

Mendip District Council Planning Enforcement

An Overview of the Service and its Functions

The Planning Enforcement Team hope that this brief document helps members and parishes to understand the planning enforcement function during lockdown and also during normal business.

Government restrictions on travel during the pandemic have impacted our ability to provide as full a service as we would normally do. Site visits may be undertaken depending on the circumstances and only after a risk assessment and on a “non-contact basis”. If photographs supplied with a complaint are adequate to enable a planning judgement to be made, a visit will not normally be undertaken. A risk assessment for site visits is conducted on a case by case basis. We may also adapt the route that we take on certain matters to ensure officer and public safety for a practical outcome.

Planning Enforcement Team at Mendip District Council

Planning Enforcement officers: Simon Snartt & Paige Savage

Line Manager: Simon Trafford

Neighbourhood Services Enforcement Officer (Separate service) Ian Glover

Contact:

To report alleged offences against the Town and Country Planning Act 1990:

Planningenforcement@mendip.gov.uk

To report Traveller Incursions on land/Fly Tipping: Neighbourhoodservices@mendip.gov.uk

To report wildlife crime (tree/hedge works affecting nesting birds): Dial 101, ask for the Wildlife Crime Officer

Planning Enforcement Issues covered by the team include but are not limited to:

- Alleged breaches of planning permission
- Alleged breaches of conditions on a planning permission
- Unauthorised use of land including changes of use
- Alleged damage to listed buildings
- Unauthorised works to buildings that are in a conservation area, or subject to an article 4 direction
- Reports of damage and or removal of trees that are protected by a Tree Preservation Order or in a Conservation Area
- Untidy land

Issues **NOT** covered include:

- The Party Wall Act
- Deeds of covenant disputes
- Damage and or removal of Trees that are NOT in a Conservation Area or protected by a TPO
- Trees cut down that affect the nesting bird season
- Land ownership disputes, including allegations of development on a third parties land

- Cases where the objection is that the complainant does not agree with what has been granted by a permission need to be directed to the Planning section.

Confidentiality

Once an alleged offence has been reported and logged as an enforcement case, the person reporting becomes what is known as a “protected informant” and as such their details will not be disclosed to any enquiring party even under Subject Access or Freedom of Information (FOI) requests. Anonymous complaints will not be investigated, nor will malicious or repeat reports of very similar offences at the same location be tolerated.

Updates for ongoing cases

After a review and in consultation with the Council’s Information Governance and Performance Officer, the Planning Enforcement Team are no longer able to provide updates or information with reference to any ongoing investigations (other than a basic response that the file remains open).

Under the General Data Protection Regulations (GDPR) the Council has a duty to protect the privacy of the person who is the subject of the complaint as we do for the person reporting the complaint. Therefore, we are no longer able to provide any updates or information about the matter during the course of our investigation. Such information is also likely to be exempt from release under the Freedom of Information Act 2000. A summary of our findings will be provided to the reporting person once the investigation has been concluded.

Investigation Methodology

The Town and Country Planning Act aims for regularisation and compromise. Enforcement action is viewed as a last resort if this is not achievable. It is *not* an offence to build something without planning permission, the offence is failing to regularise the works thereafter.

Failing to comply with an enforcement notice or breach of condition notice is also an offence, as is causing damage to a listed building, a tree that is subject to a Tree Preservation Order (TPO) or that is in a Conservation area.

Once a complaint is received and logged a site visit is usually needed to assess the planning breach (see above for lockdown site visits). This assists with the planning assessment made on the harm caused and further action that is applicable.

Site visits must be undertaken by the Enforcement Section and not the person reporting – Under the TCPA we have designated powers to enter land if required.

Some potential outcomes are listed below, this is not an exhaustive list:

No breach

- Not development
- Permitted development (General Permitted Development Order 2015 applies)
- Deemed planning permission complies with the Town and Country Planning Act 1990 or other reason.

The informant and person that is the subject of the reported issue are advised of the decision and the reason why. The case is then closed.

Technical Breach

- Minimal breach of planning control
- Can be regularised by applying for planning permission
- Does not warrant taking formal action or requesting a retrospective planning application, e.g. rear garden fence is 2m 05cm high (GDPO states it should be 2m maximum) it is not expedient to take formal action or to invite a retrospective action even though there is a breach because it is minimal.

The informant and person that is the subject of the reported issue are advised of the decision which may be no further action to be taken. They are advised that this breach could however cause conveyancing issues later on. Case is closed.

Planning Breach

- Clear planning breach that could be regularised by a retrospective planning application
- Cannot be regularised with a planning application

If a planning application is invited, the enforcement case remains open, but on hold, until the application progresses to the point where the planning officer is ready to issue a decision.

If the retrospective application is approved the enforcement case is closed. If it is refused the case will then be revisited. Should we fail to receive a valid application the case will move towards formal enforcement action.

If the breach cannot be regularised with a planning application then we need to make a balanced evaluation of the situation in terms of the harm and the planning law which is done in an expediency report. This lists the breach or breaches of planning law or of planning conditions, planning harm against national and local policies and is reviewed with the team leader.

It is our practice that a draft enforcement/breach of condition notice will be made and sent to our legal team with the expediency report if agreed with the team leader. Legal will look at the two tests, planning harm and public reasonableness. If both tests are passed, legal will agree the notice which can then be issued. Mendip will not issue a notice that, *at the time of issuing*, it is not prepared to take to court for non-compliance, this is why it must go via the legal team first.

Appeals against Enforcement Notices: These have to be made within 28 days to the Planning Inspectorate (PINS) once lodged, there will be no action taken by Enforcement until the inspectorate have made their decision which can be up to or over 18 months.

Appeals against a breach of condition notice: Made via the magistrates court.

Non-compliance with an Enforcement Notice/Breach of condition Notice: Once the compliance date has passed without an appeal or if the appeal is dismissed and the required works have not been completed this becomes an offence. The file will be sent to legal services for prosecution via the courts.

Compliance with an Enforcement Notice/Breach of condition Notice: Once a notice has been complied with this is noted and the case is closed. The notice remains on the land (not the landowner) in perpetuity.

Untidy Land: Section 215 of the TCPA allows for a notice to be issued, this is subject to appeal via PINS. It is often more efficient to issue a Community Protection Notice which can be appealed via the Magistrates Court and provide a more effective route to remedy.

Tree Replacement Notice: During lockdown Tree Replacement Notices are the most effective way to ensure any trees lost that were covered by a TPO are replaced and public and officer safety is maintained.