

South Downs National Park Authority

ENFORCEMENT GUIDE



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1. Introduction

- 1.1 This document sets out the South Downs National Park Authority's (SDNPA) approach to planning enforcement and provides guidance on the range of options available to achieve compliance with planning control enforced by the SDNPA
- 1.2 The Authority recognises the importance of an effective planning enforcement service within the National Park, and has officers assigned to investigate reported breaches of planning control, and the monitoring of new developments.
- 1.3 Relevant government guidance is found in the National Planning Policy Framework (NPPF) which came into effect in 2012 and revised in 2018. In paragraph 58 of that document it states with regards to enforcement:



National Planning Policy Framework



'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'

- 1.4 Therefore, the role of the South Downs National Park Authority (SDNPA) is:

To conserve and enhance the natural beauty, wildlife and cultural heritage of the South Downs National Park, we are committed to ensuring that planning, and other environmental controls are enforced and, when consent is granted, the approved plans and any conditions are complied with

2. What are our priorities?

2.1 It is not possible to investigate every complaint with equal priority and intensity. Our resource are directed to breaches that cause the greater planning harm. For example, the potential permanent damage to a historic listed building will have a greater priority than a new shed in a residential garden. The scales of priorities are shown below:



2.2 The following priorities are based on the criteria where: damage is irreversible and prosecutable (Priority 1) or, serious (Priority 2) or, the more minor breaches (Priority 3) and anonymous complaints which are not serious

2.3 Priority 1:

- Immediate works to harm or damage designated heritage asset (listed buildings, within conservation areas, scheduled monuments, and registered parks and gardens)
- Felling / damage TPO trees or, trees within a conservation area
- Immediate unauthorised mining, waste or other operations, that have a serious detrimental impact on the statutorily protected character of the National Park
- Unauthorised development that is causing harm and is nearing immunity from enforcement action

2.4 Priority 2:

- Stationing new residential caravans in the countryside
- Starting work on a site without discharging pre-commencement conditions
- Works resulting in landscape harm to sensitive designations
- Works likely to be harmful to public health, or compromise highway safety
- Historic works that have already harmed or damaged a heritage asset (listed buildings, within conservation areas, scheduled monuments, and registered parks and gardens) where there is no suggestion that these works are ongoing or likely to commence again
- Historic unauthorised mining, waste or other operations, that do not have a serious detrimental impact on the statutorily protected character of the National Park and where there is no suggestion that these works are ongoing or likely to commence again

2.5 Priority 3:

- Other breaches of planning control
- Display of advertisements
- Untidy land

3. Partnership with local authorities

3.1 The SDNPA is responsible for planning enforcement matters within the National Park and have agreed a unique partnership with the local authorities operating within the National Park Boundary. For seven of these areas the SDNPA deal directly with enforcement. They are:

Adur & Worthing

Arun

Brighton & Hove

Eastbourne

Mid-Sussex

Wealden



3.2 The other five authorities within the SDNPA undertake the full range of enforcement activity on our behalf. The first point of contact for all enforcement matters will be the relevant authority, those being:

Chichester

East Hampshire

Horsham

Lewes

Winchester

3.3 The host authority will keep the SDNPA informed of the progress of an investigation when necessary, and the SDNPA can offer advice and support, if required

3.4 Minerals and waste development management is part of the planning system and is subject to the same enforcement powers. This *Enforcement Guide* applies equally to minerals and waste cases. The SDNPA is responsible for planning enforcement and monitoring matters in regard to minerals and waste services for the whole of the National Park

- 3.5 We are also responsible for monitoring minerals and waste sites within the National Park. Monitoring of permitted sites is an essential tool for controlling development and preventing problems from escalating. It is this proactive approach that enables us to anticipate likely breaches of planning control before they occur. A proactive approach can only be pursued within a structured monitoring regime. The Town and County Planning (Fees for Applications and Deemed Applications) (as amended) (England) Regulations 2006, enables the SDNPA to charge operators for the reimbursement of the average costs of providing the monitoring service. This is where sites have planning permission relating to mineral extraction and / or waste landfill. We will therefore charge for our monitoring service in accordance with these regulations
- 3.6 The mining and working of minerals includes the extraction of minerals in and under the surface, and the operation of ancillary and associated plant, buildings and machinery. In the SDNP, the majority of minerals sites are for chalk, sand, gravel and clay. Minerals also include oil and gas extraction. Waste management facilities can include waste treatment facilities such as sewage works, the disposal of waste to land, recycling facilities, waste transfer stations and composting facilities
- 3.7 The type of processes involved with minerals and waste operations can sometimes pose particular enforcement problems, insofar as the potential irreversible nature of these works; and the requirement for technical information, knowledge and experience

4. How do I report an alleged breach of planning control?

- 4.1 Anonymous reports will not usually be investigated unless they relate to a matter of public safety or irreversible public harm

In relation to the recovered service areas mentioned in 3.1, you can contact the Planning Enforcement Officer by:

Telephone: 01730 819278 or 01730 819352

By letter:

South Downs National Park Authority
South Downs Centre
North Street
Midhurst
West Sussex
GU29 9DH

Email: enforcement@southdowns.gov.uk

- 4.2 Before making a complaint it is helpful to have as much information as possible such as:
- Description of the possible breach
 - Date the activity started (is it happening now / is it getting worse?)

- site address (if it is a field, describe the surrounding area to help identify the exact site)
- Name / address / telephone number of the site owner / occupier / builder / agent
- Description of the 'harm' being caused (e.g. noise, traffic, smell)
- Name / address / telephone number of the complainant



For minerals and waste enforcement matters, you can contact the SDNPA Minerals & Waste Team via the above quoted methods of contact

5. Confidentiality

- 5.1 All investigations are dealt with in the strictest confidence and details of the person reporting will not be made known without their agreement. However, the nature of the alleged breach is not confidential. Having said that, be aware that if the complaint progressed into a court of law you may be required to provide evidence

6. How long will the investigation take

6.1 An enforcement investigation can be lengthy and complex. The time taken to determine each case will vary depending on the site, people involved, and the type of breach reported



- 6.2 Some of the factors which can be perceived as a lack of action by interested parties can include:

- Gathering of evidence in order to take formal action (which can be time consuming)
- Awaiting the submission of a retrospective planning application
- Awaiting the decision from a submitted retrospective planning application
- Continual negotiation in order to resolve the matter

- Time periods of compliance once a notice has been served
- Awaiting the results of an appeal against formal notices
- Personal circumstances of the person(s) who the complaint has been raised against

6.3 On receipt of an alleged breach the Enforcement Team aim to:

- Register and acknowledge all complaints within 5 working days, however:
- Carry out the initial site visit for **Priority 1** cases within 1 working day
- Carry out the initial site visit for **Priority 2** cases within 10 working days
- Carry out the initial site visit for **Priority 3** cases within 15 working days if necessary following a desktop appraisal
- Provide an update at key stages in the investigation and when significant progress has been made

7. What if someone makes a report about me or my property?

7.1 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who reported the complaint), and you will be given an opportunity to discuss the alleged breach. Your co-operation may be sought to remedy a breach of planning control. A reasonable period of time will be allowed for you to do this. In some circumstances, you may be invited to submit a retrospective planning application

7.2 The SDNPA will usually give you a chance to put matters right before taking formal action but, if the breach is causing serious harm or nuisance to public amenity, formal action will not be delayed by protracted negotiation

8. Key principles of planning enforcement

8.1 There are a wide range of enforcement tools available to the SDNPA to remedy breaches of planning control, with prosecution and 'direct action' being the most serious. The SDNPA will always choose an enforcement option that is commensurate with the breach of planning control to which it relates, and the degree of harm the unauthorised development is causing, or is likely to cause



8.2 Generally, enforcement powers are discretionary and the SDNPA is not required to take action just because there has been a breach of planning control, or harm is being caused

8.3 However, if a development is deemed to require an Environmental Impact Assessment (EIA) and there are clear subsequent breaches at that development, because of the

EIA, the SDNPA has no power of discretion. All cases are screened initially by the SDNPA as to whether an EIA is required. Also, if a site is deemed a Special Protection Area (SPA) or a Special Area of Conservation (SAC), no discretion is available and action must be taken

8.4 A range of factors and circumstances can contribute to the harm being caused, examples of which are:

- Inappropriate development that is harmful to the landscape or setting of the Park
- Loss of protected trees, including conservation areas
- Damage to listed buildings, including demolition within conservation areas
- Development that contravenes national and local planning policies
- Untidy land and run down or derelict buildings
- Failing to comply with a condition of a planning permission which would lead to an adverse impact on the landscape
- Adverse impact of visual amenity

8.5 Harm however, would not include loss of value to a property or, competition with another business

8.6 How the unauthorised development affects any 'material considerations'

Unauthorised development must be assessed against a list of statutory 'material considerations'. These 'material considerations' are the same criteria used by the SDNPA when determining a planning application. These material considerations include:

- Visual impact
- Privacy
- Daylight / sunlight
- Noise / smell
- Access / traffic
- Health and safety
- Ecology
- Crime (or fear of)
- Economic impact
- Planning history
- Related decisions
- Cumulative impact
- Personal factors

8.7 How the unauthorised development complies with the relevant national and local planning policies

8.8 For unauthorised development to be considered acceptable it must comply with the relevant national and local planning policies. Breaches of planning control, where the



unauthorised development is considered to be contrary to planning policy, may not result in a favourable decision (if an application is made to regularise the breach)

- 8.9 Proportionality - enforcement action should always be proportionate to the seriousness of the harm being caused. It should not be taken solely to 'Regulate' development which is otherwise acceptable (on its planning merits) but, for which planning permission has not been sought
- 8.10 Consistency - we will try to promote consistency in both the level of service received and the way in which we respond. In particular:
- We will carry out all our duties in a fair, consistent and equitable manner
 - We will put in place arrangements to promote consistency, including liaison with other authorities and enforcement bodies and, where appropriate, comparable documented case histories and outcomes
 - Our decisions on enforcement action will take into account national and local government guidelines and policy, which support a consistent and effective response regarding enforcement
- 8.11 Negotiation- in nearly all circumstances, apart from the most serious complaints, negotiations will be sought rather than pursuing formal enforcement action. This is subject to a reasonable time frame. Negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable (in planning terms), or compel it to stop
- 8.12 The aim of negotiations is to result in one of the following:
- To cease an unauthorised use
 - To remove any unauthorised development
 - To comply with conditions on a permitted development
 - To apply for retrospective planning permission where necessary (this would include variations on existing permissions)
- 8.13 There are four main regimes within planning legislation:
- Development - including building, engineering and mining operations, and material changes of use of buildings / land
 - Advertisements and signs
 - Listed buildings consent
 - Natural environment - Tree Preservation Orders and all trees within conservation areas
- 8.14 The crucial difference is that advertisements, listed buildings and unauthorised works to protected trees, carry a criminal liability and are therefore a criminal offence



- 8.15 Development is not a criminal offence. No offence is being committed if a person carries out development without first obtaining planning permission. A criminal offence will only arise when a notice has been issued and has taken effect, and the requirements have not been complied with. Only then can the SDNPA consider a prosecution in the courts

9. What is a breach of planning control?

- 9.1 Planning enforcement is responsible for the investigation of alleged breaches of planning control, including mining, mineral extraction and waste disposal

Development is defined as:

“Except where the context otherwise requires... the carrying-out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land” (S.55 Town and Country Planning Act 1990)

- 9.2 A breach of planning control is either:

- Carrying out development without the required planning permission; or
- Failing to comply with any condition or limitation subject to which planning permission has been granted

- 9.3 Breaches of planning control will include:

- Unauthorised erection of a structure
- Development not in accordance with the approved plans of the planning permission
- Material change of use of a building or land
- Failure to comply with the conditions attached to a planning permission
- Failure to properly maintain land so that it affects the amenity of the area

- 9.4 The following are not breaches of planning control:

- Parking of commercial vehicles in residential areas or on grass verges
- Operating a business from home where the residential use remains the primary use, and there is no adverse impact on residential amenity
- Clearing land of undergrowth, bushes and trees provided they are not subject to a condition or protection order
- Parking of a caravan within the curtilage of a residential property, provided that it is stored or used as an extra bedroom, and is not used as a separate, self-contained residential unit (unless there is a specific planning condition restricting this type of use on the original planning permission for the estate)
- Obstruction of a highway or right of way
- Boundary disputes (civil matter)
- Deeds and covenants (civil matter)
- Disputes that relate to damage to or, reduction in value of land or property
- Where development is 'permitted development' (see below)

9.5 All forms of development require a planning permission and there are two types:

i) Deemed planning permission

Some development or changes of use of land can be carried out without having to apply to the SDNPA for planning permission. This is more commonly known as 'permitted development'. In these circumstances permission is deemed to have been granted by legislation, subject to conditions and limitations. There are many different types of permitted development, including (but not limited to) works within the domestic curtilage of residential properties, works by statutory undertakers, changes of use of land, agricultural building operations, and minor building operations

Legislation for permitted development:

- The Town and Country Planning (General Permitted Development) (England) Order 2015
- The Town and Country Planning (Use Classes Order) 1987 (as amended)

ii) Expressed planning permission

9.6 All development that is not granted by a deemed permission will require expressed permission from the SDNPA. In these circumstances such development should not be carried-out prior to this permission being obtained

10. Investigating breaches of planning control

10.1 An officer will undertake research of the relevant council planning history of the site under investigation. This research may reveal that no breach has occurred or further investigation is required

10.2 In many cases, officers will undertake a site visit to try to establish whether a breach of planning control has taken place. This may take the form of a pre-arranged site visit with the owner or an unannounced site visit to view the activities or development

10.3 The SDNPA planning enforcement officers have powers of entry under the provisions of the Town and Country Planning Act 1990, to enter premises to investigate alleged breaches of planning control. Where site visits are made, and no occupier can be found at the time of the visit, officers have powers to inspect the land in their absence. Officers do not have powers to force entry into any dwelling house. Where appropriate, officers will leave a calling card requesting the occupier to contact the council

10.4 If, during a site visit, officers are refused entry onto land or buildings, the SDNPA has the right to apply to the Magistrates Court for a warrant to enter the property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the alleged breach under investigation



- 10.5 While on site, officers may ask questions of any occupiers and may take photographs or measurements. Any information gathered will be used to ascertain whether a breach of planning control has taken place. If a breach has occurred, this information will be used to assess the most appropriate course of action to resolve the matter
- 10.6 Where a report relates to an alleged unauthorised use of land, officers will make a reasonable attempt to determine whether a breach has taken place. In most cases a 'reasonable attempt' will consist of an appropriate number of site visits



- 10.7 This approach ensures that the SDNPA resources are used efficiently. Where officers can find no evidence of a breach of planning control the investigation will be closed and no further action taken. Such cases will not be reinvestigated unless the person reporting is able to provide more substantive evidence of the alleged breach of planning control
- 10.8 Powers of entry assigned to carry-out activities and investigation:
- Town and Country Planning Act 1990 (as amended) Section 178(1), 196A, 196B, 196C, 214B, 214C, 324 and 325
 - Planning (Listed Buildings and Conservation Areas) Act 1990 Sections 88, 88A and 88B
 - Environment Act 1995 Section 97 – Hedgerows Regulations 1997 – Regulation 12
 - Anti-Social Behavior Act 2003 High Hedges – Section 74(1) and 77(5)
 - Local Government (Miscellaneous Provisions) Act 1976 Section 23 and 24 (Dangerous Trees)
 - Planning (Hazardous Substances) Act 1990 Section 36 and 36A

11. Enforcement tools for gathering evidence

- 11.1 **Planning Contravention Notice** - The SDNPA has the power to issue a planning contravention notices (PCN), under Section 171C of the Town and Country Planning Act 1990

- 11.2 A PCN may be served where it appears to the SDNPA that there may have been a breach of planning control. It is an information gathering tool to establish whether there has been a breach, and how long it has been taking place
- 11.3 The notice may be served on the owner, occupier or anyone with an interest in the land. It may be necessary to serve the notice on more than one person in order to obtain the required information. This provides an opportunity to cross-reference and verify the information obtained
- 11.4 The notice must contain the following details:
- The land to which it refers
 - The alleged breach
 - What is required (i.e. the questions)
 - Time for compliance with the PCN (usually 28 days)
 - A warning regarding non-compliance and false information
 - Additional information regarding further action and compensation in respect of a Stop Notice
- 11.5 It is considered appropriate to enable the recipient to make representations regarding the PCN. This could be undertaken by means of a meeting. The date, time and place for which may be included within the notice. Service of a PCN does not prevent the service of a Request for Information (under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 or, Section 330 of the TCPA in association with the same breach (see below)
- 11.6 Failure to comply with a PCN is a criminal offence, and a fine can be applied via the Magistrates Court for failing to reply or, for making a false or misleading statement. It is a defence that the person on whom a PCN is served is only required to supply information “*so far as he is able*” or, “*known to him*” or, which he “*holds*”. Therefore there is no positive duty on the person to go out and find or research their answers
- 11.7 Issuing a PCN does not constitute the SDNPA taking enforcement action. A PCN is not registered as a land charge, and is not included on the SDNPA enforcement register
- 11.8 **Section 330 Town and Country Planning Act 1990** Enables the SDNPA to obtain information about interest in land, including ownership and occupation, for example:
- A. As to interest in the premises:

- i. The nature of your own interest in the premises
- ii. The name and address of any other persons known to you as having an interest in the premises (whether as a freeholder, mortgagee, lessee or otherwise)

B. As to the use of the premises:

- i. The purpose for which the premises are used
- ii. The time when that use began
- iii. The name and address of any person known to you as having carried on that use
- iv. The time when any activities being carried out on the premises began

Failure to respond to this notice is a criminal offence

11.9 **Section 16 Local Government (Miscellaneous Provisions) Act 1976** Used by the SDNPA with a view to performing a function conferred by an enactment to obtain information connected with the land

11.10 This can be served on:

- Occupiers of the land
- Any freeholder, mortgagee or lessee
- Any person directly / indirectly receiving rent
- Any person who, under an arrangement with a person interested in the land, manages or arranges letting of the land

Failure to respond to this notice is a criminal offence

12. Enforcement action

12.1 The SDNPA approach to planning enforcement is built around a process of escalation. This process applies only to breaches of planning where, following the assessment of expediency, it has been determined enforcement action is necessary. The following are the course of actions that may be taken in relation to formal notices

12.2 **Enforcement Notice** The power to issue an Enforcement Notice is granted by Section 172 of the Town and Country Planning Act 1990. An Enforcement Notice is the most widely used power available to remedy a breach of planning control that relates to unauthorised building works, a change of use or, possibly a breach of condition. The notice must clearly state:

1. The alleged breach of planning control
2. What is required to remedy the breach
3. The time available to comply with the requirements (compliance period)



12.3 The notice has to be served on anyone having an interest in the land and once the notice has been served the recipient will either:

(a) Comply with the notice (in which case the matter is closed)

Or

(b) Contest the notice by way of an appeal to the Secretary of State or challenge in a court of law

12.4 There is a right of appeal on the following grounds:

- a. That planning permission should be granted for what is alleged in the notice
- b. That the breach of control alleged in the notice has not occurred as a matter of fact
- c. That there has not been a breach of planning control
- d. That the time the notice was issued was too late to take action against the matters stated in the notice
- e. The notice was not properly served on everyone with an interest in the land
- f. The steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections
- g. That the time given to comply with the notice is too short

12.5 An Enforcement Notice takes effect when the time limit available for lodging an appeal (at least 28 days) has expired

In the event that an appeal is lodged, the Enforcement Notice is suspended pending the outcome. An Inspector can either:

- uphold the notice in its entirety
- vary a notice (providing it is only a minor change)
- quash the notice completely

12.6 In the event the notice is upheld (changed or unchanged) the date of the Inspectors decision letter starts the clock for the lead-up to the compliance deadline

12.7 **Listed Building Enforcement Notice** Similar to an Enforcement Notice. The notice may:

(a) Require the building to be brought back to its former state

(b) If that is not reasonably practicable or desirable, require other works (specified in the notice) to alleviate the effects of the unauthorised works

(c) Require the building to be brought into the state it would have been, if the terms of any listed building consent had been observed

12.8 The notice must specify time constraints for securing compliance with the requirements



- 12.9 There is a right of appeal against a Listed Building Enforcement Notice. The procedures are similar to those for an appeal against an Enforcement Notice
- 12.10 If works subject to a Listed Building Enforcement Notice are later authorised by a retrospective application for listed building consent, the Listed Building Enforcement Notice will cease to have any effect (although the liability to prosecution for an offence committed before the date of any retrospective consent, remains)
- 12.11 **Breach of Condition Notice** The power to serve a BCN is contained within Section 187A of the Town and Country Planning Act 1990
- 12.12 A notice can be issued either:
- Where a condition on a planning permission has not been complied with during the development stage. (for example, failure to provide fencing to protect trees while a development is underway)
 - Following completion, failing to comply with restrictions or limitations of a planning permission (for example, a breach of opening hours)
- 12.13 28 days are given to the recipient to either respond or remedy the breach, before the notice takes effect. There is no right of appeal against a BCN, and failing to comply with the requirement is an offence that can be prosecuted at Magistrates Court (with a level four fine of £1,000 to £2,500)
- 12.14 **Full and Temporary Stop Notices** Where a breach of planning control is causing significant harm, the SDNPA have powers to take emergency action to compel it to stop
- 12.15 Section 183 and 184 of the Town and Country Planning Act 1990 is the relevant act. Emergency action is only taken in exceptional circumstances where the risk of irretrievable harm is real or considered imminent
- 12.16 A Temporary Stop Notice can be issued to support an Enforcement Notice, having the general effect of requiring a breach of planning to cease almost immediately. Consideration can then be taken to serve the Full Stop Notice, once the Enforcement Notice becomes effective
- 12.17 Compensation is payable in some cases if the Enforcement Notice to which either Stop Notices relate are quashed on appeal, and accordingly, they are only to be used in exceptional circumstances



12.18 Section 215 Untidy Land Notice

The SDNPA can serve a notice on the owner / occupier of any land or buildings that are in a condition which is assessed to adversely affect the amenity of the locality. The notice may require the relevant party to remedy the matter by undertaking steps specified in the notice. Such notices are suitable to remedy the appearance of a site (such as clearing of land of derelict cars or, remedying untidy gardens of domestic properties or, to improve the visual appearance of a property. Failure to comply with the notice can result in legal proceedings at Magistrates Court



- 12.19 **Direct Action** Where the SDNPA has issued a statutory notice (for example a Section 215 Untidy Land Notice) and those responsible for the breach have failed to comply, there are powers to carry-out the works specified in the notice
- 12.20 This is referred to as direct action. Direct action is a useful tool that can resolve many different breaches of planning control and is generally most effective when used to remove unauthorised building operations, and to clear land. The SDNPA has powers to recover any expenses incurred as a result of direct action, and unpaid expenses can be either pursued in the County Court or registered as a land charge (payable when the land is sold)
- 12.21 **Injunctions** Where the SDNPA considers it necessary or expedient for any actual, apprehended breach, or listed building control to be restrained, it can apply to court for an injunction. Such action would normally only be sought if the breach was particularly serious or protracted, and was causing (or was likely to cause) exceptional harm to the local environment. Failure to comply with an injunction may result in imprisonment
- 12.22 **Planning Enforcement Orders (Deliberate Concealment)** This type of order can be applied for when enforcing against concealed breaches of planning control (for example, a house within a barn) and it appears there may have been a breach of planning control in respect of any land. The SDNPA may apply to court for a PEO within 6 months of the apparent breach being discovered. The SDNPA then has a further year in which to take formal action
- 12.23 **Power to decline to determine a retrospective application** The SDNPA may decline to determine an application for planning permission for the development of any land, if it is the subject of a pre-existing Enforcement Notice

12.24 For this purpose, a “pre-existing Enforcement Notice” is a notice issued before the application was received

13. Possible outcomes

Introduction

13.1 The SDNPA has a variety of enforcement options that may be utilised when resolving a breach of planning control. Following an investigation of a breach (that would warrant more formal action being taken) the investigating officer will reach a decision (in consultation with the development manager and legal officers) to decide the most appropriate course of action to take. Decisions will be based on the circumstances of each individual investigation, and the planning merits of the development

Possible outcomes of an investigation

- 13.2 **No breach of planning control is established** Development may be permitted or is not within the control of planning legislation
- 13.3 **There is a breach of planning control but it is not expedient to pursue** If a technical breach has taken place (for example, a house extension that is marginally over permitted development limit) however there is minimal harm, then it is not normally worthwhile to take lengthy and expensive enforcement action. Similarly no action will be taken where, following an assessment of expediency, it is determined that an unauthorised development is acceptable on its planning merits
- 13.4 **Unauthorised development can be made acceptable by the imposition of conditions on a retrospective permission** The SDNPA may consider that the development has been carried-out without the requisite planning permission, but that the development could be made acceptable by the imposition of planning conditions (for example, to control the hours or mode of operation or, to carry-out a landscaping scheme). If so, the owner / occupier of the land may be invited to submit an application. It can be pointed out that the authority do not wish the business (or other activity) to cease, but that there is a public duty to safeguard amenity by ensuring that development is carried-out (or continued), within acceptable limits. This will have regard to local circumstances and the relevant planning policies
- 13.5 **Unauthorised development is unacceptable and immediate remedial action is required** Where the SDNPA view that an unauthorised development has been carried-out and it is considered that:
- (1) The breach of control took place in full knowledge that planning permission was needed, whether or not advice to this effect was given by the SDNPA to the person responsible
 - (2) The person responsible for the breach will not submit a planning application for it (despite being advised to do so)

(3) The breach is causing serious harm to public amenity in the neighbourhood, the SDNPA should normally take vigorous enforcement action. This includes, if appropriate, the service of a Stop Notice to remedy the breach urgently, or prevent further serious harm to public amenity

13.6 **Immunity from enforcement action** Breach has occurred but the activity has been going on for so long or, the structure has been substantially complete for such a length of time, that the breach is immune from any enforcement action. The development has become 'lawful' for planning purposes

13.7 The following table shows the timescales:

Activity	Immune after
Operational development	Substantially completed for 4+ years
Change of use of a building to a single dwelling house	Continuous occupation for 4+ years
Change of use	Continuous occupation at the same intensity for 10+ years
Breach of a condition on a planning permission	Continuous non-compliance for 10+ years
Advertisements	Continuous display for 10+ years

13.8 **Lawful Development Certificates**

If owners of land or property consider that a breach of planning control has become immune from enforcement action, they may apply for a Lawful Development Certificate (LDC) or, may be requested in the course of an investigation in order to resolve the breach

The certificate can be granted and would confirm that an existing use of land, some operational development, or some activity being carried-out in the breach of a planning condition, is lawful for planning purposes

Any person can apply to the SDNPA to obtain a decision on whether an existing use of a development is lawful or not and (providing the SDNPA are satisfied that the applicant has proved on the balance of probabilities, this change of use) it will grant a LDC

14. **Enforcement register**

14.1 The SDNPA has a statutory duty to hold and maintain an enforcement register. This records basic information and details in respect to what notices have been served, but does not detail the investigation in depth. The notices contained in the statutory enforcement register are:



- Enforcement Notices
- Listed Building Enforcement Notices
- Breach of Condition Notices
- Full & Temporary Stop Notices

14.2 The enforcement register is a public record and can be viewed on the SDNPA website. It will show any notices served within the SDNPA since 1st April 2015. Any notices prior to this date will be with the relevant authority, however there is a paper record of all enforcement notices issued since 1st April 2012 at the South Downs Centre

15. Criminal offences

15.1 As it has been stated, within the planning regime, they are three criminal offences:



15.2 Advertisements are dealt with under their own legislation:

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)

15.3 Tree Preservation Orders (TPO) are dealt with under the: *The Town and Country Planning (Tree Preservation) (England) Regulations 2012*

15.4 In regard to Tree Preservation Orders (TPO), at present there is an agency agreement with Wealden District Council who will provide a specialist consultant to assess any

reported breaches. If a breach is established the SDNPA enforcement officer will deal with the breach under the above legislation. The remaining areas within the National Park will be dealt with by that appropriate authority

- 15.5 Listed buildings are dealt with under *The Planning (Listed Building and Conservation Areas) Act 1990 (as amended)*
- 15.6 Being 'listed' identifies both the inside and outside features being protected, because these features are of historic or architectural importance. The listing of buildings is a complex issue. In most cases, it is not only the building itself that is protected, but also the land that surrounds the building. Additionally, the 'listing' details (held by Historic England) often do not include maps, drawings or photographs. It can therefore be difficult to establish precisely what is listed. The quality of information available on each listing can vary considerably, however in all cases the 'principal building' must be identified and described
- 15.7 In addition to the 'principal building', the following additional features will also be subject of the listing:
- Any object or structure fixed to the building
 - Any object or structure within the curtilage of the building which (although not fixed to the building) forms part of the land, and has done so prior 1st July 1948
- 15.8 Identifying the curtilage of a listed building can be problematic where there is no map of the listing available. Unlike curtilage issues that arise in planning matters, the curtilage of a listed building is a matter of fact, and cannot be assessed subjectively
- 15.10 **Interviewing suspected offenders** The SDNPA may question suspected offenders in accordance with the requirements of the Police and Criminal Evidence Act 1984. This course of action will only apply in cases where the person to be questioned is believed to be responsible for the breach. All but the most basic information must be obtained 'under caution'. Where interviews under caution are considered necessary they will be tape recorded. Interviews will only be recorded in writing in extenuating circumstances, such as where it is not possible to delay questioning of a suspected offender
- 15.11 **Requisitions for information** Because breaches to listed buildings, the display of adverts and damaging protected trees are criminal offences, the SDNPA has no powers to issue a Planning Contravention Notice. Where specific information is required in relation to any of the three criminal regimes, an interview under caution must take place to establish these facts. Informal questioning will suffice only in cases where the person being questioned is not believed to have undertaken the unauthorised works (such as the new owner of a listed building), due to having inherited responsibility for the unauthorised works from the previous owner / occupier
- 15.12 Where information is required purely in relation to interests in land, the SDNPA is permitted to issue formal notices requiring this information. These notices may be issued under section 330 of the Town and Country Planning Act 1990, and Section 16 of the Local Government (Miscellaneous Provisions) Act 1982

16. Relevant legislation and guidance

- 16.1 The Town and Country Planning Act 1990 (as amended) and Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) are the basis of the planning process, and provide nearly all of the enforcement powers available. Further guidance, published by the Department for Communities and Local Government in March 2014, provides information and standards to consider, when dealing with issues and alleged breach of planning

Town and Country Planning Act 1990 (as amended)

<http://www.legislation.gov.uk/ukpga/1990/8/contents>

Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

<http://www.legislation.gov.uk/ukpga/1990/9/contents>

Effective Enforcement

<http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/>

Adverts

<http://planningguidance.planningportal.gov.uk/blog/guidance/advertisements/>

Lawful Development Certificates (LDC)

<http://planningguidance.planningportal.gov.uk/blog/guidance/lawful-development-certificates/>

Tree Preservation Orders (TPO)

<http://planningguidance.planningportal.gov.uk/blog/guidance/tree-preservation-orders/>

Listed Building enforcement and other enforcement

<http://planningguidance.planningportal.gov.uk/blog/guidance/conserving-and-enhancing-the-historic-environment/further-information-on-heritage-and-planning-issues/>

Environmental Impact Assessments (EIA)

<https://www.gov.uk/guidance/environmental-impact-assessment>

Special Protection Areas (SPA) and Special Areas of Conservation (SAC)

<http://jncc.defra.gov.uk/page-162>

<http://jncc.defra.gov.uk/page-23>

17. Investigation standards

Should you not be satisfied with the way an enforcement investigation has been carried-out, the Head of Development Management will undertake a review, advising what action will be taken. If this does not resolve the matter, the matter will be investigated in accordance with the SDNPA Corporate Complaints Policy. Details of the policy can be found on the South Downs National Park website



Legislation

The Town and Country Planning (Use Classes) Order 1987 (as amended)
The Town and Country Planning Act 1990
The Planning (Listed Building and Conservation Areas) Act 1990 (as amended)
The Planning and Compensation Act 1991
The Town and Country Planning (General Permitted Development) (England) Order 2015
The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
The Town and Country Planning (Tree Preservation) (England) Regulations 2012
The Human Rights Act 1998

DCLG Guidance

DCLG Permitted Development for Householders
Planning Practice Guidance – Ensuring effective enforcement
Planning Practice Guidance – When permission is required
Planning Practice Guidance – Tree Preservations Orders and trees in Conservation Areas
Planning Practice Guidance – Advertisements
Planning Practice Guidance – Lawful Development Certificates

National Guidance

National Planning Policy Framework

