

# South Hams District Council and West Devon Borough Council

## Enforcement Policy

### 1. Introduction

This Enforcement Policy sets out how South Hams District Council and West Devon Borough Council ('the Councils') deal with non-compliance with the wide-ranging legislation that we have a duty to enforce as local authorities. This Policy is available on our website and copies can be obtained from our offices (details of which are given at the end of this document).

This Policy complies with the requirements of the Regulators' Code, introduced by Government in April 2014. All local authority regulators and many other public enforcement bodies must have regard to this. This Enforcement Policy is a living document and will evolve in the light of feedback from businesses, emerging best practice and Government Guidance.

The Councils are committed to good enforcement practice as set out in the Legislative and Regulatory Reform Act 2006, and we aim to exercise our regulatory activities in a way which is:

- **Proportionate:** our activities will reflect the level of risk to the public and enforcement action taken will relate to the seriousness of the offence,
- **Accountable:** our activities will be open to public scrutiny, with clear and accessible policies, and fair and efficient complaints procedures,
- **Consistent:** our advice to those we regulate will be robust and reliable and we will respect advice provided by others. Where circumstances are similar, we will endeavour to act in similar ways to other local authorities,
- **Transparent:** we will ensure that those we regulate are able to understand what is expected of them and what they can anticipate in return, and
- **Targeted:** we will focus our resources on higher risk enterprises and activities, reflecting local need and national priorities.

In drawing up and developing our enforcement policy we have had regard to:

**The Regulators' Code 2014** (as set out by Department for Business Innovation & Skills): in certain circumstances it may be appropriate to deviate from the Code, but any such cases will be reasoned and documented.

**Human Rights Act 1998 and the European Convention on Human Rights:** in particular, decisions need to have regard to the right to a fair trial and the right to respect for private and family life, home and correspondence.

**Data Protection Act 1998:** details the provisions to be followed where there is a need for the Council to share information about enforcement with other agencies.

**Code for Crown Prosecutors** (as set out by the Crown Prosecution Service): a public document that sets out the general principles to follow when decisions are made in respect of prosecuting offenders. The Code sets out two tests that must be satisfied; commonly referred to as the 'Evidential Test' and the 'Public Interest Test'.

**Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015:** changes to some fines and wording of notices.

Revised **Home Office Code of Practice on PACE part B:** powers of entry and provision of Notice of Powers and Rights when entering land.

The Councils are fully committed to the Devon and Somerset Better Business for All (BBfA) Regulatory Services Partnership, which is endorsed by the Better Regulatory Delivery Office (BRDO), part of the Department for Business, Innovation and Skills (BIS). The purpose is to build a local partnership between businesses and regulators across Devon and Somerset to promote economic prosperity, whilst maintaining public protection. This document will ensure that the Regulator will work in accordance with the BBfA principles. In doing so the Councils will create an environment and culture which will support our local businesses by making the activity that is being regulated easy to access, simple and clear to understand, whilst ensuring public protection.

The Councils will listen to business needs and act in an open and transparent way to help shape the way support is provided, this will be done following business consultations and throughout service use.

Better Business for All is business-focused, using business-led improvements to create better regulation, support business growth and create a level playing field for businesses. In order to achieve this, the Policy will be implemented in a consistent manner with competent enforcement staff who are working with the right attitudes and behaviours for the benefit of our Communities.

We are committed to avoid imposing unnecessary regulatory burdens, and to assessing whether similar social, environmental and economic outcomes could be achieved by a less burdensome means. We will adopt a proportionate approach to those we regulate based on relevant factors, for example, business size and capacity.

We will review our approach to regulatory activities from time to time, in order to remove any unnecessary burdens. We will also monitor our approach to ensure compliance with our stated policy.

## **Equality**

We are committed to equality of opportunity, promoting diversity and eliminating discrimination. Enforcement decisions will be fair and objective and not be influenced by ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source. A copy of our Equality and Diversity Strategy is available on our website or can be obtained from our offices.

### **2. What is this policy for?**

This Policy seeks to clarify, communicate and explain our enforcement approach, to businesses, residents, consumers and others affected by our enforcement activities, and also sets out a consistent and transparent policy as to how the Council will approach Enforcement.

This Policy is intended to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that our services can have on economic progress and growth within the local economy and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

Our staff are aware of this Policy and associated service standards and will act in accordance with this Policy and the standards set.

The overall aim of our services engaged in regulatory activity (where appropriate):

- To support good practice and promote growth for business.
- To protect our community from unsafe, unfair or illegal trading practices or unlawful activities.
- To intervene with individuals who cause nuisance or environmental crime in our communities.
- To protect the environment and amenity in our communities
- To safeguard persons in the workplace and those affected by work activities.
- To improve health and well-being across the community.

There may be legitimate circumstances where it is not possible to follow this Policy but if this is the case, we will justify the decision and record it.

The appendices to this Policy reflect practices specific to individual areas, such as Environmental Health and Planning Enforcement.

### **3. When does this policy apply?**

We recognise that the majority of businesses and residents want to meet their legal requirements without being faced with unnecessary burdens. We are keen to be supportive by adopting a pragmatic approach through advice and guidance where we can. This Policy is our overarching approach to enforcement and is supplemented where necessary by service-specific policies.

### **4. Our approach to dealing with non-compliance**

Where a breach of legislation, Government Guidance or Council Policy is identified, by far the most common outcome is for advice to be given to the business or individual concerned. This may be at a very early stage or after some further investigation. However we are committed to dealing firmly with those that deliberately or persistently fail to comply with the law or policy.

### **Communication**

We will provide general information, advice and guidance to make it easier for businesses and members of the public to understand and meet their legal obligations. This will be provided promptly, in clear, concise and accessible language, using a range of appropriate formats and media. Information will cover legal requirements relating to our regulatory and enforcement activities, as well as changes to legal requirements. Where there are significant changes, we will look at the best ways of informing businesses and the public of the changes.

We will provide targeted and practical advice by telephone and, where practicable and reasonable, promote self-service via our website. Where appropriate, we will provide this advice by personal visit. We will try to maximise the accessibility and effectiveness of advice to ensure efficient use of resources and we will involve businesses and members of the public in developing both the content and style of regulatory or enforcement guidance to ensure that it meets their needs.

Businesses and individuals can confidently request advice from us on non-compliance without directly triggering enforcement action where they show a willingness to resolve the non-compliance and we encourage those we regulate / enforce against to contact us for advice.

Our staff are committed to explaining clearly the non-compliance and any advice being given, actions required or decisions taken, with reasons for these. There will be an opportunity for dialogue in relation to this. If formal action is likely to be considered as an option that dialogue may be needed to be by way of

a formal recorded interview as the Police and Criminal Evidence Act 1984 requires. This is a legal process but it is used to provide fairness and clarity to anyone who is at risk of prosecution.

### **Delegated powers**

The Council delegates the powers it has to enforce various pieces of legislation, so that individual Council 'enforcement' officers with the appropriate levels of competence, have specific authority to act. Officers with enforcement powers carry identification and confirmation of their authorisation.

Investigations are overseen by team managers and qualified senior officers, in line with the adopted Scheme of Delegation.

### **Sharing information/intelligence**

We will refer matters to other authorities or enforcement bodies where we believe they are the most appropriate to deal with a matter. We will also accept referrals from others where we are the most appropriate enforcement body to deal with something effectively. We are committed to liaising with these bodies to target our resources and rationalise our approach. Where we refer matters to another body, we will advise the business or member of the public accordingly.

In order to maximize the effectiveness of any enforcement, we will share intelligence relating to regulatory matters both within the Councils and more widely with:

- Government agencies
- Police
- Fire authorities
- Local authorities
- Other statutory bodies

### **Conflict of interest**

In the event of a possible conflict of interest, for example, where a key enforcement decision involves parts of the Council or its staff, we will if deemed appropriate involve another local authority in ensuring an impartial decision is made.

### **Publicity**

In the event of a business or individual being prosecuted and sentenced as a result of enforcement action, the Council will usually issue a media release, which may also appear on the Council's website.

## **Risk assessment**

We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and risk assessment inform all aspects of our approach to regulatory or enforcement activity, including (where relevant):

- Data collection and other information requirements;
- Inspection programmes;
- Advice and support programmes;
- Enforcement activity and sanctions;

Where appropriate and relevant to the non-compliance, we will use the appropriate Government risk assessment scheme to inform any inspection programme or intervention but, where these do not exist, we will consult and involve businesses and other interested parties in designing any risk methodologies that we create, and publish the details. In the absence of other factors when determining risk, we will consider:

- Compliance history and potential future risks
- The existence of effective management systems
- Evidence of recognised external accreditation • Management competence and willingness to comply • Use of complaints/investigation filters.

We will also use intelligence to direct inspection based projects, targeting activities or businesses or individuals where there are known issues. However, complaints may also trigger a visit if that is the most appropriate response.

## **5. Conduct of investigations**

Investigations are subject to controls on how evidence is gathered and used and give a range of protection to members of the public and potential defendants. Our investigations will be carried out in accordance with the following legislation and in accordance with any associated guidance or codes of practice, including:

- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Criminal Justice and Police Act 2001
- Human Rights Act 1998

We will comply with the requirements of the particular legislation under which we are acting and any associated guidance or codes of practice.

Where any business has a 'Primary Authority' relationship established with a local authority regulatory service, our officers will communicate with that service at the earliest opportunity.

### **Powers of officers**

Under certain pieces of legislation that we enforce, officers are given particular powers to carry out certain activities including, for example, sampling; inspection of premises, land, buildings, goods, equipment or documents. In certain circumstances, where offences are suspected or evidence required, legislation gives our officers powers to seize items and documents. Powers vary depending on the legislation being used.

Where any items are seized officers will supply written confirmation of anything taken at the time or if not practical as soon as possible afterwards.

### **Obstruction of officers**

The legislation we enforce can include offences of obstructing officers involved in enforcement activities and this can include failure to give appropriate assistance in some circumstances. We will view obstruction as a serious matter.

Occasionally, our officers work with the Police and in some circumstances the Police may use their powers of arrest. Our officers do not directly have the power of arrest or detention of persons. Failure to give Council officers appropriate assistance or information may result in prosecution proceedings in its own right.

### **Interviews of potential defendants and evidence processing**

Where a person, company or other legal entity is suspected of breaching legal requirements and formal action remains under consideration, wherever possible (and relevant) they will:

- be formally interviewed in accordance with the Police and Criminal Evidence Act 1984 (usually but not exclusively audio recorded)
- be given the opportunity to demonstrate if a statutory defence is available to them;
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

### **Time limits for action**

Individual pieces of legislation usually stipulate time limits within which prosecutions can be brought. This is dependent upon the particular piece of legislation. We will seek to conclude our investigation in a timely manner and advise the potential defendant of the outcome without undue delay.

## **Review of evidence**

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, evidence gathered and a confidential report compiled by the investigating officer that will include the evidence obtained. This will be reviewed by the appropriate specialist. Cases in which a prosecution is to be pursued will be reviewed by our Legal Services team. The prosecution will then be managed through the court system by a member of the Legal Services team, with other legal representation being appointed or advice sought if required.

## **Keeping in touch**

Alleged offenders (or their legal representatives) are encouraged to contact the investigating officer or a member of the Legal Services team if they wish to know the progress on their investigation. Any person interviewed under caution will be informed in writing of decisions on enforcement action and the matter should not be considered as concluded until confirmed in writing, or a court hearing taken place.

Witnesses will be kept informed of the progress in accordance with our service standards.

## **6. Decisions on Enforcement Action**

We recognise that most businesses and the public wish to comply with the law. We will endeavour to help people to meet their legal obligations without unnecessary expense. When a business or individual does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate.

Formal action is more likely to be pursued in instances where the offender has:

- acted fraudulently
- put the safety or health of consumers, neighbours or others at risk
- put the environment or amenity at risk
- acted irresponsibly and negligently
- failed to heed advice or previous warning, or
- failed to take reasonable steps to avoid offences being committed.

Our approach to enforcement action will aim to:

- change the behaviour of the offender;
- eliminate any damage, risk or harm caused as a result of any offences
- eliminate any financial gain or benefit from non-compliance;
- be responsive and appropriate for the particular offender and regulatory / enforcement issue;



- be proportionate to the nature of the offence and the harm caused; • restore the harm caused by non-compliance, where appropriate; and
- aim to deter future non-compliance.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision to take formal action. Our approach will be based on risk and expediency.

In respect of action under health and safety laws we will adopt the Enforcement Management Model (EMM) developed by the Health and Safety Executive.

There are a range of enforcement options available to us through the legislation we enforce. These vary depending on the particular circumstances and legislation and one or more options may be relevant in each case. The level of the action taken varies from 'no action' through to proceedings in Court. Examples of the main types of action that can be considered are:

- No action;
- Compliance advice, guidance and support;
- Voluntary undertakings;
- Statutory (Legal) notices (including Direct Action);
- Financial penalties;
- Injunctive actions
- Enforcement orders and notices etc;
- Simple Caution;
- Anti-social Behaviour notices, order
- Prosecution; and
- Refusal/suspension/revocation of licence or registration.

#### **A. No Action**

There will be circumstances where a contravention may not warrant action, or it may be inappropriate or not in the wider public interest. Many minor contraventions can most appropriately be dealt with via advice and guidance.

#### **B. Compliance Advice, Guidance and Support**

For minor breaches of the law we will give advice on how to put matters right, including a deadline by which this must be done. The time allowed to put things right will be reasonable, and take into account the seriousness of the breach and the implications of the non-compliance. Advice is usually provided in the form of a 'warning letter', to assist individuals and businesses in rectifying breaches as quickly and efficiently as possible, avoiding the need for further enforcement action. A warning letter (sometimes called an 'informal notice') will set out what

should be done to rectify the breach and to prevent re-occurrence. Failure to comply could result in an escalation of enforcement action.

If a similar breach is identified in the future, this letter will be persuasive in considering the most appropriate enforcement action to take on that occasion. Such a letter cannot be cited in court as a previous conviction but it may be presented in evidence.

Where ever possible we will advise offenders about 'good practice', but we will clearly distinguish between what offenders *must* do to comply with the law and what is *recommended*.

We recognise that where a business has entered into a partnership with a primary authority, the primary authority will provide compliance advice and support, and we will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

Where more formal enforcement action, such as a simple caution or prosecution, is taken, we recognise that there is likely to be an ongoing need for compliance advice and support to prevent further breaches.

### **C. Voluntary Undertakings**

We may accept voluntary undertakings that breaches will be rectified and/or recurrences prevented. We will take any failure to honour voluntary undertakings very seriously and enforcement action is likely to result.

### **D. Statutory (Legal) Notices**

In respect of many breaches, our authorised officers have powers to issue statutory notices. Such notices are legally binding. Failure to comply with a statutory notice can be a criminal offence and may lead to prosecution and/ or, where appropriate, the **carrying out of work in default** (sometimes known as **Direct Action**). This means that if a notice is not complied with (a breach of the notice), we may carry out any necessary works to satisfy the requirements of the notice ourselves. Where the law allows, we may then charge the person / business served with the notice for any cost we incur in carrying out the work.

A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or prevented from recurring. It may also prohibit specified activities until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Notices may require immediate action where, for example, there are risks to public health or health and safety of persons, or an immediate risk of environmental damage or serious nuisance.

In certain limited circumstances (for example, under the provisions of food safety legislation) where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close the premises. This is followed by an application to a Magistrates Court to confirm the closure.

Some notices issued in respect of premises may be affixed to the premises and/or registered as local land charges.

Where a statutory notice is issued, an explanation of the relevant appeals process will be provided to the recipient.

### **E. Financial penalties**

Certain offences are subject to fixed penalty notices where prescribed by legislation. These notices are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. They will be used in appropriate circumstances to give a fast and measured response to the situation.

If a Fixed Penalty is paid in respect of a breach, we will not take any further enforcement action in respect of that breach. Payment of a fixed penalty does not provide immunity from prosecution in respect of similar or recurrent breaches.

If a fixed penalty is not paid, we may commence criminal proceedings or take other enforcement action in respect of the breach.

### **F. Injunctive Actions, Enforcement Orders etc.**

In some circumstances we may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/or safeguards have been put in place to prevent future breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

We are required to seek enforcement orders after issuing some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed

by the notice. Otherwise, we will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

## **G. Simple Caution**

We have the power to issue Simple Cautions (previously known as 'Formal Cautions') as an alternative to prosecution for some less serious offences, where a person admits an offence and consents to the Simple Caution. Where a Simple Caution is offered and declined, prosecution is likely.

A Simple Caution will appear on the offender's criminal record. It is likely to influence how we and others deal with any similar breaches in the future, and may be cited in court if the offender is subsequently prosecuted for a similar offence. If a Simple Caution is issued to an individual (rather than a corporation) it may have consequences if that individual seeks certain types of employment. Offenders will be made aware of this before agreeing to accept a simple caution.

Simple Cautions will be used in accordance with the Home Office Circular and other relevant guidance issued by the relevant Lead Specialist.

## **H. Anti-Social Behaviour**

Anti-social behaviour will be dealt with in accordance with the statutory guidance issued by the Home Office 'Anti-social Behaviour, Crime and Policing Act 2014: reform of anti-social behaviour powers – statutory guidance for professionals'. We will liaise with our statutory partners to ensure that Anti-social Behaviour is effectively dealt with and that our actions are proportionate.

## **I. Prosecution**

We are more likely to prosecute in respect of serious or recurrent breaches, or where other enforcement actions, such as voluntary undertakings or statutory notices have failed to secure compliance. When deciding whether to prosecute we will have regard to the provisions of the Code for Crown Prosecutors issued by the Director of Public Prosecutions.

Under normal circumstances, a process of escalation will be used until either compliance is reached or there is no option other than to instigate proceedings. Exceptions would be where there is a serious risk to personal safety or the environment, or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment. Each case will be considered on its own facts and merits.

Once an officer has completed their investigation, s/he will submit a case report to a senior officer, who will decide the most appropriate course of action.

The senior officer will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes before deciding whether or not to authorise the institution of legal proceedings.

The Legal Lead Specialist (in consultation with the relevant Senior Lead Specialist) must be satisfied that there is sufficient evidence to provide a reasonable prospect of conviction against each defendant on each charge (i.e. that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged). To this end, the Legal Lead Specialist (in consultation with the relevant Lead Specialist) will look at all the available evidence, reliability of witnesses, supporting documentation and any other matters relating to the investigation. Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

In deciding whether a prosecution will serve the public interest, the senior officer will balance factors for and against the prosecution carefully, fairly and impartially. Some factors may increase the justification to prosecute whereas others may militate against.

A successful prosecution will result in a criminal record. The court may impose a fine and in respect of particularly serious breaches a prison sentence. Prosecution may also lead, in some circumstances, to the disqualification of individuals from acting as company directors or, in the case of food safety laws, from managing a food business.

The Council will always seek to recover all prosecution costs where possible.

In some cases we are likely to make applications to the Court under the Proceeds of Crime Act 2002 (POCA) for confiscation of assets. These are the most serious cases or where there is persistence of offending over a long period of time or where the offences are deemed to be 'lifestyle crime' under POCA. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

## **J. Refusal/Suspension/Revocation of Licences**

We issue a variety of licences and permits and register certain persons/activities. Many of these include conditions which require the licence holder to take steps to ensure that, for example, a business or activity is properly run. Breach of these conditions may lead to a review of the licence which may result in its revocation or amendment.

When considering future licence applications, we may take previous breaches and enforcement action into account.

We will provide a timely explanation in writing to any rights of representation or appeal to our enforcement action and provide practical information on the process involved.

Where legislation allows and information arises which goes to the heart of the licensing legislation then a case may be brought for immediate revocation of the licence.

## **7. Review of this Policy**

This Policy will be updated should any changes in legislation or relevant codes of practice require it to be updated, and we welcome any comments on the Policy at any time.

We will adopt mechanisms to engage with those we regulate; including businesses and individuals to offer views and contribute to the development of our policy and service standards. Before changing our policy, practice or service standards, we will consider the impact on business and engage with business representatives.

## **8. Comments and Complaints**

If a matter has not yet reached court or in any other case where a person affected by an enforcement decision is dissatisfied, as with other complaints about our service or staff, one of our managers will be able to discuss the cause of the dissatisfaction, and will try to find a solution.

We have a Complaints Procedure and any person aggrieved by the enforcement action taken by the Council in connection with our enforcement activity (or any other actions) may register their complaint in accordance with that procedure. Copies of this document (and other documents referred to in this Policy) are available upon request by writing to either:

- South Hams District Council, Follaton House, Plymouth Road, Totnes TQ9 5NE or telephoning 01803 861234 or via the Council's website at [www.southhams.gov.uk](http://www.southhams.gov.uk) or,
- West Devon Borough Council, Kilworthy Park, Drake Road, Tavistock PL19 0BZ or, telephoning 01822 813600 or via the Council's website at [www.westdevon.gov.uk](http://www.westdevon.gov.uk).

All our publications are available in alternative formats, such as large print or a language other than English. Please contact us using the above contact details or email:

[customer.services@southhams.gov.uk](mailto:customer.services@southhams.gov.uk) or, [customer.services@westdevon.gov.uk](mailto:customer.services@westdevon.gov.uk).

## Appendix 1

### Environmental Health

A separate document (available on the website) details our Service Standards and how we can support businesses.

**Primary Authority Scheme:** (developed by the Better Regulation Delivery Office): when considering taking enforcement action against any business or organisation that has a 'Primary Authority' agreement, we will have regard to guidance issued by the Secretary of State in relation to the Primary Authority scheme pursuant to the Regulatory Enforcement and Sanctions Act 2008.

**Home Authority Principle** (as set out by Local Government Regulation): we support this principle which is to promote good enforcement practice and reduce burdens on business. (It was developed for food and trading standards authorities and applies to a local authority where the decision making base for a large multisite business is located). Under this we will:

- provide businesses for whom we are the 'home authority' with appropriate guidance and advice;
- maintain records of our contacts with 'home authority' businesses to reduce the amount of information they have to provide to us;
- support efficient liaison between local authorities, and
- provide a system for the resolution of problems and disputes.

We recognise that where a business has entered into a 'primary authority' or a 'home authority' arrangement with a particular regulatory service then that primary or home authority will provide compliance advice and support. We will take such advice into account when considering the most appropriate enforcement action. We may discuss any need for compliance advice and support with the primary or home authority. Liaison will take place at the earliest opportunity with that authority.

## Appendix 2

### Planning Enforcement

#### 1.0 Introduction

- 1.1 South Hams District Council and West Devon Borough Council are the responsible Authorities for the Planning Enforcement Service within their

administrative areas. Effective enforcement is important as a means of maintaining public confidence in the planning system.

1.2 In order for the Councils to give the best possible service to members of the public, it is vital that this document clearly sets out what matters we are able to deal with and how we balance demands on our services against the resources available to us.

## 2.0 What is Planning Enforcement?

2.1 The Councils are responsible for investigating breaches of planning control which will ordinarily constitute the following:-

- Development or change of use of land without planning permission
- Not complying with conditions of a planning permission
- Demolition in a Conservation Area without consent
- Works to a Listed Building or protected tree without consent
- Neglecting land or buildings which harms local amenity
- Advertisements which harm amenity or public safety

### What is not Planning Enforcement?

2.2 The planning enforcement team will not investigate:-

- Boundary disputes/trespass
- Destruction of property during the building process
- Devaluation of property
- Competition to other business
- Squatting
- Unsafe structures
- Fly tipping
- Civil disputes
- Party wall disputes

## 3.0 The Council's Approach to Planning Enforcement

3.1 Local Authorities have a general discretion to take enforcement action, when they regard it as expedient. In considering any enforcement action, the decisive issue for the Councils will be whether the breach of control would unacceptably affect public amenity or an existing use of land and buildings meriting protection in the public interest

3.2 Planning legislation and policies will be enforced in a fair, equitable and consistent manner, although care will be taken to ensure that the merits of each case are carefully considered. The emphasis of South Hams District Council and



West Devon Borough Council policy is on persuasion, influence and education to secure the aims of the above legislation and planning policies.

- 3.3 Where serious harm is being caused by the breach of planning control, both Councils will take firm action and may not enter into any negotiations before doing so.
- 3.4 Enforcement action should always be commensurate with the breach of planning control to which it relates. The Councils will not normally take enforcement action in order to remedy only a slight variation in excess of what would have been permitted by virtue of the Permitted Development Legislation or Planning Permission.
- 3.5 Section 70c of the Town & Country Planning Act 1990 (as amended) provides that a local planning authority may decline to determine an application where any part of that application relates in whole or part to the matters specified in an enforcement notice as constituting a breach of planning control. The purpose of the provision is to stop time being taken with repeat applications for slightly amended schemes, each subsequently being taken to appeal which delays full compliance with an existing enforcement notice. Both Councils will use this power where any proposed application fails to sufficiently address the breaches of planning control set out within the existing enforcement notice on the land.

#### **4.0 What action can the Councils take?**

- 4.1 In every case it investigates, the Councils must first establish whether or not a breach of planning control has in fact taken place. In some cases this will not always be clear and in such circumstances the authority may serve a 'Planning Contravention Notice' on the owner/occupier of land or property which will require answers to specific questions relating to any alleged breach of planning control.
- 4.2 If a breach of planning control is established and it is considered expedient to do so then the Councils can take formal enforcement action this can be through:
  - Service of an 'Enforcement Notice'
  - Service of a 'Breach of Condition Notice'
  - Service of a 'Section 215 Notice'
  - Service of a 'Listed Building Enforcement Notice'
  - Service of a 'Conservation Area Enforcement Notice'
  - Service of a 'Section 207 Notice' requiring the replacement of a protected tree which has been felled without permission.

Failure to comply with any of the above notices is a criminal offence

- 4.3 A copy of any Enforcement Notice served will be kept on a publicly available Enforcement Register, a copy of the Notice will also be placed on the Land Charges Register. The Notice will remain on public record and will be revealed on any property searches.
- 4.4 Where the requirements of any Enforcement Notices are not complied with within the specified time frame the Councils will take appropriate action which can take the form of a Criminal Prosecution, Injunctive Relief or Direct Action.
- 4.5 In cases where it appears that there has been significant financial benefit in failing to comply with any enforcement notice, the Council will use the Proceeds of Crime Act 2002 to seek to recover any monies or assets gained during the time the Enforcement Notice has been breached.
- 4.6 Prior to taking any formal enforcement action or instigating any prosecution proceedings in relation to planning enforcement, the Councils will give careful consideration to the provisions of the Human Rights Act 1988 and will have due regard to Public Sector Quality Duty as set out within s.149, Equality Act 2010.

## **5.0 Complaints of Breaches of Planning Control**

- 5.1 The Councils will investigate complaints of a breach of planning control if they are provided with:
- The exact address / location of the property or land affected
  - (if the property / land is not correctly identified Council officer may not be able to inspect the site)
  - Details of the alleged breach
  - Any other relevant information
  - Your name and address
- 5.2 Complaints can be forwarded by email, by telephone, in writing or through the South Hams District Council and West Devon Borough Council websites. Contact details are available at the end of this Policy. South Hams District Council and West Devon Borough Council have a policy of maintaining the confidentiality of the complainant in all cases.
- 5.3 Anonymous complaints will not be accepted. If you are concerned about submitting your details, please contact your Local Councillor who can submit a complaint on your behalf. We will then be able to use the Councillor as the point of contact and they in turn can update you on the complaint.

5.4 The Councils receive approximately 700 planning enforcement complaints every year which must be investigated. When assessing your complaint the Councils will take into account whether the works are:

- to a Listed Building
- causing a serious risk to public health
- to a Protected Tree
- within a Conservation Area
- contrary to a Planning Condition
- unauthorised display of an Advertisement in a prominent location
- contrary to Local and National Policy
- to a building that adversely affects the amenity of adjacent properties
- conversion of a building into flats
- a High Hedge complaint
- a breach of planning control
- sufficient to warrant any action by the Council

## 6.0 Contact Information

If you have any further questions relating to the planning enforcement process please do not hesitate to contact us using the following methods:

**By Email:** [PlanningEnforcement@swdevon.gov.uk](mailto:PlanningEnforcement@swdevon.gov.uk)

**By Phone:** Customer Services 01803 861234

**By Post:** South Hams District Council  
Follaton House  
Plymouth Road  
Totnes  
Devon  
TQ9 5NE