

This leaflet can be obtained in alternative formats, e.g. in braille, large print, on audio tape, or e-mail by contacting the Council on telephone:

01727 819344 or 819345



The District Council Offices textphone number is **01727 819570**. The service is for customers with a hearing impairment.

এই লিফলেটে যে তথ্য দেওয়া হয়েছে যদি আপনি আরও বুঝার সাহায্য চান তবে কোন্ করনন Telephone: 01727 866100

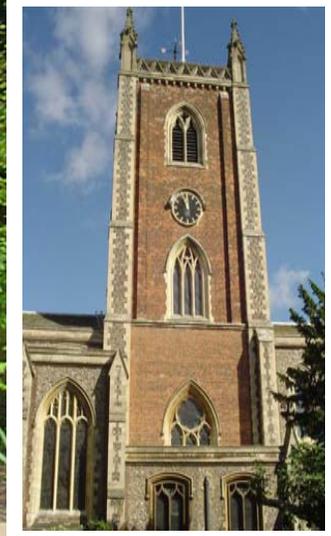
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www.stalbans.gov.uk



Planning Advisory Leaflet



PLANNING ENFORCEMENT

Introduction: Why enforce?

Planning regulations and policies are put in place to help protect and enhance the amenity and environment in our towns, cities and countryside. In an ideal world, development would be carried out properly and in compliance with regulations and policies. No planning enforcement would then be required. Unfortunately this is not the case and breaches do occur. A breach could be the result of a deliberate disregard of the planning regulations or simply a lack of knowledge of the relevant provisions. In these situations, planning enforcement officers are needed to ensure the amenity and environment of St Albans and District is protected and maintained.

Where development has taken place without the required planning permission or where it fails to comply with the requirements of a permission, the Council can take enforcement action and can, as a last resort, prosecute any person undertaking work that is unauthorised. This leaflet outlines the planning enforcement process at St Albans District Council.

*To find out whether any works you propose require planning permission please visit the Customer Service Centre at the Council offices or see the leaflet "A Householder's Guide to Permitted Development Rights" available on the Council website. Planning or enforcement officers will also be able to provide you with guidance but you should be aware that this is an informal view only and not binding on the officer or the Council. **For a formal decision, you will need to apply for a Certificate of Lawfulness.***

What does enforcement involve?

The Planning Enforcement section at St Albans City and District Council investigates around 1,500 complaints/enquiries a year about alleged breaches of planning control received from the general public, District Councillors, Town and Parish Councillors and via referrals from other departments within the Council.

The Council's enforcement officers are involved in the following:

- investigating alleged breaches of planning control. This could include: general works undertaken in respect to buildings and properties, unauthorised fly-posting and advertisement displays, works undertaken to listed buildings, works undertaken in Article 4 Areas and conservation areas;
- checking compliance with conditions on planning consents, and the discharge of planning conditions;
- checking compliance with Section 106 legal agreements;
- assisting in the processing of certificates of lawful use or development;
- providing reports to planning committees on breaches of planning control;
- preparing evidence for enforcement and/or prosecution proceedings;
- responding to telephone requests for planning information and advice;
- posting of site notices for planning and other applications;
- maintaining the Register of Telecommunication Apparatus;
- processing applications for Goods Vehicle Operators Licences;
- investigating retrospective applications that have been refused planning permission;
- liaising with all departments within the Council.

What should you do if you suspect a breach of planning control

If you suspect a breach of planning control, you should contact the Planning Enforcement section as soon as possible. You may submit your complaint or enquiry in writing, by letter or email (details at the end of this leaflet), or by calling 01727 819346. As enforcement officers are often out investigating complaints, there are occasions when you may need to leave details on an answering machine service.

When reporting any alleged breach please provide as much information as possible. Providing accurate details of the postal address of the premises or site can help to speed up the initial investigation.

The Council will ask any person reporting a breach of planning control or making an enquiry to provide their contact details. This is to allow the enforcement officers to update the person on the progress of the case and also to provide a contact should any further information be required. All complaints and enquires are dealt with under strict confidentiality and every effort is made to safeguard this.

You are not, however, required to supply your contact details if you do not wish to do so. An anonymous complaint or enquiry will be considered in the same manner as any other complaint or enquiry.

Despite measures to improve the manner in which the service is provided, it is unlikely that it will be possible to meet everyone's expectations. There will always be a need to prioritise the use of available resources to reflect the nature of the alleged breach, ongoing other commitments and the commitment to securing results. The Council investigates all reported breaches of planning control, but will give special priority to certain referrals such as breaches that are causing serious immediate harm or require emergency action, for example the demolition of a Listed Building.

Many of the 1,500 complaints investigated each year are found to be works carried out under what is known as 'permitted development' rights. For example, you may be concerned that your neighbours have erected a large structure in their garden without planning permission. However, they may be fully entitled to do this lawfully under permitted development rights. Enforcement officers will, of course, investigate every complaint made, but you might wish to view the Council's leaflet, *A Householder's Guide to Permitted Development Rights*, to see if this is the case before you contact the enforcement section.

What happens to your enquiry or complaint?

Once a complaint or enquiry has been received by the Planning Enforcement section, it will be allocated to an officer, who will aim to investigate the complaint or enquiry within five working days and advise you of his/her initial findings. Should a breach of planning control be identified, enforcement action may then be considered.

How is enforcement undertaken?

Many breaches of planning control reported to the Council are very minor, and formal action cannot always be justified. The Local Planning Authority must consider whether the breach of planning control would unacceptably affect the public amenity of the existing use of the land and buildings. Enforcement should always be commensurate with the breach of planning control to which it relates. Enforcement powers are discretionary and even when it is technically possible to take enforcement action, in law the District Council is first required to determine whether such formal action would be 'expedient'. In each case, all the relevant planning circumstances must first be considered and any of the following may be appropriate.

1. **Ongoing review:** Take no action, but monitor the position in case circumstances change. This might involve minor breaches of planning control causing no significant harm.
2. **Allow time to remedy:** Time may be given to remedy the breach of planning control or to consider whether any unauthorised development should be retained, for example by requesting the submission of a planning application. This may be considered appropriate in circumstances where the harm is easily repairable and is not so serious as to warrant immediate action.
3. **Planning Contravention Notice:** Service of this type of Notice is a primary method of gaining information about an alleged breach of planning control. It gives clear warning that further action is being considered and can in itself bring about a satisfactory conclusion.
4. **Enforcement Notice:** Service of such a Notice will be the normal means of remedying unacceptable development where the Council's investigations have not met with a satisfactory response. The Notice will specify the actions that need to be undertaken to remedy any unauthorised development. There is a right of appeal to the Secretary of State against the Notice, which can be quashed or amended on appeal.

5. The Council may choose to '**under-enforce**' to remedy a specific problem. In such circumstances the remaining building or use will be deemed to have planning permission when an Enforcement Notice is complied with. The Council may choose not to issue proceedings against certain aspects contained in the Enforcement Notice. Under-enforcement will only be used when the planning merits are clear, unarguable and third parties are not adversely affected.
6. **Discontinuance Notice:** Service of such a notice allows the Council to take action against any advertisement, or the use of any advertisement site, which might normally have the benefit of deemed consent. Discontinuance action can only be taken if the Council is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public.
7. **Breach of Condition Notice:** A Breach of Condition Notice can be used in addition to, or as an alternative to, an Enforcement Notice where an activity is in breach of a condition attached to a planning permission. There is no right of appeal against this Notice and under-enforcement is not an option.
8. **Stop Notice:** The Stop Notice procedure allows the Local Planning Authority to impose a ban almost immediately on activities that are being carried out in breach of planning control. A Stop Notice can only be served if there has been a prior service of an Enforcement Notice, and it prohibits the use or operation even if an appeal has been made against the Enforcement Notice. Government advice is that a Stop Notice should only prohibit what is essential to safeguard amenities or public safety in the neighbourhood, or to prevent serious or irreversible harm to the environment in the surrounding area.
9. **Temporary Stop Notice:** A Temporary Stop Notice (introduced by the Planning and Compulsory Purchase Act 2004) may be issued where it appears to the Local Planning Authority that there is a serious breach of planning control and to allow time to investigate the breach fully or to issue an Enforcement Notice.

10. **Court Injunction:** An injunction can be sought by the Local Planning Authority from the County Court or High Court in the most serious cases where irreparable harm is being done, where a flagrant breach is resulting in clear financial gain to the individual or where all other actions have failed. Significant costs are involved in such actions and they can only be justified in extreme cases. Defendants risk imprisonment if they do not comply with a court order.
11. **Default Powers:** The Council has the right to enter land and carry out works that are required by an Enforcement Notice. Remedial action may be less problematic than prosecution and capable of resolving any breach. A Local Planning Authority may recover costs from the owner, but the cost-effectiveness of such an action needs to be considered.

Other than 1) and 2) listed above, the relevant Planning Committee will need to determine whether it is expedient to take further enforcement action. However, the Head of Legal and Democratic Services has delegated authority to undertake prosecution proceedings for advertisement breaches or to issue Breach of Condition Notices, while the Head of Planning and Building Control has delegated authority to issue Planning Contravention Notices.

What planning enforcement does not cover

The Planning Enforcement section only investigates planning-related complaints and enquiries. Other departments of the Council undertake enforcement, such as Environmental Health (litter, noise nuisance, refuse collection), Licensing (pubs, restaurants, taxis) and Community Safety (anti-social behaviour). Please see the Council's leaflet, *A-Z of Council Services*, to find out the appropriate department for your complaint. The information is also available on the Council's website: www.stalbans.gov.uk.

Please note: complaints and enquires relating to roads, highways and pavements and verges should be directed to Hertfordshire Highways. Hertfordshire Highways can be contacted on 01438 737320 or www.hertsdirect.org/highwayfaults.

The legal and advisory framework

Powers to enforce planning control are given to Local Planning Authorities by the Planning and Compensation Act 1991, which amended the Town and Country Planning Act 1990. This legislation gives the local planning authorities various enforcement powers, most of which are discussed in this leaflet. Guidance on enforcement procedures is provided by the Government in the form of the Concordat on Good Enforcement issued by the Cabinet Office in 1998.

The Council has adopted the principles of the Enforcement Concordat, which is a voluntary, non-statutory code of practice that sets out best practice for enforcers and is based on the principles of good enforcement. This has been incorporated into the St Albans City and District Council Statement of Policy for the Planning Enforcement Service, which Cabinet adopted on 1 September 2004.

It is important to note that Parliament has decided that in law, the carrying out of unauthorised works or changes of use should not initially constitute a criminal offence, except for unauthorised works to Listed Buildings and the display of certain advertisements. A criminal offence only arises in the majority of cases when an Enforcement Notice has been issued and the recipient has failed to comply with its requirements.

The principles of good enforcement

As mentioned above, St Albans City and District Council has adopted the Concordat on Good Enforcement. Based on the Concordat, the Council has produced its own set of principles for good enforcement. These are set out below:

Standards: In consultation with business and other relevant interested parties, clear standards are to be drawn up setting out the level of service and performance the public and the business community can expect to receive. The information will be made publicly available.

Openness: Information and advice will be provided in plain language. Clear explanations will be given on procedures and

actions. Any issues or problems will be discussed with anyone experiencing difficulties.

Helpfulness: A courteous and efficient service will be provided and matters will be dealt with as quickly as possible, in accordance with agreed priorities and targets.

Proportionality: Any action taken will be proportional to the harm that is involved. Account will be taken of all relevant circumstances, and consideration given to what actions are necessary and expedient.

Consistency: The Planning Enforcement service will be carried out in a fair, equitable and consistent manner in accordance with the practices and procedures discussed throughout this leaflet. Consistency will also be promoted through sharing of knowledge, experience and good practice with other neighbouring Local Planning Authorities through various meetings, committees and training opportunities.

How to contact the Planning Enforcement service

This advisory leaflet is intended to be a helpful and useful source of information and not binding on any party. The Council offers no guarantee or warranties concerning the accuracy of the information supplied.

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