4.6. This scheme of delegation has been approved under delegated authority, which is part of the Council's Constitution. In doing so, regard shall be given to Government and local policy under the National Planning Policy Framework and South Kesteven Enforcement Policy Document, which states that enforcement action should not be used solely to "regularise" development which is acceptable on its planning merits, but for which planning permission has not been sought.
- 8.4.7. In considering any enforcement action, the decisive issue for the Local Planning Authority should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site).

9 Enforcement Action

- 9.1. Where it becomes apparent that a person causing a breach of planning control is unwilling to comply, either with Officers' suggestions of a voluntary solution or with the terms of an existing permission, the District Council will consider the initiation of measures to secure compliance.
- 9.2. This policy document advises that the need for enforcement action will particularly arise where the following are satisfied:
- Where the breach took place in full knowledge that prior approval was required.
 - Where the person responsible will not submit an application to regularise the development (despite being given the opportunity to do so).
 - Where the breach is causing serious harm to public amenity in the neighbourhood of the site.
- 9.3. The Council has a number of formal options available to assist in resolving a breach of planning control. Not all options will be suitable in each case, and any option used will be dependent on the facts of the case.
- 9.4. Any Formal Notice issued which appears on the Land Charges Register will be available to members of the public to view, either at the Council's Offices, or on the Council's [website](#).
- 9.5. A summary of the main powers available to the Council is attached as Appendix 2.

10 Contacts and Further Information

Planning Enforcement Team

South Kesteven District Council
 Development Management
 St Peters Hill
 Grantham
 Lincolnshire
 NG31 6PZ
 Phone: 01476 406306
 Fax No: 01476 406009
 E-mail: planning@southkesteven.gov.uk
 Website: [Enforcement Website](#)

Department for Communities and Local Government

(The Government Department with overall responsibility for planning)
 Eland House
 Bressenden Place
 London, SW1E 5DU
www.dclg.gov.uk

National Planning Aid Unit (Royal Town Planning Institute)

Unit 419, The Custard Factory,
 Gibb Street,
 Birmingham
 B9 4AA
www.planningaid.rtpi.org.uk

Planning Inspectorate

(The independent body responsible for the processing of planning and enforcement appeals)
 Room 301,
 Kite Wing,
 Temple Quay House,
 2 The Square,
 Temple Quay,
 Bristol, BS1 6PN.
www.planning-inspectorate.gov.uk/pins/index.htm

Planning Portal

(The Government's online planning resource where you can learn about the planning system and research the latest government policy).
www.planningportal.gov.uk

11 **National Guidelines**

- The Town & Country Planning Act 1990
- The Town and Country Planning (General Development Order) 1995 (Amended 2008)
- The Town and Country Planning (Control of Advertisements) Regulations 2007
- DoE Circular 10/97 Enforcing Planning Control
- Enforcing Planning Control: Good Practice Guide for Local Authorities
- The Enforcement Concordat published by the Cabinet Office, March 1998
- The Regulation of Investigatory Powers Act 2000
- The Anti Social Behaviour Act 2003
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- The Human Rights Act 1998
- The Hedgerow Regulations 1997
- The Control of Fly-Posting – Good Practice Guide
- The Localism Act 2011

Appendix 1 – The Harm System Assessment Form

South Kesteven District Council - HARM ASSESSMENT FORM

TO BE COMPLETED BY AN OFFICER WHO HAS INSPECTED THE DEVELOPMENT

All cases relating to refusals of retrospective planning applications, works to listed buildings, hedge removals and works to protected trees will automatically receive a full investigation – **do not complete form.**

Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score on which its priority will be based.

Points Allocation			Score
1	Is the breach	Worsening Stable	(1) (0)
2	Highway safety issue	Yes No	(2) (0)
3	Other safety issues	Yes No	(2) (0)
4	Causing a statutory or serious environmental nuisance	Yes No	(1) (0)
5	Complainant	Immediate neighbour/staff Other/Parish Council Anonymous/malicious	(2) (1) (0)
6	Age of breach	Within 6 months of immunity Less than 1 month old More than 1 month old	(2) (1) (0)
8	Is there harm	Widespread Local None	(2) (1) (0)
9	Irreversible harm	Yes No	(2) (0)
11	Breach of a planning condition or Article 4 Direction	Yes No	(1) (0)
12	Conservation Area (or adjacent to)	Yes No	(1) (0)
13	Affects the setting of a Listed Building/Ancient monument	Yes No	(1) (0)
14	Special exercise (please provide details)	Yes No	(1) (0)
15	Particularly sensitive site e.g. SSSI, AONB, Scheduled monument Listed Garden, Archaeological importance	Yes No	(1) (0)
16	Undesirable precedent (please provide details)	Yes No	(1) (0)
		TOTAL POINTS (HARM SCORE)	

Appendix 2 – Formal Enforcement Powers

Enforcement Notice

The Council may serve an Enforcement Notice when they are satisfied that there has been a breach of planning control and that it is appropriate to take action.

The recipient(s) of an Enforcement Notice must take the specified steps within a set time period, as required by the Notice.

The recipient(s) of a notice have a right of appeal to the Secretary of State, through the Planning Inspectorate. Any appeal suspends the effect of a notice until the appeal is determined. If the recipient(s) lodge an appeal, we will communicate with all appropriate third parties and neighbours of the appeal and how they can make representations to the Planning Inspectorate.

Failure to comply with an Enforcement Notice is a criminal offence and currently attracts a maximum fine on conviction of £20,000.

Breach of Condition Notice

A Breach of Condition Notice can be served on a developer or occupier when they do not comply with conditions imposed on a planning permission.

There is no right of appeal to the Secretary of State against a Breach of Condition.

It is a criminal offence to fail to comply with a Breach of Condition Notice within the period for compliance specified.

Listed Building Enforcement Notice

This is similar to an enforcement notice in terms of procedures to be followed. It may be issued where works affecting the character of a listed building are being, or have been, carried out in the absence of listed building consent.

The notice can specify steps to be taken to restore the building to its former state, to alleviate the effect of the unauthorised work, or to bring the building to the state that it would have been in had any listed building consent been fully complied with.

An appeal against an Enforcement Notice suspends the notice until the outcome of the appeal.

Stop Notice

These notices are served either with or after an Enforcement Notice if it is considered that continuing with unauthorised operations will cause irreparable and immediate significant harm.

The Stop Notice continues to take effect even if an appeal is lodged against the Enforcement Notice.

There are compensation liabilities if the Enforcement Notice is quashed.

There is no right of appeal and failure to comply with the notice is a criminal offence.

Temporary Stop Notice

This notice can be served if we consider it is necessary to restrict unauthorised activity or development immediately to safeguard the amenity of the area and prevent further irreparable harm.

This differs from the normal Stop Notice powers as it is immediate and does not have to be accompanied by an Enforcement Notice.

The notice has effect for up to 28 days while considering whether further enforcement action is necessary.

There is no right of appeal to the Secretary of State but a judicial review can challenge the validity and propriety of the decision.

There are compensation liabilities where the Council is found to have been unreasonable in issuing such a notice.

Injunction

The Council can apply to the County Court or High Court for an injunction to cease an actual or imminent breach of planning control.

Clear evidence must be provided when seeking an injunction for an imminent breach.

Injunctions may be considered as a supplement to other statutory powers, particularly where an immediate response is required.

Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.

Section 215 Notice

This notice can be served on the owner and occupier of the land if the Council considers that harm to the amenity of part of its administrative area is adversely affected by the condition of the land.

The notice specifies steps to remedy the condition of the land but it cannot take effect until 28 days after it is issued.

Then the notice must give a compliance period for when the works specified in the notice should be complied with.

Advertisements

The display of advertisements is controlled under The Town and Country Planning (Control of Advertisements) Regulations 2007.

Advertisements are divided into four main groups:

- Advertisements that are specifically excluded from the planning authority's direct control.
- Advertisements that have 'deemed consent' where the planning authority's prior approval is not required provided the advertisement meets certain criteria.
- Those for which the local planning authority's express consent is always needed.
- Advertisements that have been granted express consent are excluded from local planning authority control other than any controls imposed in the terms of the consent itself.

Advertising rules are complex and seek to control amongst other things; the height, size and illumination of the advertisements.

It is an offence to display an advertisement without the consent required and it is open to the Council to take prosecution in the Magistrates Court for an offence under the Advertisement Regulations.

The maximum fine on conviction for the display of unauthorised advertisements is £3,000 with additional fines on conviction for continuing offences.

Fly-posting

Fly-posting is the display of any advertisements and other promotional material without permission, on buildings, posts, poles, litter bins and elsewhere in public places.

Fly-posting without a permit is illegal under the Highways Act 1980, the Town and Country Planning Act 1990, the Anti-Social Behaviour Act 2003 and the Clean Neighbourhoods and Environment Act 2005.

Legal measures available to the Council to prevent fly-posting include:

- On the spot fines
- Fixed penalty notices
- Prosecution in a magistrate's court
- Anti-Social Behaviour Orders
- Charging the offender for the cost of removing the posters.

Protected Trees

Under the Town and Country Planning legislation the local planning authority has may protect important trees in the district by making Tree Preservation Orders.

Any unauthorised works to such protected trees is a criminal offence which is liable, on summary conviction, to a fine of up to £20,000 per tree harmed.

Trees in Conservation Areas are also afforded a degree of protection under the planning legislation.

Unauthorised work to and/or removal of trees in a conservation area also constitutes a criminal offence.

Planning Obligations

Planning Agreements provided under Section 106 of the Town and Country Planning Act 1990 are agreements made between the Local Planning Authority and a developer.

Unilateral undertakings are made by the developer. Both aim to make proposed development acceptable and accord with planning policies. Such obligations may restrict development or use of land, may require certain operations to be carried out, or may require payments to be made to the Authority.

The Council monitors these planning obligations to ensure that operations are carried out and payments made in accordance with the terms of each agreement.

Requirements to comply with planning obligations run with the land so if the terms of an obligation are not complied with any enforcement action may be taken against persons acquiring an interest in the land.

Should there be a breach of a formal obligation there are three methods of enforcement open to the Council. The Council may:

- Apply to the County Court or High Court for an Injunction. The Council must prepare a high level of evidence to convince a judge that an injunction is necessary. Failure to comply with an injunction can lead to an unlimited fine and/or imprisonment.
- Enter the land to complete works and may recover costs where certain operations or works have not been carried out, but must give at least 21 days notice of our intention.
- Place a charge on the land in order to assist the Council in proceedings to recover costs incurred.

High Hedges

The Council has powers under Part 8 of the Anti-social Behaviour Act 2003 to deal with complaints about high hedges. The legislation enables the owner or occupier of a domestic property affected by a high hedge to make a complaint to the Council provided that:

- the hedge concerned is a line of two or more predominantly evergreen or semi-evergreen trees or shrubs
- the hedge is 2 metres or more high
- the hedge is forming a barrier to light or access to their home or garden
- attempts have been made to amicably resolve the problem with the owner of the hedge.

The Council's role is not to mediate or negotiate between the complainant and the hedge owner, but to adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of his property.

If the circumstances justify it, the Council will issue a remedial notice to the hedge owner setting out what the hedge owner must do to remedy the problem.

The notice may specify future work on the hedge to ensure that it is maintained at a reasonable height.

The Act allows for an appeal to the Secretary of State against the issue or withdrawal of a remedial notice.

The Council will charge a non-returnable fee of £360 for this service, payable on submission of a complaint.

Formal Caution

The Local Planning Authority may consider Formal Cautions as an alternative to prosecution.

Examples of where they may be appropriate are:

- To deal quickly and simply with less serious offences;
- To divert less serious cases away from the court process;
- To deter repeat offences.

Before a caution is administered the officer will ensure:

- There is evidence of the offender's guilt sufficient to sustain a prosecution;
- The offender admits the offence;
- The offender understands the nature of the formal caution and agrees to be cautioned for the offence.

Prosecution

The Council recognises the use of the criminal process to instigate a prosecution as an important part of enforcement.

It uses discretion in making such a decision because the use of other enforcement powers may equally or more effectively and satisfactorily resolve the matter.

Where circumstances warrant, the Council will pursue prosecution action.

All investigations into alleged breaches of legislation will follow best professional practice and the requirements of the Police and Criminal Evidence Act (PACE) 1984, Criminal Procedure and Investigations Act 1996 (CPIA) the Regulation of Investigatory Powers Act 2000 (RIPA) and the Human Rights Act 1998.

Default Powers

In the event of a defendant not complying with the terms of a formal notice, the District Council has 'default' powers to enter land and carry out the necessary works. The Council may also recover their reasonable expenses from the then owner of the enforcement notice land.

Expenses incurred become a legal charge on the land until such time as the expenses are recovered. This charge is binding on successive owners of the notice land.

Access to Land

The Planning Acts confer rights of entry onto land to duly authorised planning personnel, for the purpose of investigating an alleged breach of planning control. Wilful obstruction of this right of entry is a criminal offence.

In the event of access being denied, the District Council, where necessary, shall seek a warrant from magistrates authorising entry, and pursue further action.

Planning Contravention Notice

A Planning Contravention Notice is a method for local authorities to obtain information on a suspected breach of planning control.

It will usually set out a list of questions about the site/development.

It gives the person the opportunity to visit the Council Offices to furnish the information required.

It is a criminal offence not to comply with the terms of a notice or to provide false or misleading statements in reply.

Section 330 Notice

A Notice under section 330 of the Town and Country Planning Act 1990 is used to illicit information about the site being investigated and requires the person upon which it is served to give details about the ownership and interest in the land.

It is a criminal offence not to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

Section 16 Notice

This is primarily intended to establish information about the ownership and other interests in the land.

It is a criminal offence to fail to comply with the requirements of the Notice within the period set for its return, or to make false or misleading statements in reply.

South Kesteven District Council

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