

Planning Enforcement Protocol

South Somerset District Council

June 2020



South Somerset
District Council

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A Introduction

The planning system in England operates to regulate development and the use of land which is in the public interest. The effective and proper enforcement of planning control is essential to protect the local environment and the interests of the residents, visitors and businesses from the harmful effects of unauthorised development.

This protocol sets out South Somerset District Council's policy (the Local Planning Authority or the "LPA") for the enforcement of planning control within the district and it is regularly reviewed. It should also be read in conjunction with South Somerset District Council's Regulatory Services Enforcement Policy (2016-2020).

We will also have regard to the Royal Town Planning Institute Planning Enforcement Handbook, view able here:

<https://www.rtpi.org.uk/practice/2020/may/planning-enforcement-handbook-for-england/>

B What is the remit of planning enforcement?

The Council, as the LPA, has no obligation to monitor development but it does have a duty to investigate alleged breaches of planning control. A breach of planning control broadly means the carrying out of development (as defined below) without the grant of planning permission from the LPA, or a deemed permission given by a government Order. A breach will also include the carrying out of development without complying with the approved plans, or any conditions attached to a planning permission.

The definition of "development" is found in Section 55 of the Town and Country Planning Act 1990. This is "... a building, engineering, mining or other operation in, on, under or over land..." or a "material change of use."

The LPA has powers to remedy proven breaches by statutory and other means. It is our policy to exercise these powers appropriately and proportionately so that development takes place in accordance with the appropriate legislation or conditions and limitations imposed on any planning permission. The purpose of this policy is to ensure that councillors and officers, external agencies and the general public are aware of the LPA's approach to its enforcement responsibilities within the District of South Somerset.

Unauthorised works to listed buildings, trees covered by Tree Preservation Orders, trees within a Conservation Area and the control of advertisements also come within the scope of planning control, but unlike the breaches identified above, constitute a criminal offence. The LPA also investigates offences under the Hedgerows Regulations 1997 and High Hedge complaints under Part 8 of the Anti-social Behaviour Act 2003.

Our Key Objectives of Planning Enforcement

The main objectives of planning enforcement are to remedy undesirable effects of unauthorised development and to bring unauthorised activity under control to ensure that the credibility of the planning system is not undermined within the district of South Somerset.

We will give perpetrators the opportunity to rectify a breach of planning control, but where cooperation is not forthcoming within the timescales set out by this authority then the authority

will decide whether it is expedient to escalate to formal action.

Our approach to Enforcement

The integrity of the development management process depends on the readiness to take enforcement action, when it is considered expedient to do so. Parliament has given the LPA the primary responsibility for taking whatever enforcement action is necessary within the area for which it is the LPA. (A private citizen cannot initiate planning enforcement action). The enforcement of matters relating to waste management and mineral workings within this district are the responsibility of Somerset County Council.

Whilst nothing in this protocol should be taken as condoning a wilful breach of planning law - the LPA's enforcement powers are discretionary and will only be exercised when it is considered expedient to do so. In considering the issue of expediency, the LPA will have regard to:-

- Whether the breach of planning control unacceptably harms public amenity, or the existing use of land and buildings merit protection in the public interest.
- Ensuring any enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of control which are considered to cause no harm to amenity. For example, work that is slightly larger than permitted development rights allow for.
- Ensuring that, if initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development fail, negotiations should not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

There are statutory time limits for taking enforcement action. This can be either four or ten years although there can be certain circumstances where this is different.

What will we investigate?

- Unauthorised building works, uses of land and buildings
- Breaches of planning permission/approved plans
- Breaches of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO)
- Unauthorised works to a tree in a conservation area or covered by a Tree Preservation Order (TPO)
- Unauthorised works to a listed building
- Unauthorised advertisement displays and flyposting
- Untidy land

What we will not investigate:

- Disputes between neighbours over non-planning matters
- Matters where other authorities have power to intervene more effectively
- Issues with Covenants and Deeds
- Issues with land ownership/boundaries
- Cases where there may be a technical breach but it is clearly evident it is not expedient to intervene

C How do I report a breach of planning control?

You can report a breach of planning control you are concerned about by visiting the South Somerset District Council's website.

<https://www.southsomerset.gov.uk/services/planning/report-a-planning-breach-and-planning-enforcement/>

Our online reporting tool will take you step by step in providing us with all the information we need to ensure that we can investigate your concerns effectively. Some of the fields are mandatory and without that information you will not be able to submit the form.

Please provide as much information as possible. Remember, all complaints are dealt with in the strictest confidence. However in certain circumstances the source of the complaint maybe be assumed or obvious. It may become necessary at some point for you to provide the Council with evidence, especially where to demonstrate there is harm being caused by the activities you are reporting.

Without this information the Council may not be able to pursue enforcement action because it does not have sufficient evidence.

Emergencies

If suspected unauthorised building work is causing immediate, serious or irreversible harm to a listed building, protected tree or conservation area, you can call the Council on 01935 462462 where a member of the team will ask a series of questions so we may react quickly.

Unfortunately in such circumstances the damage is often instant and the matter turns to one of recording evidence to support a prosecution.

D Our service standards and our investigation timescales

All complaints received will receive a response. Priority will be given to cases where irreversible harm is being caused - i.e. the demolition of a listed building or the felling of a protected tree. Priority will also be given to those where a criminal offence may have been committed.

After visiting the site (where deemed necessary) we will identify the complexity of the breach

or whether it is not expedient to pursue the matter further. Depending on certain circumstances this will affect the timescale of the investigation and what progress will be made.

It is worth stressing that the ability of the Council to remedy any complaint is very much affected by the further actions and attitude of the perpetrator.

Priorities will be identified as “Routine, Urgent and Immediate.”

“Routine”

These will be attributed to the bulk of complaints we receive and will be dealt with as soon as possible having regard to the priority of other enforcement cases. These will likely be householder breaches or where the harm caused is likely to be minimal and or easily reversed.

“Urgent”

This is where the LPA may receive information that works are to commence and it is felt that a pro-active response is required so as to minimise the level of possible harm. It may be that planning permission has yet to be granted or that the works are likely to be contentious from a public point of view and a rapid response is best-suited in the short term.

“Immediate”

This is where there is likely to be irreversible harm being carried out at the time the report is received and that an officer presence at the site is required. Likely scenarios are the felling of protected trees, works or demolition to a listed building, or where it is expedient and in the public interest to issue a Temporary Stop Notice or a Stop Notice.

We have identified a green, amber and red process for the majority complaints and signify the various stages of an investigation. Further into an investigation some cases may become more complex and therefore timeframes may extend for a variety of reasons.

Where cases are not resolved through the normal enforcement process the matter can be referred to either the Magistrates Court or the Crown Court for consideration of prosecution. This is very much a last resort but is necessary where non-compliance occurs.

Enforcement processes from receipt to conclusion

Stage in the Process	Processes within each Stage				Timescale
BLUE	Receipt and the registration of complaint	Identify non-planning matters and respond accordingly to enquirer	Close down case and archive	Direct to other agencies where necessary	Within 7 working days of receipt
GREEN	Triage and initial assessment	Planning history check and background research	Conduct site visit and gather evidence	Evaluate evidence	Due to the nature of Enforcement timescales will vary
AMBER	Decision to close or investigate	Land Registry check and S330/S16 Requisition for Information	Set out formal expectations of the LPA and a timeline	Measure progress or non-compliance. Identify formal action required	Due to the nature of Enforcement timescales will vary
RED	Reassess ownership, material consideration & background information	Issue of formal notice where expedient	Monitor whether compliance is being achieved	If no appeal monitor for compliance (see Black stage)	Due to the nature of Enforcement timescales will vary
PURPLE	Appeal and compliance period	Prepare appeal documents, and await outcome of Inspector's decision	Depending on outcome check for compliance. Close if appeal upheld	Gather evidence for preparation of file for prosecution if necessary	Due to the complexities of the appeal process timescales will vary
BLACK	Take case to Magistrates' Court or Crown Court	Await outcome of case - guilty or not guilty	Identify if compliance occurs and consider further prosecution	Consider works in default	Due to the complexities of the legal process timescales will vary

We will provide you with an update of what is happening where ever possible. However in some cases it is not practical to give a running commentary of what is happening for a number of reasons. Whilst we accept that a breach of planning control may be occurring which is causing harm, the Council also have to have regard to the rights of those being complained about as well.

The quickest and best way to bring about a resolution is through negotiation. This sometimes may appear that someone is “getting away” with something or that the Council is not being robust enough in the interim period. Our officers are skilled at trying to bring about the best conclusion to all parties wherever possible. In some cases hasty formal enforcement action can prolong a case by many months due to appeal processes and other challenges.

The action that we take MUST be proportionate to the breach that has occurred. The Council is impartial and will act as such at all times. It will continue to have regard to the public interest and expediency tests at all times.

The Council will only invite retrospective planning applications where there is a reasonable chance that planning permission could be granted, perhaps with the imposition of Conditions. It does not mean that it is a foregone conclusion that permission will be granted.

We reserve the right to await the outcome of the application or any subsequent appeal before taking further action.

By the same token the Council will not invite a planning application where it is likely to be recommended for refusal. This is because it raises false hopes for some and also can prolong the matter unnecessarily.

We will be clear and open with you about progress on cases; however the Council must have regard to data protection legislation and that much of some investigations are strictly confidential. Releasing information that is privileged may compromise an investigation.

The Council is duty bound to investigate allegations about a breach of planning control. However it has discretionary powers as to whether enforcement action should be taken. The Council will explain to you why it is no longer taking further action.

Action can only be taken when it is expedient to do so and is in the public interest. Any form of investigation by a public body is properly regulated by legislation. The Council must have regard to this at all times and will affect how it carries out those investigations and can dictate how long it takes.

E The investigation process

The officer will determine the best way to conduct a site visit. In most cases the visit may be unannounced. However in certain circumstances it may well be by appointment because this ensures that any key persons can be present at the time of the visit and reduces aborted site visits where there is no one at home or those who are at home may not be able to give a meaningful response to the officer. See “Vulnerable Persons” below.

Any such site visit will be conducted properly and in accordance with the officer’s rights of entry.

After the site visit and initial checks are undertaken, the officer will establish whether there has been a breach of planning control. There will be some instances when more than one site visit is needed to establish if there is a breach of planning control.

Vulnerable person(s)

Should a site visit be undertaken and it is found that only vulnerable people are present on the site, the visit will be abandoned and contact will be made with a responsible person to rearrange a suitable time and date. No photographs will be taken that could include vulnerable persons. Children or young persons are considered to be “vulnerable” within the scope of conducting an investigation.

Parts of the investigation require us to ask the following:

“Are the works “development” as defined in Section 55 of the Town and Country Planning Act 1990?”

If the answer is “no” then the LPA does not have any power to intervene.

“Do the works already have planning permission?”

If the answer is “yes”, then there is no breach of planning control. If the answer is “No”, then is it possible the development is deemed to be ‘permitted development’ under the provisions of the Town and Country Planning (General Permitted Development) Order 2015? If it is found to be “permitted development” then there is no breach of planning control occurring and no further action can be taken by the LPA.

“Is it immune from enforcement through the passage of time?”

Some breaches become lawful through the passage of time – i.e. after four years or ten years have passed since the breach was substantially completed.

“What happens when a breach of planning control is found?”

The decision as to whether or not to take formal enforcement action is discretionary and depends on the level of planning harm. Any works carried out without the relevant planning permission are done so at the risk of the owner or developer and that enforcement action may be taken against it.

This could require the works to be reversed fully. We have to ask a number of questions before a decision is taken as to whether or not to take formal enforcement action. This stage can take several months especially if the matter is very complex.

“How long has the breach been happening?”

Planning legislation says that after set periods of time the breach may be immune from enforcement action. The breach will have become lawful, and/or planning permission is not required. These time limits are:

Four years from the substantial completion of operational development (when the works were

finished).

Four years from when the change of use of a building to a single dwelling began.

Ten years for all other breaches including change of use of land or breaches of conditions (except dwelling houses). It is not an offence to carry out development without first obtaining planning permission UNLESS the works relate to a Listed Building, concern a tree protected by a Tree Preservation Order (TPO) or is within a Conservation Area, or is in contravention of a Temporary Stop Notice, Stop Notice, Enforcement Notice or a Injunction. There is no time limit for immunity in relation to unauthorised works to a listed building, or relevant demolition, under the Listed Buildings and Conservation Areas Act 1990.

“Has there been a deliberate attempt to conceal unauthorised development?”

If the period for taking enforcement action has lapsed, the Council may apply to the court for a Planning Enforcement Order (PEO). This must be done within six months of the date the breach has been detected.

“Would planning permission have been granted?”

The Council will not issue an Enforcement Notice solely to remedy the absence of a valid planning permission. If a breach of planning control has occurred, the Council may invite a retrospective planning application to regularise the unauthorised development where there is a reasonable prospect that planning permission would be granted, subject to conditions and/or a S106 legal agreement. In most cases, planning law says this planning application must be considered as if the works had not started. Councillors can ask for such a planning application to be considered at an Area Planning Committee. The fact that the works have been carried out without having been obtained is not a consideration when making a decision to approve or refuse.

The Council may resolve the breach informally by negotiation/remedial works or will give the transgressor the opportunity to regularise the breach if planning permission is likely to be granted on application with no restrictive conditions

After consultation with local councillors, we may commence enforcement action where it is expedient to do so and there is no other appropriate alternative. The Lead Specialist of Planning also has powers delegated to him, or her, in which to authorise enforcement action.

Unauthorised development by small businesses or self-employed people

Although some breaches of control are clearly deliberate, the LPA may find that an owner or operator of a small business, or a self-employed person, has carried out unauthorised development in good faith, believing that no planning permission is needed for it. The cost of responding to enforcement action may represent a substantial financial burden on such a small business, or self-employed person. LPAs should consider this in deciding how to handle a particular case.

The initial aim should be to explore - in discussion with the owner or operator - whether the business can be allowed to continue operating acceptably on the site at its current level of activity, or perhaps less intensively. The LPA should carefully explain the planning objections to the current operation of the business and, if it is practicable, suggest ways to overcome

them. This may result in the grant of a mutually acceptable conditional planning permission, enabling the owner or operator to continue in business at the site without harm to local amenity. If the site's owner or occupier is at first reluctant to negotiate with the LPA, the service of a "planning contravention notice" may help to convey the LPA's determination not to allow the development to go ahead by default.

If a mutually satisfactory compromise cannot be reached, and formal enforcement action is essential, the LPA should make their intentions clear, at the outset, to the owner or operator of a small business or a self-employed person. Unless it is urgently needed, formal enforcement action should not come as a "bolt from the blue" to a small business or self-employed person. It should be preceded by informal discussion about possible means of minimising harm to local amenity caused by the business activity; and, if formal action will clearly be needed, by discussion of the possible relocation of the business to another site. It is not the LPA's responsibility to take the initiative in finding or providing a suitable alternative site.

If formal enforcement action is likely to compel a small business or self-employed person to relocate their trading activities, the LPA should aim to agree on a timetable for relocation which will minimise disruption to the business and, if possible, avoid any permanent loss of employment as a result of the relocation. Once an enforcement notice has taken effect, LPAs should bear in mind that, where the circumstances justify it, section 173A of the 1990 Act enables them to withdraw the notice; or to waive or relax any requirement in it, including the compliance period. A reasonable compliance period, or an extension of the initial period, may make the difference between enabling a small business or self-employed person to continue operating, or compelling them to cease trading.

The Council remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. The LPA should bear this in mind when considering how best to deal with unauthorised development by small businesses. Nevertheless, effective enforcement action is likely to be the only appropriate remedy if the business activity is causing irreparable harm.

Unauthorised development by private householders

When we are considering the possibility of enforcement action involving unauthorised development by a private householder, we will bear in mind that independent professional advice to establish if planning permission was needed for the development may sometimes not have been readily available, or indeed affordable. This is particularly true where the householder may have relied on their own interpretation of "permitted development" rights contained within the Town and Country (General Permitted Development) Order 2015 (the "GPDO") as authorisation for the development, but a specified limitation has been exceeded in carrying it out. In these circumstances the tests of expediency must be applied. It must be borne in mind that if you have relied on advice from a professional then the householder would still ultimately be responsible in law. It is imperative to satisfy yourself that planning permission is not needed.

In considering whether it is expedient to take enforcement action against development carried out in excess of the permission granted by the GPDO, we will have full regard to what would have been permitted if the development had been carried out in strict accordance with the relevant provisions. The LPA would not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted development.

“Is it a minor or technical breach?”

The Council will not take formal enforcement action against a trivial or technical breach of planning control that causes little or no harm to the amenity of the local area, or if planning permission is likely to be granted.

“Is it expedient to take formal enforcement action?”

This is a complex area. We need to balance the harm caused by the unauthorised development against the potential impact on the health, housing needs and welfare of those affected by the proposed action. The views of District Councillors with an interest in the case and Parish Councillors may be sought to ascertain the local harm.

Any action must be proportionate to the breach, be in the public interest, consider any implications of the Human Rights Act 1998 and the Equalities Act 2010, and be appropriate to the stage reached in the planning process. Each case must be considered on its own merits.

If it is not expedient to take enforcement action, this is a decision usually taken by senior officers within the planning department. Often this is in consultation with the Council’s Legal Team and with District Councillors’ input where appropriate. The investigation will be closed and interested parties informed.

If the complainant is unhappy with the outcome, he/she may complaint to the Council.

The Council has an internal complaints system which comprises two stages. The Stage 1 investigation will normally be conducted by the Lead Specialist who will provide a written response. If you remain dissatisfied with the response you can ask for it to be reviewed by way of a Stage 2 investigation. This is normally carried out by the Director for Service Delivery, and again you will receive a written outcome.

This procedure should be used by any person dissatisfied with any aspect of their dealings with the Council regarding any deviations from the provisions of this Enforcement Protocol. Persons wishing to make a complaint should visit the South Somerset District Council website at:

<https://www.southsomerset.gov.uk/your-council/your-council-plan-and-strategies/complaints-procedure/>

If a person is not satisfied with the Council’s response to a written complaint he or she can complain to the Local Government Ombudsman. Details of how to complain to the Local Government Ombudsman can be found on its website www.lgo.org.uk link.

Generally you can only further your complaint by the Ombudsman once you have exhausted the Council’s own complaints system.

F What happens when a Notice is served?

The enforcement notice is served on all parties understood to have an interest in the land. This means that it must be served on persons such as the owner(s), the occupier(s), tenant(s), lessees, mortgagee(s) (your mortgage lender), and any other person having an interest in the

land. There is a period of usually 28 days before the notice comes into effect.

The Notice will clearly state what the breach of planning control is and what steps are required to comply with the Notice. Further it will also set out what the times scales are.

The Notice will not come into effect if an appeal is lodged between the date of service and the date stated when the notice would come into effect. If an appeal is lodged, the outcome of the appeal is that it can either be upheld or dismissed. If the appeal is upheld, then the enforcement notice becomes null and void. If the appeal is dismissed, then the enforcement notice will come into effect. The inspector who considers an appeal does have the power to vary the requirements of the enforcement notice.

The compliance period can vary but it is often a period between 3 and 6 months. The time periods may also be phased to make compliance more reasonable. If the notice is complied with, then no further action is taken at that time.

If the enforcement notice is not complied with, then further legal advice would be sought regarding the failure to comply with the Notice. Failure to comply with an enforcement notice could result in court proceedings or direct action taken by the Council.

G Lodging an appeal against a Notice

An Enforcement Notice can be appealed through the independent Planning Inspectorate (PINs), on a number of grounds.

Appeals may be dealt with by:

“Written representations” (exchange of written submissions). This is the simplest form of appeal process for all parties, and is the quickest.

“Informal Hearing” This is a meeting chaired by a Planning Inspector, where Council officers, the appellant and their agent where necessary, as well as any interested third parties are in attendance. It is an informal meeting but follows a prescribed format. The Inspector will lead the discussions and invite those whom he thinks have relevant representations to make. Press may also be present.

“Public Inquiry” This is the most formal of events and is normally for more complex cases where there may be debate about points of law, or where evidence has to be taken on oath. It is very similar to a court case and usually the Council and the appellant will have appointed barristers to represent them. Those giving evidence will normally do so under oath. Again this is chaired by the Inspector and is much more formal.

Each of the above usually will mean that a site visit is carried out by a representative (by either an Appeal Planning Officer or an Inspector) from the Planning Inspectorate. If the Inspector can see the site properly without having to go on to it he or she may do it unaccompanied. He may have done this prior to any Hearing or Inquiry. Where the Inspector has to go on to the land to see the appeal site he will need to be accompanied by the appellant and a representative of the Council. There are strict rules about who can say what at these site visits and the Inspector will remind those persons prior to the visit being carried out.

The effect of the Enforcement Notice is held in abeyance until the Inspector releases his or her decision in writing. It should be noted that once the appeal is lodged with PINS then the timescale is set by them. Depending on the complexity of the appeal it may take many months to resolve. The following link gives the current PINS statistics for dealing with appeals from receipt to closure.

<https://www.gov.uk/guidance/appeals-average-timescales-for-arranging-inquiries-and-hearings>

H Prosecution and direct action

Failing to comply fully with an Enforcement Notice within the relevant timeframe is an offence, liable for prosecution in either the Magistrates' Court or the Crown Court. The Council will normally invite a suspect to an interview under caution, in accordance with PACE guidelines, before proceeding with a prosecution.

There are circumstances in which the Council can prosecute without having to serve an Enforcement Notice. The range of offences includes:

- Non-compliance with an Enforcement Notice (including S215 Notice) or Injunction
- The illegal display of advertisement(s), unauthorised works to a listed building, Damage to trees protected by a TPO or within Conservation Area status

“Relevant Demolition” in a Conservation Area, and, the failing to return a Planning Contravention Notice, Section 16, Section 330 or providing false or misleading information in connection with the same.

Persons suspected of an offence should be placed under caution before any questions are put to them. All Officers investigating a suspected offence will carry out their duties in accordance with PACE guidelines.

Direct action

In some instances, failing to comply with a Notice will give the Council the power to carry out the works and seek to reclaim the costs. This is known as “direct action.” Few cases reach this stage, but the Council will consider taking direct action when appropriate (e.g. with S215 Untidy Land Notices). Any such decision may be referred to the Area Planning Committee, and the proportionality of undertaking such works will be given thorough consideration. The Lead Specialist of Planning may refer a matter involving potential prosecution and/or direct action to the Area Planning Committee.

I Trees

You can report unauthorised works to protected trees via our online service.

Where unauthorised works are alleged to have been carried out to protected trees the following process will be followed:

- An initial desktop assessment will take place by a tree officer to establish if the trees are protected. If it is found that minor works have taken place, then a warning letter will be sent.
- A site visit will take place to assess the work.

- Further investigation will take place usually by the tree officer in conjunction with legal and the enforcement officer. This could include a Land Registry search to further establish who owns the land.
- An invitation for an interview under caution with the alleged transgressor, and any other interested party, will occur.
- A further assessment will take place and the appropriate legal advice sought. This may require preparation of statements for our legal department leading to a decision regarding prosecution in accordance with the Council's Corporate Enforcement Policy.

J High Hedges and Hedgerows

A "high hedge" is defined in the Act as a barrier to light or access as is formed wholly or predominately by a line of two or more evergreen or semi-evergreen trees or shrubs and rises to a height of more than 2 metres above ground level. Cypressess, such as the infamous "Leylandii" are included, as well as other evergreens, such as Yew, Laurel and Privet.

However, the Act will only offer control over hedges that affect domestic properties, which are defined as a dwelling or any associated garden or yard. Individual trees (even those which have multiple trunks) and shrubs will be outside the scope of the legislation.

Once you have tried and exhausted all other avenues for resolving your dispute with your neighbour, you may consider reporting the issue to us. Submitting a complaint to the Council should be a last resort. Before doing so, we highly recommend that you read the [Government's guidance](#).

More information can be found on the Council's website.

<https://www.southsomerset.gov.uk/services/planning/planning-technical-zone/trees-and-hedges/high-hedge-disputes/>

Agricultural hedges can only be removed by first submitting a 'Hedgerow Removal Notice' to the Council. Such hedges are covered by the Hedgerow Regulations 1997. The Council has 42 days after the receipt of a properly constituted Hedgerow Removal Notice to consider the notification and decide whether or not to serve a Hedgerow Retention Notice in response.

If such hedges are removed, it is important to distinguish removal from a severe pruning. Often the digging up of roots by grubbing out would signify removal. Then a complaint can be made. Photographic evidence is important. The process thereafter would follow that for Trees.

K Adverts

The display of unauthorised signs can have a serious effect upon the visual amenity of both urban and rural areas, and may also affect the safety of highway users by distraction or confusion.

The display of unauthorised signs, is, unlike many breaches of planning control, an absolute criminal offence which may be tried in the courts. Action can be taken against the owner of the land, the occupier of the land, and/or any person who undertakes or maintains the display of the unauthorised sign.

Our approach will be influenced by factors such as where the advert has been placed (public or private land); whether it is temporary (for a charity event on an upcoming date); or a permanent business sign.

Where unauthorised signs are displayed outside of the boundaries of the highway, consideration will be given to the necessity of having the sign removed, instigation of prosecution action, or the offender may be advised of the right to seek consent for the retention of the sign.

APPENDICES:

Appendix A - Our Enforcement Toolkit

Appendix B - Legislative Framework and Government Guidance

Appendix C – Officers' Powers of Entry

APPENDIX A - Our Enforcement Toolkit

There are numerous tools that South Somerset District Council can use in which to further their investigations. We will only use them where we are entitled to in law, and will be able to justify the reasons why we have used them.

Planning Contravention Notice

Section 171C and s171D of the Town and Country Planning Act 1990 (as amended)

The Planning Contravention Notice is used to obtain information relating to activities on land, and can only be issued when it appears to the local planning authority that a breach of planning control may have occurred. There are penalties for non-compliance with a Planning Contravention Notice, providing misleading or inaccurate information, or failing to provide a response within 21 days of the notice being issued. It is essentially a questionnaire that is bespoke to the particular investigation. Questions must be specific and relevant to the enquiry.

Seeking information about interest in land and ownership

Section 330 Notice

A Section 330 Notice has a limited use, and is generally used to ascertain information relating to interest and ownership in land. Recipients have 21 days in which to return the information to the Council. Failure to do so is an offence.

Section 16 of the Local Government (Miscellaneous Provisions) Act 1984

(Section 16 Notice)

This is similar to a Section 330 Notice but can be served on a wider range of persons, including agents. The time requirement for submitting the information is slightly less, at 14 days. Failure to do so is an offence.

Alternative methods of enforcement

Under-enforcement

Section 173 (11) (as amended) of the Town and Country Planning Act 1990

Where an Enforcement Notice is issued in respect of any breach of planning control which could have required buildings or works to be removed or any activity to cease in the extreme, but specifically does not do so, then “under enforcement” occurs. If all the requirements of the Notice have been complied with, then planning permission is deemed to have been granted in respect of those buildings. An example would be an unauthorised building where there is deemed to be overlooking in to another persons property. Instead of total demolition, the Enforcement Notice may require just the windows to be adequately obscured instead.

Formal Notices

Enforcement Notice

Section 172 of the Town and Country Planning Act 1990

An Enforcement Notice can be used to remedy an injury that has been caused by the breach, to secure compliance with conditions of a planning permission, or to require the use of land to cease and to restore land to the position it was before the breach, within a specified time.

Listed Building Enforcement Notice

Section 38 - 43 Planning (Listed Buildings and Conservation Areas) Act 1990

A Listed Building Enforcement Notice can be issued where there have been works to a Listed Building without consent or failure to comply with a condition attached to a consent. There are no time limits for issuing a Listed Building Enforcement Notice and irrespective of whether a notice has been issued, the carrying out of work without the necessary listed building consent is an offence under section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Breach of Condition Notice

Section 187A of the Town and Country Planning Act 1990

A Breach of Condition Notice may be issued where planning permission has been granted subject to Conditions, and the Conditions have not been complied with. This Notice is an alternative to the Enforcement Notice requiring compliance within the date specified on the notice (usually 28 days), starting from the date the notice was issued. It is important to note that there is no right of appeal against this Notice. This is because when the Condition was originally imposed the applicant had the opportunity to lodge an appeal against it at that time. It is an offence not to comply with the notice.

Temporary Stop Notice

Section 171e of the Town and Country Planning Act 1990

A Temporary Stop Notice may be issued where there has been a breach of planning control and it is expedient that the activity should stop immediately. The Notice is effective for 28 days from the date of display or as specified in the notice. It is an offence to contravene a Temporary Stop Notice. The requirements of the Notice extend to all persons on the site including contractors. There is provision within the legislation to allow a site to be made safe and secure before the works stop.

Stop Notice

Section 183 of the Town and Country Planning Act 1990

A Stop Notice can be issued at the time an Enforcement Notice is served or afterwards. The Notice is used to ensure that works cease before the expiry of the compliance period of an Enforcement Notice, and prohibits the carrying out of that activity on the land subject to the Enforcement Notice. It is an immediate offence for anyone to contravene a Stop Notice and the offender may be prosecuted in the Magistrates' Court or in some cases the Crown Court, depending on the seriousness of the offence.

Injunctive Proceedings

Section 187B of the Town and Country Planning Act 1990

Where the local planning authority considers it expedient to restrain a breach of planning control, it can apply to the High Court or County Court for an injunction. Under section 214A of the 1990 Act, the local planning authority may apply for an injunction to restrain an actual or anticipated offence under section 210 (work on TPO trees) or section 211 (work on trees in a conservation area). An injunction may also be used to enforce listed building control (to cease works to listed buildings). It is an offence to contravene an injunction.

Section 178 (1) of the Town and Country Planning Act 1990

In some circumstances, direct action or default action may be considered. Direct or default action involves the local planning authority undertaking works that are necessary to remedy the breach of planning control, where the recipient of the enforcement notice has not complied

with the requirements of the notice, and all options have been exhausted. This can be an expensive option as the costs would need to be paid for upfront and recovered from the land owner. In cases where this is not possible, the local planning authority has the power to register a charge against the land in breach of the notice and recover the money when the land or property is eventually sold.

Land adversely affecting the amenity of an area

Section 215 of the Town and Country Planning Act 1990

The Council may issue a notice requiring steps to be taken to tidy up land when its condition adversely affects the amenity of the area. The Notice will be issued on the owner or occupier of the land requiring the works to be carried out within a specified time period. There is a right of appeal to the Magistrates' Court. If the notice is not complied with, the Council may prosecute the owner for non-compliance, or enter the land to carry out the works in default and recover the costs from the owner. It is an offence to contravene a Section 215 Notice, and the Council has the power under section 219 to carry out the works in default and recover the costs if the Notice is not fully complied with.

Formal Caution

When the Council is minded to prosecute for an offence, but the suspect is willing to admit their guilt and contribute to the Council's Costs, the Council will consider issuing a formal Caution, which will be held on record and produced at sentencing if the suspect is found guilty of any future offences. The Council will still have to have produced a Full File ready for prosecution, before any Caution can be considered.

Section 106 Agreements

Section 106 of the Town and Country Planning Act 1990

A "section 106 agreement" is a planning obligation in the form of a legal document (a deed) which makes a development or proposal acceptable in planning terms. The obligation becomes a land charge and can be enforced by way of a private law claim, either in court or by arbitration.

Completion Notices

Section 94 of the Town and Country Planning Act 1990

If a development subject to planning permission has been started and not finished, and the time limit for starting the development has lapsed, with completion within a reasonable period unlikely, a completion notice can be served, which has the effect of expiring the planning permission after a specified period, which must not be less than 12 months. Completion notices are rarely used, but consideration will be given if a development appears to have stalled and it is expedient to take action. Completion Notices are required to be confirmed by the Secretary of State and so are relevant only in certain circumstances.

Tree Replacement Notices

Section 207 of the Town and Country Planning Act 1990

Notwithstanding the offences in relation to carrying out unauthorised works to trees, if a protected tree is removed uprooted or destroyed, the owner of the land has a duty to replace the tree under section 206 and section 213 of the Act. If satisfactory replacement is not carried out, the Council can serve a formal Notice under section 207 requiring the replacement to be carried out in a specified timeframe. Failure to comply with the Notice will give the Council the powers to carry out the works under section 209 of the Act and recover the costs.

APPENDIX B - Legislative Framework and Government Guidance

LPA's have powers within the Town and Country Planning Act 1990 (as amended) to investigate alleged breaches of planning control and have powers to remedy proven breaches by statutory and other means.

The following sets out the legislative framework applicable to breaches of planning control:

The LPA's powers in relation to planning enforcement are set out in the following Acts of Parliament, Orders and Regulations:

The Town and Country Planning Act 1990 (as amended)
The Planning (Listed Building and Conservation Areas) Act 1990
The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
Town and Country Planning (Tree Preservation) Regulations (England) 2012 (as amended)
The Town and Country Planning (General Permitted Development) Order 2015 (as amended)
The Town and Country Planning (Use Classes) Order 1987 (as amended)

Advice from Central Government on planning enforcement is set out in the following documents:

The National Planning Policy Framework (February 2019) replaced Planning Policy Guidance Note 18 "Enforcing Planning Control" (PPG18, December 1991). Within the National Planning Policy Framework, a single paragraph (207) relates to enforcement, which states:

"Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so".

"The European Convention of Human Rights confers rights that are embodied in the Human Rights Act 1998. It would be unlawful for the Council to act in a way that is incompatible with a Convention right."

Police and Criminal Evidence Act 1984

PACE is probably the most well-known piece of legislation and typically associated with the Police. However whilst the majority of it is used by the Police when investigating a crime, it still has Codes of Practice relative to public bodies who perform a regulatory function. The most relevant is how suspects are interviewed under caution. In most cases this will be following non-compliance with a formal Notice. It could also be where a protected tree has been felled or works to a listed building have occurred with the appropriate consents.

The Act clearly sets out the rights of suspects being interviewed and the environment in which

they are interviewed. It also sets out rights to legal representation and what happens following an interview.

Most interviews under caution will be by appointment and the suspect will have had the chance to seek legal advice on what to do, and have legal representation at interview. However there may be instances where officers will become aware of an offence whilst speaking with someone, especially if they have arrived at a site to carry out an investigation.

Once the officer identifies that an offence occurs he or she will caution the suspect and will normally have a brief interview on the site. If as in most cases the environment in which to interview is not conducive, then the basic details will be established and then a further interview by appointment will be arranged. This will normally be at Council offices and the interview recorded using digital media.

Regulation of Investigatory Powers Act (RIPA)

The Regulation of Investigatory Powers Act 2000, or 'RIPA' as it is commonly known, governs the use of covert surveillance by public bodies. This includes bugs, video surveillance and interceptions of private communications (e.g. phone calls and emails), and even undercover agents ('covert human intelligence sources').

It's important to note that RIPA does not just cover surveillance by police but also by other law enforcement bodies (e.g. the Serious Fraud Office or the Serious Organised Crime Agency), the security and intelligence services (MI5, MI6 and GCHQ), as well as a large number of other public bodies, including local government.

The Act provides a detailed framework for surveillance activities, although not everything understood as surveillance would be covered by RIPA. As a general rule, RIPA governs active surveillance – actions interfering with individual privacy that would normally be illegal if carried out by a private individual, e.g. installing a listening device in someone's house, but can be lawful because carried out for a legitimate governmental purpose, e.g. detecting crime. It does not extend to other privacy technologies such as databases or CCTV (except, for example, where the CCTV camera was installed in such a way as to monitor a private home).

'Directed' surveillance is surveillance that is conducted as part of a specific investigation and carried out "in such a manner as is likely to result in the obtaining of private information about a person".

'Intrusive' surveillance is directed surveillance that involves either residential premises, a private vehicle, or any kind of surveillance device. So, for example, following a suspect along a street as part of an operation would be directed surveillance. Planting a 'bug' in someone's house, by contrast, would be intrusive surveillance.

It is rarely used by the LPA but is legislation we must have to have regard to.

Criminal Procedure and Investigations Act 1996 (CPIA)

The act pertains to persons charged with a summary offence, indictable offence or one that is triable either way, as well as the criminal investigation into such an offence and as to whether such a person should be charged with the offence or found guilty of it once charged.

It details the procedures for "disclosure" and continued disclosure by the prosecution to the defence any information "which is in the prosecutor's possession, and came into his

possession in connection with the case for the prosecution against the accused.” It also defines a defence statement, defence witnesses and the means by which they should be interviewed, and confidentiality of disclosed information, and other statutory common law rules of a court.

The second part of the act defines a criminal investigation as ‘an investigation conducted by police officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it.’ It outlines the codes of practice for any investigation set out by the Secretary of State and the means by which such a code could be revised.

Proceeds of Crime Act 2000 (POCA)

“Proceeds of crime” is the term given to money or assets gained by criminals during the course of their criminal activity. The authorities, including the CPS, have powers to seek to confiscate these assets so that crime does not pay. By taking out the profits that fund crime, we can help disrupt the cycle and prevent further offences.

At first it may not be apparent how “proceeds of crime” can be associated with a breach of planning control or failure to comply with a formal Notice. However where a person commits an offence and the penalty is substantially less than the financial gain made, the LPA can look to ascertaining how much financial gain has been accrued as a result, and make an application to the court to have that ‘gain’ seized. This may be where a person has converted a large building into numerous flats and has been receiving significant amounts of rent whilst the breach of planning occurred. Because some investigations are complicated and compounded with non-compliance or changes in ownership etc., the financial gain may outweigh the penalty.

Further there are cases where the value of a property has been significantly increased where a tree subject to a Tree preservation Order has been felled purely for financial gain. The rules and guidance as to how the LPA can use this piece of legislation are quite clear as and when it can be applied for.

Violence or aggressive behaviour towards our officers

The Council is committed to ensuring that its officers are able to carry out their work safely and without fear and will use legal action to prevent abuse, harassment or assaults on officers. Officers have powers under Section 196a, and 196b of the Town and Country Planning Act 1990 to enter land and buildings either with or without a warrant. Further they may be accompanied by other persons with them where it is deemed necessary. Under Section 196c it is an offence to obstruct an officer in the execution of his or her duty.

Officers may also wear body worn video cameras when conducting a site visit. They will explain to you how the information is held and processed in accordance with the relevant legislation

APPENDIX C – Officers’ Powers of Entry

Section 196a of the Town and Country Planning Act 1990 (TCPA)

Rights to enter land without a warrant at any reasonable hour to ascertain whether there is or has been any breach of planning control on land, or any other land adjacent.

Section 196b (TCPA)

Right to enter with a warrant, for the reasons above.

Section 196c (TCPA)

Right to take any other persons as may be necessary for the purposes of the investigation and offences relating to obstruction of officers.

Section 214a , 214b, 214b (TCPA)

Rights of entry in connection with injunctive proceedings.

Section 324 (TCPA)

To enter any land for the purpose of the preparation, revision adoption or approval of a local development order under Part 2 of the Planning and Compulsory Purchase Act or local development plan.

Section 88, 88a, 8bB of the Planning (Listed Building and Conservation Areas) Act 1990

Powers of entry in relation to heritage and listed building cases.

Leaving the land secure

On leaving the land, the authorised person shall, if the owner is not then present, leave it as effectively secured against trespassers as it was found.