



# Planning Services Enforcement Plan

January 2022



## Introduction

An effective planning enforcement and compliance service is vital to the overall success of the planning system.

The National Planning Policy Framework (NPPF) encourages local planning authorities (LPAs) to publish a 'local enforcement plan' to manage enforcement proactively, in a way that is appropriate for the area. This Plan has, therefore, been prepared in accordance with the advice contained within the NPPF which states that:

*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.*

Furthermore, National Planning Policy Guidance (NPPG) advises that where the balance of public interest lies will vary from case to case and that LPAs should usually avoid taking formal enforcement action where:

- there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development; and,
- in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

However, the NPPG also recognises that the ability of the LPA to undertake effective enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process; and,
- help ensure that public acceptance of the decision-making process is maintained.

This Plan provides clarity on the enforcement powers available and how the LPA will:

- Investigate alleged breaches of planning control;
- Act proportionately, but firmly and swiftly where justified, in responding to suspected breaches of planning control;
- Set clear enforcement priorities;
- Monitor the implementation of planning permissions; and,
- The level of service that can be expected from the Council.

## **What are the general principles behind Planning Enforcement?**

The main purpose of planning enforcement is to resolve the problem rather than to punish the person who has not obtained the appropriate consents. There is often a misconception that it is a criminal offence to carry out development without the benefit of planning permission. This is not the case for most breaches except where the building is listed or unless the works involve the unauthorised display of advertisements or the felling of protected trees and the unauthorised removal of hedgerows.

Enforcement powers are discretionary and before taking action the council must be satisfied that such action is 'expedient', in other words it is the right thing to do. Moreover, any action taken by the Council must be proportionate to the scale and nature of the breach of planning control. The Council does not have to take action against all unauthorised development, but it should take action where harm to the environment is being caused. If enforcement action would serve no useful purpose – for example, where the breach is a minor one or the unauthorised development is not contrary to the provisions of the Development Plan and is entirely acceptable on its planning merits– the Local Planning Authority can reasonably decide not to take any action.

## **What is the scope of Planning Enforcement?**

There are a wide range of issues that planning enforcement can deal with and these include:

- Building, or engineering work and the change of use of land or buildings without planning permission;
- Breach of conditions attached to planning permissions or the terms of a Section 106 obligation;
- Non-compliance with approved plans attached to planning permissions;
- Unauthorised works to a listed building;
- Unauthorised advertisements or signs;
- Unauthorised work to trees protected by a tree preservation order or in a conservation area;
- Land or buildings in such condition that it adversely affects the amenity of the area;
- Unauthorised demolition work in a conservation area;
- Unauthorised deposit of waste or mineral extraction;
- High hedges; and,
- Unauthorised hedgerow removal

The scope of planning enforcement is not all encompassing, and the following issues are outside our remit:

- Non-planning related neighbour disputes;
- Land boundary or ownership disputes;
- Use of or development on highways including pavements and grass verges; and,
- Dangerous structures.

Some matters are covered by other legislation and where the complaint relates to something that is a Council responsibility, we will pass such concerns on to the relevant department.

### **What planning enforcement powers are available to the Council?**

The powers available to the LPA to deal with breaches of planning control are set out in Part VII of the Town and Country Planning Act 1990 (as amended) and the Listed Buildings and Conservation Areas Act 1990 and associated secondary legislation.

The powers include:

*Planning Contravention Notice* – this is essentially a notice designed to gather information about the activities taking place and ownership details.

*Section 330 Notice* – also designed to secure information as to interests in land.

*Enforcement Notice* – this notice sets out the steps which need to be undertaken to remedy the breach of planning control within a given time period.

*Temporary Stop Notice* – this notice will normally only be used where the Council believes the breach of control is so serious it should be stopped immediately. The benefit of a temporary stop notice is that it comes into effect immediately and prohibits activities continuing until such time as the Council has issued and served an enforcement notice. The notice will only be effective for a maximum of 28 days after which the Council may serve a permanent stop notice.

*Stop Notice* – this has a similar effect to a temporary stop notice but can only be served in conjunction with or once an enforcement notice is served.

*Breach of Condition Notice* – the purpose of this notice is to secure compliance with any condition or limitation imposed on a grant of planning permission.

*Injunction* – only used in exceptional circumstances where there is a significant breach of planning control and where normal enforcement measures have failed.

*Waste land/untidy site notice* – under section 215 of the Planning Act where the Council find that the appearance of a building or land is having an adverse impact upon the amenity of its area it can issue a notice requiring steps to be undertaken to improve its appearance.

Other powers available to the Council include:

*Listed Building Enforcement Notice* – similar to an enforcement notice but used where works have been carried out to a listed building, either without the benefit of listed building consent or in contravention of a condition of such a consent.

*Tree Replacement Notices* – Where a protected tree is removed, uprooted, or destroyed without prior consent, the LPA can serve a tree replacement notice requiring, within a specified period, the replanting of a tree of a specified size and species.

*Hedgerow Retention and Replacement Notices* – if certain hedgerows are removed the authority can serve a replacement notice requiring the replanting of a hedgerow.

*High Hedge Remedial Notice* – action can be taken where it is determined that a hedge is adversely affecting the reasonable enjoyment of a property.

*Advertisement Removal Notices* – Where an advertisement is erected without consent the LPA can, in certain instances, serve notices requiring their removal.

*Discontinuance Notice* – allows the LPA to serve a discontinuance notice against any advertisement, or the use of any advertisement site, which normally has the benefit of deemed or express consent.

*Prosecution* – if a notice is not complied with or where an offence is committed then the LPA may take legal action through the Court system to secure compliance.

### **What action will the Council take if notices are not complied with?**

With most notices there is a right of appeal to the Planning Inspectorate and where this happens the Inspector may uphold the notice, vary the terms of the notice, or quash the notice. Where a notice has not been challenged or where an appeal has not been successful the notice will come into effect and the steps specified in the notice will have to be complied with within a given time frame.

Where the terms of the notice are not complied with the Council, in the first instance, will seek to encourage swift compliance through negotiation. However, the Council will not engage in lengthy discussions and rather will require confirmation, within a matter of days of a clear and swift timescale to bring resolution in the matter. If this is not provided we will promptly instigate legal proceedings.

Prosecution does not always in itself resolve breaches of planning control and where it is evident that a breach of control is not being resolved the Council will consider carrying out the works to remedy the situation itself. This is known as 'direct action' with the cost of the work reclaimed from the owner or a charge placed on the land, so that the Council's costs are recovered when the land is sold.

The Council can also commence legal proceedings for unauthorised works without the need to serve any formal Notices, e.g., unauthorised works to a listed building or a protected tree, or an unauthorised advertisement. Such proceedings will be brought as a matter of course in such cases, unless works are very minor in nature and can be addressed by other means

## **How will the Council manage enforcement proactively and in a way appropriate to the County?**

In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Enforcement action is discretionary, and the council will act proportionately in responding to suspected breaches of planning control.

Effective community engagement is a key part of delivering a responsive, accountable, and modern planning enforcement service. Decisions on whether, or not, to take enforcement action are governed largely by the law and clearly defined material planning considerations and as a result cannot and should not be unduly influenced merely by local perception.

However, it is important that the service is fully receptive to concerns raised by individual communities in addition to service improvement ideas that are generated from a community level. The service will look towards supporting and facilitating close liaison with communities through the following means:

- Ensuring responsibility for the decision not to take enforcement action in relation to complaints made by a community representative (which includes an MP, County Councillor, Town or Parish Council or an, AAP) is elevated to the Development Manager and not the area office.
- Ensuring that complaints from a community representative; including an MP, County Councillor or Town or Parish Council, AAP are given higher priority.
- Ensuring that at the request of an MP, County Councillor, Town or Parish Council or AAP officers attend local meetings to discuss and debate enforcement issues in the locality, where appropriate and at the discretion of the Development Manager or Area Manager.
- Ensuring wider customer views on the delivery of the enforcement service are fully considered and holistically assessed to inform service improvement plans.
- Supporting community initiatives (such as, the CAT & Towns and Villages programmes) where specific environmental issues, such as untidy sites, unauthorised roadside advertising, car sales and repairs, have been identified as a major issue by the local community and need to be addressed.
- Engaging in and promoting a multi-agency approach where appropriate. The Council, in recognition of the benefits of working in partnership, have an agreed 'Memorandum of Understanding' with the Environment Agency in relation to environmental crime and the regulation of waste businesses in County Durham.

When investigating enforcement complaints Officers will undertake their duties in a helpful and customer focused manner. This approach will ensure that those to whom enforcement action is directed are provided with the appropriate advice as to what options and rights to challenge the Council's intended course of action they have.

A customer focused approach to enforcement is also an important requirement when dealing with those who have made complaints about a breach of control. This includes ensuring they are provided with the contact details of the investigating Officer; are provided with updates at regular and key stages as to progress made in an investigation; and, also that Officers take the time to explain the various processes which must be followed as an integral part of any investigation. This often helps a complainant understand why formal action cannot be taken or cannot be progressed as swiftly as they would like.

**What can I expect from the Council when I lodge a complaint alleging that a breach of planning control is taking place?**

We will aim to acknowledge complaints within 5 working days by letter, e-mail or telephone depending upon the complainants preferred means of communication. In acknowledging the complainant will be advised when they can expect an initial response to be provided. When a complaint is received the receiving Officer will ensure that sufficient details of the breach are recorded to enable an investigation to be commenced and a response to the complaint to be provided.

**How long will the Council take to investigate my complaint?**

Whilst the service will seek to investigate all complaints promptly it is not possible, having regard to available resources, to attach the same degree of urgency/priority to every case. The degree of priority which will be afforded a particular complaint will depend upon a number of factors including the planning harm that the breach is considered to cause, whether, or not, the breach is irreversible and the level of public interest.

Complaints will, therefore, be prioritised as follows:

	<b>Nature of breach</b>	<b>Time period for initial inspection</b>
1.	Activities or development which may cause serious harm to human health or involve irreversible breaches of control (i.e., loss of protected trees, demolition of listed buildings)	1 working day
2.	Development or operations which are in progress  Changes of use alleged to be taking place  Complaints raising potentially significant planning issues  All complaints from an MP, County Councillor, Town or Parish Council, relevant AAP, a Resident Association or, from a member of the Planning Service management team	10 working days

3.	Developments where conditions designed to protect the amenity of an area have either been breached or not been discharged  All other complaints	20 working days
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### What Happens next?

Once the Council have visited the site and investigated whether or not a breach of planning control has taken place the complainant will normally be provided with an update of how the case has progressed within 5 working days of the site visit deadline using the complainants preferred method of communication. For the purposes of this document the 'update' will either advise that:

- A breach of planning control has not taken place and that the file has been closed;
- Further investigations are required to establish whether, or not, a breach has/is taking place; or,
- A breach of planning control has/is taking place and negotiations are ongoing.

The investigating officer will keep the complainant updated during the course of any investigation, where contact details have been provided. Contact will normally be made via the complaints preferred means of correspondence. In relation to cases which take some time to conclude we will aim to provide an update every 8 weeks. Customers are always welcome at any point in this process to contact the investigating officer by telephone or e-mail for an update. Updates will not be provided where a case is subject to an ongoing separate process where alternatives notification procedures apply, such as enforcement notice appeal or consideration of a retrospective planning application.

### What will happen once the Council have completed its investigations?

There are essentially four different outcomes which can follow an initial investigation. These outcomes, together with a procedure for each, are outlined below.

#### No Breach of Control

In many cases initial investigations will reveal that the matter does not constitute a breach of planning control. In such instances the Case Officer will contact the complainant to explain that there is nothing in law the Council as Planning Authority can do in relation to the matter. Following this the file will be closed.

However, if the Case Officer is aware of any other service team within the Authority or external organisation which they feel may be able to investigate the complaint they will forward details of the case onto the relevant agencies. This factor should be drawn to the attention of the complainant when providing the final response, together with details of how the complainant may contact the relevant agency to keep abreast of their investigation.

### **Breach of Control Potentially Identified – Further Monitoring Required**

In many cases, particularly where the allegation relates to a change of use, it will not be possible for the Case Officer to come to an immediate view as to whether a matter does constitute a breach of planning control. In such cases the complainant should be advised that further monitoring is required and be invited to provide details of when the activities are most prevalent. A minimum of three site visits will normally be undertaken to establish whether a material change of use has occurred, but this will depend upon the nature of the breach and any evidence which is recorded.

### **Breach of Control Identified – Officer Assessment Likely Acceptable**

Where investigations reveal that a relatively minor breach has occurred which would most likely be considered acceptable the landowner/developer will normally be invited to submit a retrospective application depending upon the nature of the breach. This course of action upholds the integrity of the planning system and allows the matter to be assessed in the public domain, following due process. In such cases it will be made clear that the invitation to submit a retrospective application is made without prejudice to the Council's consideration of any such application. However retrospective applications will not normally be requested for trivial matters, which represent entirely technical breaches.

Where a developer/landowner is not prepared to submit a retrospective application a reminder letter will be sent which will point out the potential pitfalls in not seeking planning permission, including potential difficulties when selling the land.

Both the complainant and landowner/developer will be notified of the Council's decision as whether, or not, it intends taking further action and where appropriate the reasons why it was not considered expedient to take enforcement action.

### **Breach of Control Identified – Officer Assessment Likely Unacceptable**

In some cases, the investigation will reveal that the matter amounts to a breach of planning control which raises significant planning issues and would likely to be unacceptable on its planning merits.

In those instances where there is clear and serious harm which could not be mitigated against through the imposition of planning conditions the Council will serve an enforcement notice which under current legislation will not allow the submission of a retrospective application.

In particularly serious cases this may include the service of a Temporary Stop Notice, Stop Notice and / or Injunction where deemed necessary.

Where it is considered that the breach is capable of being resolved through the submission of a retrospective application which will enable a conditional approval to be

granted the landowner/developer will be given a short time limited opportunity to submit a retrospective planning application.

During such negotiations it will often be necessary to serve a Planning Contravention Notice (PCN), or other appropriate requisition notice, to establish the facts of a breach. It may also be appropriate to commission a Land Registry Search. This process enables formal enforcement action to be expedited in the event a retrospective application is not made in a timely manner or is refused

In such cases the developer will also be advised that negotiations will not be allowed to go on indefinitely and rather if they are willing to follow the negotiated solution route they, must ensure appropriate steps are taken inside a defined timescale. The timescale applied will clearly vary depending upon the nature and degree of harm caused by the breach however will be limited in timescale to what is required to make an application. Such timescales will not normally be extended unless clearly extenuating circumstances are provided.

Where negotiations fail and a harmful breach remains, the Council will not allow negotiations to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds or to compel it to stop.

**Having decided that enforcement action is necessary how will the Council ensure that they act proportionately?**

The Council will only take enforcement action when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise technical breaches in planning control. In taking formal enforcement action the Council will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach.

When taking enforcement action, it is important to ensure that action is always commensurate with the breach of planning control to which it relates. When deciding to take action the Council will take care to draft any Notice to ensure it only requires the appropriate action necessary to remedy the harm caused by a breach.

The decision to take enforcement action or commence prosecutions will ordinarily be taken under delegated powers by the Area Manager or the Principal Planning Officer. Where it is considered in the wider public interest, the approval of the Planning Development Manager will be sought before a decision is taken as to whether to take enforcement action or commence legal proceedings.

The timescale for compliance will be determined by the seriousness of the breach and the complexity of the works required to rectify the breach. However timescales will not be prolonged and for serious breaches in particular these will be the minimum required to rectify the breach.

## **What factors will the Council consider when deciding whether to take formal action?**

### *Businesses*

The Council is committed both to fostering business growth and facilitating investment and employment opportunities within the County. Where it is apparent that an owner or an operator of an established business, (in particular, a small business or a self-employed person), may have carried out unauthorised development the Council will:

- Explore with the developer whether the business can be allowed to operate on the site, perhaps less intensively. This will be with a view to granting a mutually acceptable conditional planning permission enabling the owner to continue his business at the site without harm to issues of planning policy or local amenity.
- Ensure that only the necessary steps are required to undo the planning harm arising from the breach of control
- Work with the business to find alternative premises where relocation is required.
- Where relocation of a business is, however, required, the Council will aim to agree a timetable for relocation which will minimise disruption to the business and wherever possible, avoid any permanent loss of employment because of relocation.
- Attempt to make it intentions clear at the outset so that enforcement action is not unexpected.
- Give sufficient time to comply with the requirements of the Notice where possible. The Council will also consider a relaxation of any requirement or compliance period if special circumstances allow, and the harm caused by the breach of control is not giving rise to serious amenity concerns.

Adopting this approach may potentially make the difference between allowing a business to continue operating and compelling them to cease trading.

However, none of the above measures will prevent the Council from taking action against a business where it is clearly justified, and the harm caused by the unauthorised development is considered to outweigh the economic benefits.

### *Householders*

In recognition of the fact that householders may have initiated unauthorised development on the basis of ignorance of the planning system, or on the basis of flawed advice from a third party the Council will normally:

- Allow adequate time for householders to rectify the breach, except in those cases which give rise to serious harm.
- Not normally consider it expedient to take enforcement action in order to remedy what might be professionally considered to be only a slight variation in excess of what would have been permitted by virtue of the current permitted development rights provisions.

## **How will the Council proactively monitor development sites?**

The National Planning Policy Framework recognises the importance of monitoring the implementation of planning permissions and this section of the plan sets out how the Council will proactively monitor conditions and limitations.

Monitoring of conditions can be extremely resource intensive, however early detection of non-compliance can prevent costly enforcement action at a later date and ensure that development is carried out in accordance with approved plans. At present developers are not required by law to give notice of their intention to implement a planning permission. However, Durham County Council has introduced a '**start notice**' which requires developers to notify the Council of their intention to commence development. It is not a mandatory requirement, but developers are actively encouraged to take part in the scheme.

This system very much depends upon the co-operation of the developer and therefore has its limitations. The Council has therefore developed a system whereby Building Control records are checked to identify those applications where a corresponding Building Regulations application has been received and to identify notification of any new starts. Developers will then be reminded, where appropriate, that there are outstanding conditions which need to be discharged.

A number of planning applications will be the subject of legal agreements requiring certain measures to be undertaken or for financial contributions to be made. Compliance monitoring will be undertaken to ensure that these requirements are met, and financial contributions are received on time.

## **Enforcement and monitoring of mineral and waste disposal sites**

The Council is also the mineral and waste planning authority, responsible for determining planning applications for mineral and waste developments and monitoring planning permissions it grants.

The County is an important mineral producer and has many mineral and waste disposal sites. As of 1 April 2021, there were 25 active sites, 5 in aftercare and 55 sites that are either not currently working or are dormant as well as over 100 waste facilities.

Conditions are generally attached to planning permissions for specific planning reasons such as protection of the residential amenity or the environment. The Council is responsible for monitoring the planning permissions it has granted and for investigating any complaints about these developments.

All active and inactive mineral and landfill sites are charged for monitoring visits by Officers from mineral planning authorities. Fees are payable when Officers enter a site to monitor compliance with planning permissions and obligations as part of an agreed programme. Other visits including those arising from specific public complaints are not chargeable. Reports are sent to operators as a record of the visit and to highlight

matters requiring action. These are followed up as necessary. The programme of visits produces an up-to-date picture of site operations and allows compliance issues to be identified and followed up.

Monitoring can seek to ensure that breaches of planning control are identified at an early stage and dealt with more efficiently with less likelihood of damage to the environment. A number of mineral sites have regular site liaison meetings that provide a forum for the operator and community representatives to engage with each other about site related issues and activities which is useful in the monitoring of activities at a site.

### **What Level of Service can I expect from the Council?**

All complaints will be acknowledged within 5 working days depending upon the complainants preferred means of communication. Following the receipt of a complaint:

- 90% of all Priority 1 cases will be visited within 1 working day
- 90% of all Priority 2 cases will be visited within 10 working days
- 90% of all Priority 3 cases will be visited within 20 working days
- In 90% of all cases, complainants will be provided with a progress report within 7 days of the initial site visit deadline
- The Council will seek to resolve 80% of cases within 100 working days or less

Resolved is defined as:

- No breach found
- Not expedient to take action
- Breach ceased
- The receipt of a valid retrospective application
- Relevant notice served

For the purposes of this indicator no account will be taken of the time accrued between date of the submission of a retrospective application or appeal and its subsequent determination.

Where an appeal is lodged against the service of an Enforcement Notice the Council have set a target of successfully defending 75% of all cases.

In those circumstances where it is has been necessary to instigate legal proceedings the Council have set a target of successfully defending 90% of all cases.

The Council will also produce bi-annual business reports on enforcement activity including details of the number cases received, the number of enforcement notices issued and performance outcomes. Such reports enable progress against the plan to be monitored and for the plan to be refined as necessary and procedures updated in light of changing workload demands, staffing levels and legislative requirements.

**If I am not satisfied with the manner in which my complaint has been dealt with how do I complain?**

To ensure that the key aims of the Council; in particular, those of accountability and strong customer focus are met, an open and transparent approach will be adopted when dealing with complaints.

The Planning enforcement service is invariably a highly contentious area of the Council's work. Complaints can be received from customers who feel aggrieved that an investigation has not been progressed as speedily as they would have liked. Conversely complaints can be received from persons at whom an investigation is directed who feel the Council may have been overzealous in its actions.

In all cases customers seeking to make a complaint about the service will firstly be encouraged to initially discuss their concerns with the Case Officer. The Case Officer may be able to explain why their particular aspiration has not been met.

If the complainant is still dissatisfied, then they will be afforded the opportunity to pursue the matter through the Council's Corporate complaints procedure and if the complaint is still unresolved the complainant will be able refer their complaint to the Local Government Ombudsman.

The Development Manager will be responsible, through the Area Managers, for keeping abreast of the nature of complaints, to ensure any commonly occurring reasons are considered as part of future service reviews.