



LOCAL PLANNING ENFORCEMENT PLAN 2019



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1.0 Introduction

- 1.1 Test Valley contains a diverse and high quality environment including a significant number listed buildings and conservations areas, suburban areas, business parks and attractive countryside all of which are highly valued by its residents.
- 1.2 This enforcement plan sets out Test Valley Borough Council's approach to planning enforcement, explains how breaches of planning control will be investigated, provides guidance on a range of options available to achieve compliance and sets out the priorities we have for investigating alleged breaches of planning control.
- 1.3 The Council is firmly committed to an effective and efficient enforcement service and this document will set out the procedures, priorities and performance the public can expect to receive.
- 1.4 This document is intended for all users and providers of the service, including members of the public, interested parties, Town and Parish Councils and Borough Councilors.

2.0 Government Advice and Legislation

- 2.1 **The Town and Country Planning Act 1990** provides the main legislative framework for dealing with breaches of planning control. The Act provides the Council with the necessary powers to deal with breaches of planning control whilst the **National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)**, provides guidance on how the Council should deal with breaches of planning control.
- 2.2 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) make it clear that the powers provided by the Act are discretionary and should only be used when it is expedient to do so. Any action taken should be commensurate with the seriousness of the breach of planning control and the harm caused or harm that may be caused:

Paragraph 58, of the NPPF states that:-

“Effective enforcement is important to maintain 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. They 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 appropriate.”

- 2.3 NPPG provides additional guidance to that contained in the Framework under the title “Ensuring Effective Enforcement” for further advice please follow the link [Ensuring effective enforcement - GOV.UK](#)

3.0 Aim of Planning Enforcement

- 3.1 The Council aims to provide an efficient and effective planning enforcement service within the resources available, whilst treating all of our customers with courtesy, respect and fairness.
- 3.2 The Council aims to remedy the undesirable effect of unauthorised development and to strike a balance between protecting amenity/environment and other interests.
- 3.3 The Council will, when it is considered appropriate and proportionate to do so, take a robust approach to enforcing against confirmed breaches of planning control.

4.0 What is a breach of planning control?

- 4.1 A breach of planning control occurs when one of the following takes place:
- Carrying out of operational development (building or other works) without the required planning permission.
 - Carrying out of material changes of use without planning permission.
 - Failing to comply with a condition or limitation subject to which planning permission was granted.
 - Carrying out of works to a Listed Building without the relevant permission(s).
 - Unauthorised works to a tree protected by a Tree Preservation Order or works carried out to trees within a Conservation Area.
 - The display of advertisements without advertisement consent.
 - The neglect of land or buildings to an extent which causes harm to the amenity.
 - Failure to comply with Section 106 Agreements/undertakings.
 - Engineering operations such as the raising or lowering of ground levels and formation of earth bunds; carried out without the benefit of planning permission.
 - Not building in accordance with the approved plans (following the granting of planning permission).
- 4.2 Most breaches of planning control are not, in themselves, criminal offences. Under current legislation a criminal offence only arises when an Enforcement Notice has been served, has taken effect and the requirements of such a notice have not been complied with in the time required within the notice. However, certain breaches of planning control do constitute a criminal offence from the outset. Such breaches include:
- Unauthorised works to a List Building, without the necessary consents.
 - Unauthorised works to a Protected Tree or tree within a Conservation Area.
 - The display of Advertisements which do not benefit from deemed consent.

5.0 Matters which are not breaches of planning control

5.1 The following list contains examples of those matters which do not constitute a breach of planning control. This list is not exhaustive:

- Internal alterations to a building which is not a listed building.
- Obstruction of a highway or public right of way.
- Land ownership disputes and boundary disagreements.
- Parking of vehicles on the highway or on grass verges.
- Operating a business from home, where the residential use remains to be the primary use of the property and there is no significant impact on the residential amenity or the character of the area.
- Covenants and restrictions on Deeds and Land Registry enquiries.
- Advertisements which are exempt or benefit from deemed consent.
- Any development deemed to be “Permitted Development” by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 or in any statutory instrument revoking and re-enacting that Order, ie where it does not need the permission of the Council.
- Clearing land of overgrowth, bushes or trees (provided the trees are not subject to a Tree Preservation Order or within a conservation area).

6.0 Enforcement action is discretionary

6.1 In most cases it is not a criminal offence to undertake development without first obtaining planning permission or other formal consent.

6.2 The Government has made it clear through legislation and guidance that the response to an alleged breach of planning control is a matter for the discretion of the local authority. Not every breach of planning control justifies the taking of enforcement action.

6.3 The Council must make a judgement having regard to national planning policy (including the National Planning Policy Framework), Local Planning Policy (Test Valley Borough Revised Local Plan DPD 2011- 2029), case law and any other relevant planning considerations.

6.4 Guidance from Central Government is that enforcement action should be a last resort and that councils are expected to give those responsible for a breach of planning control the opportunity to put matters right or to seek to regularise the breach before resorting to formal action such as an Enforcement Notice. Any such service of a formal notice must be proportionate and commensurate with the alleged breach of planning control.

6.5 In exercising planning functions, the Council is required to consider whether enforcement action is in the public interest. At the same time, it is also under an obligation to act consistently with the European Convention on Human Rights (in particular, Article 8 – the Right to Respect for Home, Privacy and

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Family Life, Article 14 – Prohibition of Discrimination, and Article 1 of the First Protocol – Right to the Enjoyment of Property). Regard must also be had to the Public Sector Equality Duty as contained in the Equality Act 2010.

- 6.6 Any one or a combination of these factors may mean that the Council will decide **not** to take formal action in any particular case where there has been a breach of planning control. It **will** however take action where a breach causes significant harm.

7.0 How to report an alleged breach of planning control

- 7.1 If someone believes that a breach of planning control has occurred, they should notify the Council's Planning Enforcement Team using one of the following options:

- By using the Councils Online reporting form which can be found at: <http://www.testvalley.gov.uk/forms/showform.asp>.
- By telephone: 01264 368000.
- By email to: planning@testvalley.gov.uk.

- 7.2 In order for the Council to investigate your complaint you will need to provide the following information:

- The address of the site or directions (we may need a plan so that we know exactly where the site is).
- What the breach of control is considered to be and when it first occurred.
- The name and address of the landowner(s) and/or the person responsible for carrying out the works, if known.
- Your name, postal address, email address and telephone number.

- 7.3 Anonymous complaints will not be investigated unless they relate to a serious breach of planning control involving for example:

- A matter of public health or safety. Such as development causing severe pollution problems.
- The storage and handling of hazardous materials.
- The development of contaminated land.
- Works to protected trees.
- Works affecting heritage assets.
- There is evidence of significant irreversible harm.

- 7.4 The Council will determine whether the alleged breach merits further investigation. If complainants do not wish to give their personal details they will be advised to contact either their Local Borough Councillor or their Parish Council who may then contact the Planning Enforcement Team on their behalf.

8.0 What can you expect if you report an alleged breach of planning control?

8.1 We will:

- Investigate alleged breaches of planning control reported to the Council.
- Keep your personal details confidential at all times, unless required to disclose as part of Court proceedings.
- Register your complaint within 3 working days, providing you with an acknowledgement and reference number with a named officer as the point of contact.
- Check the site planning history.
- Visit the site within the requisite time period (see priorities below) – planning enforcement officers have powers to enter land at any reasonable hour to investigate alleged breaches of planning control, should access be required to a dwelling house 24 hours notice must be given, in accordance with S196A of the Town and Country Planning Act 1990.
- Take photographs when on site and measurements if necessary.
- Establish whether a breach of planning control has taken place.
- Find out the details of the landowner.
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner).
- On occasion, the Council may issue a Planning Contravention Notice (PCN). This is a formal request for information.
- Keep you informed of the progress of the case and of any decisions made with regard to whether to take action or of what action will be taken and likely timescales involved.
- Actively pursue your complaint to a conclusion.
- Investigations into alleged breaches of planning control may take some time as cases can be complex and raise a variety of issues that need careful consideration. However, we will seek to conclude 80% of cases within 42 days of the date of receipt.
- In cases where we decide there has not been a breach of planning control we will close the case and notify you.
- In cases where there may be a technical breach of planning control, but the harm caused is insufficient to warrant formal action (non expedient) we will inform you of the reason(s) for not taking formal action and close the case.
- Negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern rather than issuing a formal Notice in the first instance, unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of success.

8.2 When a breach of planning control is found to have occurred and it is causing significant 'harm' the case will be pursued until such a time that the matter is

satisfactorily resolved or the breach is regularised or found to be lawful or the decision is taken that it is not expedient to pursue any further for sound planning reasons.

- 8.3 In the event that a formal notice is served and not complied with, the Council will consider pursuing the case through the Magistrates' Court or Crown Court where necessary and appropriate. Exceptionally the Council may decide to carry out works required in an Enforcement or other Notice which is not being complied with and will seek to recover the costs of doing so. Such action will be pursued where resources allow.
- 8.4 We will not re-open a case that has been closed unless there is a significant new piece of information or change on site.

9.0 What happens if an allegation is made that you have breached planning control?

- 9.1 If a complaint is received you will be contacted by an Enforcement Officer. In cases where access to a dwelling house is required the Enforcement Officer will give at least 24 hours notice. However the site inspection may be undertaken without any prior notification should it be considered detrimental to the investigation to give such notice. The purpose of this visit is to establish the facts and whether there is any basis to the allegations made. The investigating Officer will, where necessary, take measurements and photographs of the development or activity taking place.
- 9.2 Enforcement Officers do have a right to enter land to undertake an investigation, in accordance with Section 196A of Town and Country Act 1990.
- 9.3 If it is established that there is a breach of planning control you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. If you have no involvement with the identified breach no action will be taken against you although if you are the land owner, if an Enforcement Notice is issued, we are required to serve a copy on you.
- 9.4 You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach of planning control. If compliance is not secured through negotiations or the submission of a retrospective planning application, formal action may be instigated.

10.0 How we prioritise complaints

10.1 To make the most effective use of resources, complaints regarding suspected breaches of planning control will be assigned a Priority Rating depending on the nature of the breach and the degree of harm caused. Individual cases may be re-prioritised as the investigation progresses.

Priority	Alleged Breach Of Planning Control
<p>1 Site Visit within 1 working day of receipt.</p>	<ul style="list-style-type: none"> • Unauthorised development/activity which is causing immediate and irreversible harm in the locality. • Unauthorised works to trees subject of a Tree Preservation Order or to trees in a conservation area. • Unauthorised works to a Listed Building. • Development which is likely to give rise to a serious risk of harm to public health, public safety or seriously compromise highway safety (including a Breach of Condition).
<p>2 Site Visit within 5 working days from receipt.</p>	<ul style="list-style-type: none"> • Stationing a new residential caravan in the countryside (including gypsy sites and travelling show people sites). • Works not in accordance with a planning permission. • Householder development. • Commencement of development (following the grant of planning permission) without discharging 'pre-commencement' conditions – except for issues such as landscaping or means of enclosure, which are unlikely to require immediate action.
<p>3 Site visit within 10 working days from receipt.</p>	<ul style="list-style-type: none"> • All other breaches of conditions. • Changes of use not covered by Priority 1 or 2. • Earthworks and changes to land levels. • Display of advertisements. • Agricultural developments. • Equestrian related developments. • Gates, walls, fences. • Satellite dishes. • Untidy land. <p><u>(Note: adverts and fence issues may be increased in priority if highway safety issues are identified).</u></p>

11.0 What are the possible outcomes of an investigation?

- 11.1 **No breach established** – Following a site inspection it may be found that there is no breach of planning control because, for example, the unauthorised use has ceased or the development is permitted development or no development has taken place.
- 11.2 **There is a breach of planning control but not considered expedient to pursue formal action** – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and should be used proportionately and so for minor and technical breaches, which cause little or no planning harm, it may be considered expedient not to pursue, ie the breach is too minor to warrant the time and public expense of pursuing further.
- 11.3 **The development is lawful and immune from enforcement action** - This is when unauthorised operational development commenced more than 4 years ago, or an unauthorised material change of use has been continuing for more than for 10 years, or where planning conditions imposed by way of a planning permission have been breached for a continuous 10 year period. In any such case, the person responsible for the breach is entitled to immunity from enforcement action. They may be asked to submit an application for a Certificate of Lawful Use or Development which will enable the Council to make a formal decision on whether the breach has become lawful by the passage of time and is therefore immune from enforcement action. These time limits may also be extended where there is evidence that the alleged breach has been deliberately concealed from the Council. This is explained in more detail below under the heading “Deliberate Concealment – Planning Enforcement Orders”.
- 11.4 **Negotiations take place to find a solution** – In accordance with Government guidance, the first priority is to try and resolve any breaches of planning control through negotiation. Only when such negotiations fail to secure a solution should formal action be considered. The Council will not however allow negotiations to become protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.
- 11.5 **Invitation to submit a retrospective application** – In accordance with Government advice, where a breach of planning control is considered to be acceptable in planning terms, the Council would invite the submission of a retrospective planning application for formal consideration by a planning officer.
- 11.6 A retrospective application will only be invited where we consider that there is a reasonable likelihood that permission or consent may be granted in line with Local and National planning policies or where a development may be made acceptable by way of the imposition of conditions. However, the fact that an application is submitted does not necessarily mean it will be approved.

- 11.7 **Under-Enforcement** - Where development has been carried out without planning permission, and where the development could be made acceptable by imposing conditions, a retrospective application may be invited. If after a reasonable period of time the owner or occupier of the land fails to submit such a planning application, consideration will be given to serving an Enforcement Notice which “under-enforces”; that is, it has the effect of granting planning permission subject to the terms of the Enforcement Notice being complied with in full. This will only be used where it is considered that the harm caused by the unauthorised development is such that it can be made acceptable if controlled by restrictions or requirements imposed by a Notice. In such circumstances the Council will notify the owner or occupiers of the land, the complainants and the Local Ward Borough Councillors, and where appropriate the Parish Council, of the intended course of action.
- 11.8 **Formal Action** - The Council considers that the harm caused by the unauthorised development is unacceptable and it is therefore necessary to take formal enforcement action to remedy the breach of planning control. The more common forms of enforcement action are listed below:
- The service of an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 that identifies a breach of planning control and requires specific steps to be undertaken to remedy the breach.
 - The service of a Listed Building Enforcement Notice under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that requires specific steps to be undertaken to bring a listed building back to its former state or to carry out work to alleviate the effects of unauthorised works or to bring the building into the state it would have been if the terms of any listed building consent had been observed.
 - The service of a Breach of Condition Notice (BCN) under Section 187A of the Town and Country Planning Act 1990 to secure compliance with conditions imposed on a planning permission.
 - The service of a Stop Notice or a Temporary Stop Notice (TSN) under Section 183 and Section 171E of the Town and Country Planning Act 1990 requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above. Before issuing a Stop Notice the Council will carry out a cost benefit analysis so that any costs incurred by the developer by having to stop works are fully taken into account and weighed against the harm being caused and the likelihood of planning permission being granted. A TSN is not issued in conjunction with an Enforcement Notice and will last a period of up to 28 days after it is served. There is no right of appeal against either a Stop Notice or a TSN.
 - The service of a Notice under Section 215 of the Town and Country Planning Act 1990 requiring the proper maintenance of land and buildings.
 - In extreme cases where the need arises proceedings for an injunction may be considered. The Council is entitled under s187B of the Town and Country Planning Act 1990 to seek to obtain an injunction in either the High Court or County Court in order to restrain a breach of planning control. Should there be non-compliance with an injunction, the person in breach

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will be in contempt of Court, and may be liable to financial penalty, or committal to prison.

11.9 If enforcement action is considered to be necessary, the Enforcement Team will instruct the Council's Legal Team and aim to issue an Enforcement Notice or other relevant Notice within 28 days of sending those instructions.

11.10 **Right of Appeal** - The recipient of an Enforcement/Listed Building Enforcement Notice has the right to lodge an appeal before the date on which the Notice takes effect (which must be at least 28 days from the date when the notice is served). Appeals are decided by an independent Planning Inspector and it will take several months, or longer in complex cases, before there is a formal decision. If there is an appeal interested parties will have an opportunity to make representations to the Planning Inspectorate.

11.11 **Failure to comply with the requirements of a Notice** - Where a landowner/occupier or other person responsible for a breach of planning control does not comply with an Enforcement Notice (after either the appeal process has been exhausted and the Notice has been upheld or the Enforcement Notice has come into effect without an appeal being made), the Council can:

- Take direct action to remedy a breach. Where such action is taken the Council will seek to recover the costs of undertaking the works from the landowner, including charging the land with the costs incurred. Whilst this can be an effective way to secure compliance with an Enforcement Notice, it can also involve a significant cost to the Council. Such action will, therefore, only be considered in exceptional circumstances, and will be subject to appropriate resources being identified.
- Prosecute land owners who fail to comply with an Enforcement Notice within the compliance period. In most cases this will be the preferred method.
- Prosecute land owners who have committed other criminal offences such as unauthorised works to protected trees and listed buildings and the display of advertisements without consent.
- Apply to the County Court or High Court for an injunction in serious cases.

12.0 Enforcement Register

12.1 The Council has a statutory duty to hold and maintain an enforcement register. This records details and basic information about what notices have been issued. The notices contained in the register are:

- Enforcement Notices
- Breach of Condition Notices
- Full Stop Notices
- Temporary Stop Notices.

12.2 The enforcement registers are public records and hard copies of the notices can be viewed at Test Valley Borough Council, Beech Hurst, Weyhill Road, Andover, Hampshire SP10 3AJ.

13.0 Deliberate concealment - Planning Enforcement Orders

- 13.1 In accordance with Sections 171BA, 171BB and 171BC of the Town and Country Planning Act 1990, as amended by the Localism Act 2011, the Council can apply to the Magistrates' Court for a Planning Enforcement Order to be made if it finds that an owner/occupier has deliberately concealed an unauthorised development.
- 13.2 In these circumstances, the Council will need to produce evidence that the owner/occupier has taken positive steps to conceal the unauthorised development, rather than merely refraining from informing the Council about it. An application must be made within 6 months, starting with the date on which sufficient evidence of the apparent breach came to the Council's knowledge.
- 13.3 If a Planning Enforcement Order is made, the Council is able to take enforcement action in relation to a breach of planning control notwithstanding that the time limits for taking enforcement action may have expired. If an Order is granted the Council has a further 12 months to complete its investigations and take formal action.

14.0 Other useful links

<http://www.testvalley.gov.uk/>

https://www.planningportal.co.uk/info/200125/do_you_need_permission/90/interactive_house

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

<http://www3.hants.gov.uk/archives/hals-collections/hedgerows.htm>

<https://www.hants.gov.uk/transport/parking/droppedkerbs>

<http://www3.hants.gov.uk/mineralsandwaste/monitoring-and-enforcement-homepage.htm>

<https://www.gov.uk/government/organisations/environment-agency>

<https://www.gov.uk/government/organisations/land-registry>

<https://www.citizensadvice.org.uk/>