

Appendix II: Comments Received on Draft Planning Enforcement Strategy

Comment Summary	Response
I am writing to lodge a complaint against building works that took place...	Thank you. Comments passed to planning officer dealing with the retrospective planning application
All retrospective applications should be considered at Committee and not dealt with at officer level.	A retrospective application is considered in the same manner as one made in advance. It does not automatically follow that permission will be granted, and this is no more or less likely when decided at Committee rather than under delegation. All decisions are made based on national and local policy.
I find the strategy clearly written, and sets out very clearly what is covered/what isn't. What is seen as more/less serious. Timescales expected for different priorities. I will find this very useful, both as a new Councillor and as a resident. I will also be confident in referring other residents to it, if asked	Noted, thank you.
The strategy is silent on how complaints will be prioritised	Please see Appendix 2 which lists priorities and categories along with initial site visit response times
<p>Where can the public view the key performance indicators and what is the frequency of publication?</p> <p>Could performance indicator statistics be made available on a regular basis so stakeholders can see how well targets (response times etc) are being met.</p>	<p>Performance and monitoring indicators for enforcement are:</p> <ul style="list-style-type: none"> • % complainants updated within 21 days of registration • No. of enforcement notices served • % priority cases responded to within one working day <p>Some of these are new indicators. They are reported to Policy and Resources Committee twice yearly.</p>
<p>What course of action is available to complainants when they do not receive a satisfactorily detailed response within the 21 day period from officers.</p>	<p>We would encourage ongoing dialogue with the investigations officer, noting that some details cannot be shared during a live investigation.</p> <p>A complaint can be made under Stage 1 of the Councils complaints procedure if desired.</p>
<p>The document is procedures rather than strategy. There are no details on how SBC will engage with Parish Councils or the general public which is fundamental to make enforcement work.</p> <p>There is historical evidence of major developments not being built to approved plans. There are no details on how Planning and Building Control will collaborate to ensure build outs are to approved plans or when there are potential breaches.</p> <p>Concerns were raised about enforcement outside of office hours and this could be improved.</p>	<p>Engagement begins when a Parish or member of the public reports a breach, and their help is invaluable during investigations.</p> <p>Paragraph 5.3 covers monitoring of sites and we regularly monitor Building Control's Commencement and Completions lists and act on suspected irregularities.</p> <p>Out of hours provision will be considered going forward, but this is not within current budgets.</p>
<p>Whilst the draft policy has a logical flow it seems to provide incentives to ignore the planning process</p>	<p>The document outlines the processes and procedures by which all Local Planning Authorities are bound. There is no provision within the Planning Act to</p>

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<p>and wait to be caught? Should you be seeking some form of penalty when this happens?</p> <p>If the enforcement system is not seen to be vigilant and effective, the view could prevail that planning control is weak, and encourage some to not apply for planning permission / comply with conditions on the assumption that failure is unlikely to lead to sanctions or that a long period will elapse before sanctions are applied.</p>	<p>penalise perpetrators on discovery of unauthorised development, as it is not an offence to undertake development without planning permission. It becomes an offence if an enforcement notice is issued and not complied with.</p> <p>We agree with your take on the workings of a successful system and the team has recently been reorganised to manage variations in workload throughout the district.</p>
<p>It also does not seem to cover deliberate wholesale criminality where land is used for dumping spoil/material for cash. This crime cuts across both planning controls and environmental controls.</p> <p>My view is that the policy should set challenging timescales for dealing with these reports and contain clear linkages with other agencies to take rapid action. I would suggest there are quarterly meetings between enforcement leaders in KCC, Swale and the EA to review sites of interest.</p>	<p>Waste crime falls within the remit of the Environment Agency and Kent County Council Minerals and Waste Planning Enforcement. It is generally not a district council matter.</p> <p>Swale BC Planning Investigations team maintains a close working relationship with other statutory bodies, including the Environment Agency, KCC planning and the police and do meet regularly.</p>
<p>The use of agricultural land effectively as scrap yards seems to be growing rapidly.</p>	<p>Reports can be made online through the Council's planning investigations pages.</p>
<p>Responses to illegal residential use of agricultural land should be tightened. Once it is established that a static caravan is deposited on a site not designated for housing an order for removal within 30 days is given. The owner can apply for planning permission but the caravan should be removed in the interim pending their application.</p>	<p>Unauthorised residential use of land which conflicts with planning policy and national planning guidance is always followed up by enforcement action. There is no provision within the Planning Act to allow us to require that unauthorised development must cease/ be removed whilst a planning application is being determined.</p>
<p>There is no definition of 'harm' as this can mean different things to different people</p>	<p>Harm that results from a breach in planning control could concern residential amenity or highway safety. It is the collective term used to describe the negative impacts of a development.</p>
<p>There needs to be more transparency and ability to view what breaches have been logged and actions taken, similar to reporting potholes.</p> <p>It would also be very helpful if Swale does include enforcement cases and case history to its planning portal as indicated in the strategy, as this should help avoid multiple reports from the public where a matter is already in hand.</p>	<p>Reports are submitted on a confidential basis. It is not good practice to make allegations public from the onset of the investigation.</p> <p>Planning Enforcement Notices are available to view on the Council's planning enforcement website, along with related appeal decisions.</p>
<p>There needs to be a process to address cumulative volumes of breaches.</p>	<p>Cases are dealt with individually and decisions as to whether to take enforcement action are discretionary, taking into account planning harm and other material considerations.</p> <p>There is no legislation in place singling out multiple breaches for tougher action. Each case is unique and will be dealt with accordingly</p>

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<p>We strongly agree that “effective enforcement is necessary in order to maintain public confidence in the planning system”. At the present time, we are of the view that Swale does not have an effective enforcement system in place.</p>	<p>Comment noted.</p>
<p>The NPPF states that enforcement is “discretionary” but this word in our view has been misconstrued by Swale. It does not give local authorities carte blanche as to whether or not to offer an enforcement service. Rather, in our view it means that the local authority must exercise discretion when carrying out its enforcement function which, as para 59 makes clear, means that the council must act “proportionately”.</p>	<p>Enforcement action is discretionary, however the Council’s duty to investigate an alleged breach is not. Enforcement action is intended to be remedial rather than punitive. The majority of cases are resolved by negotiation, but as soon as it becomes clear that a breach cannot be resolved and there is planning harm that is contrary to the public interest we consider formal action.</p>
<p>Acting “proportionately” means balancing several factors when deciding on a course of action and the stepped approach set out in the draft does this - our criticism would be that it lacks rigour and in some cases urgency. Enforcement action is sometimes slow, incomplete and ineffectual. These show in our view a lack of “proportionality”.</p>	<p>Comments noted. The investigations team are aware of the sites you refer to in your wider comments, many of which have been served enforcement notices upheld on appeal and where the breach is continuing. Legal advice is being sought.</p> <p>There are a lot of factors when deciding whether to take formal action, and the gathering of evidence can take some time if we are to successfully challenge any appeal that may be made against an enforcement notice.</p>
<p>In our opinion, effective, prompt and timely taking of enforcement action is a prerequisite to a functioning planning department. We do not expect all allegations of breach to lead to stop or enforcement notices but we do expect the process to move forward at a pace which ensures that the matter is dealt with expeditiously.</p>	<p>The Strategy sets out the processes, procedures and the powers at our disposal when considering enforcement action. The planning investigations team begin investigations within 21 days of a complaint being received, and complainants are updated throughout the course of the investigation. The majority of sites are visited within 10 working days, with the most urgent cases being visited the same day. There are timescales involved beyond the team’s control – for example waiting for determination of a retrospective application, and compliance and subsequent appeals processes of enforcement notices.</p>
<p>Our conclusion is that the draft strategy sets out a reasonable set of rules, but that these should be tightened to provide a more timely and rigorous enforcement policy whilst still applying the principle of proportionality to outcomes.</p> <p>This should be combined with more resources. This will include the clearing of pending cases. Planning enforcement should be seen as an important part of the effective operation of the planning system and not as some optional add-on.</p>	<p>Noted. Swale BC covers a large area of North Kent and the four investigating officers dealt with 259 cases in 2023, all of varying complexity. Cases where an enforcement notice has not been complied with usually result in a prosecution, and we are dependent on HM Courts to convict before considering further action. Whilst not a statutory duty, Swale BC understands the importance of planning enforcement, and every concern submitted via the online form is investigated.</p> <p>With regard to pending cases – there are many instances where a period of monitoring is required to gather evidence of a breach, and case reviews are</p>

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	<p>held regularly where decisions are taken on whether to close a case or take formal action, taking into account expediency, harm and public interest. A 'pending' case does not mean there is a backlog.</p>
<p>It appears to our Parish Council that insufficient resources have been put historically into planning enforcement at Swale, and that there is a large backlog of cases which has led to instances where a situation has to be tolerated or has become incapable of enforcement. This inadequacy in resources and timely action needs to be addressed to provide confidence that planning enforcement is taken seriously at Swale.</p>	<p>There is no backlog of cases. Cases that are open for 6 months or more remain on file for variety of reasons, for example: appeals in progress; planning applications pending consideration; Court action; monitoring to gather evidence. The team comprises a Team Leader and four full time officers which is the average compliment for a suburban/rural planning authority.</p> <p>Swale is in the top percentile of Kent Planning Authorities in terms of the number of enforcement notices issued since 2022.</p> <p>The respondent has been invited to share details of the sites so that updates can be provided</p>
<p>Tone, perception and risk</p> <p>The thrust and direction of the draft strategy comes over as leaning heavily towards minimising cost and effort. It appears to offer cover for wider tolerance of planning breach (ie no or only limited action).</p> <p>The past strategy has already been weighted too heavily towards informal action. The new strategy needs to address this otherwise it under-estimates the overall impact on planning control and future planning officer workload as well as the reputational risk.</p> <p>Once problem developments are in situ, officers become involved in a series of steps by applicants/appellants over time to manoeuvre and manipulate the planning system.</p> <p>In this context the draft strategy only mentions temporary stop notices once – and on page 15 mentions stop orders (rather than temporary stop notices) - instead relying on a combination of informal action and enforcement notices, but weighted heavily towards informal action. Formal action, majoring on enforcement orders issued <u>after</u> unlawful development has already been carried out risks poorer outcomes.</p> <p>It would be helpful to tighten the risk-based system on page 14, prioritising rapid action in sensitive areas, to include not just conservation areas and the AONB but adverse planning history, and where concern has</p>	<p>The strategy aims to be transparent, covering all eventualities in the planning enforcement process, and does not condone enforcement where it is unnecessary to act.</p> <p>The initial visit criteria is effective, and deals with development that is irreversible, such as works to a listed building or felling of a protected tree.</p> <p>Temporary Stop Notices are used where necessary, and are followed up by enforcement notices and/or stop notices as required.</p> <p>Reports of work on sites with adverse planning history and where there is concern about further unauthorised development are prioritised for immediate attention.</p> <p>The opening statement query – it is for the Council to decide on whether there has been a breach of planning control based on the information supplied by the complainant, and we consider this would complicate the reporting process.</p>

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<p>been flagged up by a Ward Member, MP or Parish Council.</p> <p>A combination of these factors should automatically trigger a Category 1 response as well as a lean towards prompt formal action.</p> <p>The opening statement (Para 1.2 Principles) only says Planning Enforcement “<i>aims to investigate planning breaches..</i>” - it would help if that paragraph could say something like</p> <p><i>Swale Enforcement will:</i></p> <p>i) <i>investigate potential breaches of planning law, and therefore unlawful in planning terms, defined as :</i></p> <ul style="list-style-type: none"> • <i>the carrying out of development (including change of use of land) without the benefit of the necessary planning permissions, or</i> • <i>failing to comply with any condition or limitation subject to which planning permission has been granted</i> • <i>any contravention of the limitations on, or conditions belonging to, permitted development rights</i> <p>(ii) <i>take enforcement action deemed appropriate by the Council and consistent with relevant Council planning policies, national planning policy and guidance, in order to prevent, halt and seek to remedy breaches of planning law”.</i></p>	
<p>Public involvement</p> <p>Section 3.0 Reporting alleged breaches</p> <p>Making it easy for people to report concerns and responding rapidly to reports of unlawful development assessed as Category 1 is an important part of the overall control system. In practice it is currently not easy. Whether contact is online or by phone, few members of the public know or understand planning law etc - they just want to make contact or speak to someone about a particular concern.</p> <p>It’s long been the case that work on an unauthorised development would start near a bank holiday. Restricting phone access to half a day a week creates the equivalent of a perennial bank holiday for unauthorised development.</p> <p>Officers clearly cannot be at their desks to take calls all the time but it would be helpful if the main switchboard system included Planning and Enforcement in its list of options, and for planning dept phones to accept voice messages at any time.</p>	<p>Comments noted, and will be passed to the relevant team.</p> <p>Planning enforcement can be contacted by telephoning the main switchboard if the matter is considered. Reports can be made in person at Swale House reception, by letter, email and the preferred option of completing the online form on the Council’s planning enforcement webpages.</p> <p>Planning investigations officers are available to discuss planning enforcement concerns by telephone on Wednesday mornings between 9am and 12.30pm. Outside these times messages can be left on voicemail, and officers are alerted to voice messages immediately by email with a text transcript of the call.</p> <p>Enforcement notices going back 30 years were recently uploaded to public planning website, which can be accessed under the ‘Enforcement’ tab on the search page.</p>
<p>Notifying local people Para 4.4 Appeals</p> <p>As far we are concerned Para 4 is not happening. Some notification used to happen, and none appears</p>	<p>The relevant department has been notified of your concerns. Objectors to planning applications and planning enforcement complainants are always</p>

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<p>to be currently happening. In addition people no longer appear to receive letters (or emails) informing them of nearby planning applications, retrospective or otherwise so, unless they see a statutory notice pinned up locally they will be unaware.</p> <p>Access to Appeal documents is not easy as the Planning Inspectorate don't make these available on line to the public, so anything Swale can do to make these available would be welcomed.</p> <p>Statutory notices are still displayed nearby by Swale, but the strategy doesn't mention these for planning applications, Enforcement or Appeals, so it would be helpful to clarify this in the draft strategy.</p>	<p>contacted about appeals, including neighbouring properties</p> <p>Appeal documents are available to interested parties on request as set out in the appeal notification letters sent by Swale.</p> <p>Statutory notices such as planning application notices and inquiry notifications are displayed on site. Enforcement appeal notifications are sent by letter to complainants, neighbours and any other interested parties.</p>
<p>3 Priorities: Para 5.1 Priorities and page 19 Categories</p> <p>Little mention has been made of the importance of the role of Parish Councils, in particular their role in flagging up high risk concerns. It would be helpful to correct this by adding Parish Councils to the last sentence of para 5.1 , after Ward Members and MPs.</p>	<p>Noted. We have a close working relationship with parishes and concerns are always investigated. This change will be made.</p>
<p>Page 1 : Proportionality :</p> <p>The strategy mentions "averting" the breach whereas the preceding sentence says "has been carried out". Should remedying be added to averting? Could this paragraph include something along the lines of :</p> <p><i>"In considering its options for enforcement, formal action will be taken when, in the officers opinion, the breach constitutes significant harm to the amenity of the local area, contravenes the Councils planning policies or national planning policy and a relevant planning application is unlikely to be approved. The Council has a wide range of formal powers including for example, Temporary Stop Notice, Enforcement Notice, Stop Notice, Breach of Condition Notice, the use of which will be decided on a case-by-case basis".</i></p> <p>Targeting; saying that enforcement will focus on the most serious breaches signals to the public that enforcement will probably really only deal with serious breaches. This puts planning control at risk – can this section refer to the (tightened) scoring system on Page 14 ?</p> <p>Transparency: reference is made to reasonable timescales for compliance but can reference also be made to the use of a temporary stop notice to avoid or reduce further harm ? The period of the stop notice (Page 17) has apparently recently been increased from 28 to 56 days</p>	<p>Potential harm is covered in this paragraph, and a retrospective application will always be invited if a breach is judged to be potentially acceptable on its planning merits and can be controlled by conditions. Much of our work is education and negotiation, and failing this we will use formal powers to enforce, where expedient and in the public interest.</p> <p>We investigate all breaches reported to us, and act accordingly depending on the seriousness of the breach. It is right to focus on the most serious breaches and give them priority.</p> <p>Temporary Stop Notice is at Appendix 1 – Terminology. Legislation - The Temporary Stop The draft Strategy has been updated to reflect the legislative change.</p>
<p>Para 2.0 Breaches of planning control</p>	<p>The strategy is designed to be clear and easily understood with the appendix clearly stating our</p>

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<p>Can the focus be shifted from just enforcement orders to the wider issue of maintaining a system of planning control and bring in all the other mechanisms not just enforcement orders (detailed in appendix 1) more clearly into the strategy, rather than just buried in an attachment.</p>	<p>enforcement powers. Enforcement is a complex area of planning, and there are many potential outcomes, some of which may include one of more of our powers as listed in the appendix</p>
<p>Para 2.3 Immunity – does this need updating to reflect the recent end of the 4-year rule?</p> <p>It puts people off by saying reports won't be investigated if only limited details but don't explain what limited means- people aren't versed in planning law.</p>	<p>Thank you, the immunity paragraph has been changed to reflect the new 10 year period.</p> <p>Limited details refers to the precise location of the reported breach, and scant details of the building or activity of concern. This is a case by case judgement call.</p>
<p>Page 8 : Para 3.1 Reporting a breach Privacy Can privacy of the complainant include address not just name withheld on request.</p>	<p>Yes, the complainant's name, address, email address, phone number are confidential.</p>
<p>Page 8: Last sentence of Para 3.1 - the last sentence will deter anyone from contacting you until work etc has at least started, which is not desirable in high risk cases. Would it be better to receive information which leads to a site visit and halting the start or progression of a high risk Category 1 breach? E.g. building materials, large vehicles, mobile homes arriving on site.</p>	<p>If there is hard evidence of an impending breach of planning control such as building materials and the arrival of mobile homes we will always investigate as a priority.</p>
<p>Page 9: Para 3.3 what you can't investigate You mention high hedges but then include high hedges in category 4. Delete from para 3.3 or from category 4 ?</p> <p>Last sentence currently gives a message that Swale will always seek to resolve informally, which is probably ok in most cases, but it also needs to give a clearer signal that it will take strong action when necessary.</p>	<p>High Hedges are dealt with by the Tree Officer and notices by planning enforcement in conjunction with legal, and we provide back up if requested for site visits. A fee is payable for this kind of investigation. The draft strategy has been amended for clarity.</p> <p>Our enforcement powers are outlined elsewhere in the document, and this sentence does mention immediate enforcement action</p>
<p>Page 10 Para 3.4 Information needed Could the check list be written in less formal language and request only a brief description rather than a detailed one (most people won't know the detail of what is required)?</p> <p>Although the strategy has a link to the planning portal can the strategy mention its a shared service (Mid Kent) rather than Swale which is confusing, and that it can be found by searching online for 'Swale planning applications'. It would be helpful if the strategy included a link direct to the on-line reporting system a list of key internal phone extension numbers and contact hours.</p>	<p>These are just suggestions and if the information is not provided the cases will still be investigated at our discretion, however they may take longer to deal with as additional information is gathered.</p> <p>The strategy is accessed online by visiting the planning enforcement section of Swale's website, which contains key contact and reporting information.</p>
<p>Page 11 What is considered ?</p>	<p>Expediency relates to the planning balance for taking action, and when assessing a case for enforcement</p>

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<p>Last sentence: rather than saying 'establish whether it is expedient to act upon the breach', could it instead say 'decide what action to take'?</p>	<p>action the Council will ensure that any action is reasonable, proportionate and in the public interest.</p>
<p>Page 19 Categories Can category 1 be tightened to include the Kent Downs AONB, and whether the location or person in control already has an adverse planning history, and where concern has been flagged up by a Ward Member, MP or Parish Council Chairman.</p>	<p>Category 1 is very clear, and to include a reference to the Kent Downs AONB would not make a difference to our response to the types of development stated.</p> <p>When a new complaint is logged on the system it automatically brings up the entire planning history for the site, thereby alerting officers to any adverse planning history.</p> <p>Complaints raised by Ward Members, MPs or Parish Councils are always investigated, and will be placed in the appropriate category based on the nature of the complaint.</p>