

Simple cautions and planning enforcement guidance note

1. Introduction and Context:

- 1.1 This guidance note has been prepared to supplement the information published in the adopted Tonbridge and Malling Borough Council's 'Planning Enforcement Plan'. It has been prepared having had regard to the Council's corporate policies and plans, and relevant planning policy and guidance.
- 1.2 The Council has at its disposal a range of planning enforcement powers to ensure effective enforcement. A simple caution is one of a range of formal out of court disposals available to the Council. This guidance note is intended to set out the framework for using such powers regarding offences in respect of the Town and Country Planning Act 1990 and associated planning legislation.
- 1.3 Simple cautions provide a means of dealing with low-level, mainly first-time, offending without a prosecution. Simple cautions form part of the offender's criminal record. They may be referred to in future legal proceedings and may be revealed as part of a criminal record check.
- 1.4 The guidance note takes direct reference from the Ministry of Justice - Simple Caution for Adult Offender Guidance, April 2015 which applies to all decisions relating to simple cautions.
- 1.5 The guidance note should also be read in conjunction with the Council's published Planning Enforcement Plan and the legal guidance provided by the Crown Prosecution Service, which can be found via the link below:

<https://www.cps.gov.uk/legal-guidance/cautioning-and-diversion>

2. When can simple cautions be used?

- 2.1 An assessment of seriousness of the offence is the starting point for considering whether a simple caution may be appropriate. The more serious the offence, the less likely it is that a simple caution will be appropriate.
- 2.2 Section 17(4) of the Criminal Justice and Courts Act 2015 restricts the use of simple cautions for repeat offending.
- 2.3 A simple caution **must not be**:
 - Offered to a person who has not admitted to committing the offence.
 - Given to an offender who does not agree to accept the simple caution.
 - Given if the decision-maker considers that it is in the public interest for the offender to be prosecuted.
- 2.4 As such, the following are pre-requisites:

- The offender has admitted the offence.
- The offender is willing to accept the caution.
- There is sufficient evidence to provide a realistic prospect of a conviction if the offender were to be prosecuted.
- The offence is not one where a prosecution is required in the public interest.

3. Use by Planning Enforcement

3.1 The Council may issue simple 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, the Council will consider prosecution action.

3.2 The Council will consider issuing simple cautions as a means of redress against offenders in the following circumstances:

- When a breach of an Enforcement Notice has occurred, but the breach is subsequently complied with before prosecution action is progressed.
- When unauthorised works to a protected tree have taken place but those works have been assessed and judged to not have resulted in irreversible damage to the long-term future of the tree. In such instances, both the person responsible for undertaking the works and the person instructing the works will be considered as offenders for the purposes of issuing the caution.
- When unauthorised works have been undertaken to a Listed Building, but those works have been assessed and judged to not have resulted in any adverse harm to the fabric or appearance of the building in such a way that had an formal application been submitted, consent would have been forthcoming.

3.3 In any such cases, a legal view will be sought by the investigating enforcement officer. Legal advice on whether to issue a simple caution will be predicated on the following:

- There is enough evidence to prove the offence has taken place.
- The offence is not considered to amount to a serious planning breach.
- The offender has admitted the offence and shows remorse.
- The same offender has not previously been issued with a caution.

4. Benefits of simple cautions

- 4.1 As a tool for planning enforcement purposes, simple cautions demonstrate to offenders the seriousness of their actions and that there are real consequences to committing such offences.
- 4.2 They can also assist in the Council resolving certain types of breaches quickly and efficiently, allowing for resources to be more focused in remedying harmful breaches which require prosecution and/or direct action.

5. Procedure

- 5.1 If it is established that a simple caution is the most appropriate enforcement tool available to the Council, having had careful regard to the above, the investigating enforcement officer will prepare a report for endorsement by the Development Manager. The report will:
 - Explain the nature of the breach.
 - Summarise the evidence collected by the investigation.
 - Set out the justification for the use of a simple caution in accordance with this guidance note.
 - Provide a summary of the legal advice obtained in accordance with this guidance note.
- 5.2 Once the course of action has been endorsed, a letter will be sent inviting the offender to attend the Council offices. The caution will be issued by either the Director of Central Services or the Head of Legal and Democratic Services.