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Working in Partnership

# **North East Lincolnshire Council**

## **Planning Enforcement Plan**

Reviewed and updated – October 2020

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## Introduction

1. This Plan outlines the procedures used by North East Lincolnshire Council when responding to complaints about possible breaches of planning control. The Plan sets out a proactive approach for the Council's use of its enforcement powers.
2. The principal activity of the Planning Enforcement function is directed to the avoidance of infringements of planning law. It is inevitable that breaches of planning law will occur but essential that they should be resolved in a consistent, balanced and transparent manner. The integrity of the planning system is reliant on enforcement ensuring that planning permissions are properly implemented as well as taking appropriate action when unauthorised development occurs.
3. The Planning Enforcement section investigates:
  - Building work undertaken without planning consent
  - The unauthorised change of use of buildings and land
  - Non compliance with Planning Conditions
  - Illegal advertisements
  - Unauthorised works to Listed Buildings within Conservation Areas and other heritage assets
  - Unauthorised works to protected trees

## Our Aims

4. Our emphasis is on achieving a negotiated settlement wherever possible without the need to rely on formal enforcement action. Related to this, clear timescales are also needed as to how quickly we will act and this detail is set out below.
5. Nevertheless, there will be some situations where negotiations are not appropriate and, in the interests of amenity or public safety, the Council will move directly to use its formal planning enforcement powers.
6. In all cases our investigations will be guided by 4 key principles:
  - **Consistency** – to ensure that issues are dealt with in a similar way.
  - **Fairness** – to ensure an even handed approach and that decisions are based on the merits of the case and not the gender, race, ethnic origin or religion, political views or other beliefs of any person involved.
  - **Transparency** – to ensure that enforcement action taken is easily understood by residents, businesses and the public. This also means that both alleged offenders and those reporting alleged offences will be told about the progress of the investigation.
  - **Proportionality** – to ensure that enforcement action is in proportion to the actual or potential harm caused by any breach of planning control.

This means that in some cases, it may not be considered proportionate for the Council to take enforcement action.

### **Recording and Acknowledging Complaints**

7. Reports of potential breaches of planning control can be made either in writing, by telephone, by email, online or in person.

<b>Write to:</b>	<b>Development Management Services - Planning Enforcement, New Oxford House, 2 George Street, Grimsby, North East Lincolnshire, DN31 1HB</b>
Telephone:	01472 326289 - Option 1
Email:	<a href="mailto:planning@nelincs.gov.uk">planning@nelincs.gov.uk</a>

8. Reports of potential breaches of planning control will be logged and acknowledged within 2 working days and details provided of the investigating officer, along with details of the online enforcement pages, so that the progress of the investigation can be tracked by the reporting person.
9. To avoid unnecessary use of resources, anonymous allegations of breaches of planning control are not normally investigated. You should, however, be aware that if you give your name, address, or any other details, they will be treated in the strictest confidence so far as legislation permits.
10. Anonymous complaints may be accepted at the discretion of the Planning Enforcement service if the matters raised constitute a criminal offence such as works to protected trees and listed buildings, or where there is irreparable and immediate harm to public safety or the natural or built environment.

### **Confidentiality**

11. The identity of a person reporting a complaint will be kept confidential unless otherwise authorised by them. Nor will they usually be required to give evidence at a public hearing, inquiry or court case.
12. Under Parts 1 and 2 of Schedule 12A of The Local Government Act 1972 (as amended), enforcement files are not public documents and complainant details are confidential.
13. However, it must be understood that despite a person's identity remaining confidential, on occasions this may become apparent to the alleged offender despite the best efforts of the Council.

### **Prioritising new cases and how we will respond**

14. Upon receipt, each report of a breach of planning control will be categorised, according to the seriousness of the breach, into one of five priorities of response. The more serious a breach and the more harmful its potential impact the higher the priority it will be given. The priority given to a complaint

will be based solely on the nature of the complaint and will not be prioritized due to the complaints origin.

15. The priority levels are assigned in accordance with the details in table 1.

16. We aim to undertake an initial visit and respond in writing within the timescales detailed in table 2.

**Table 1 – Priority Levels**

<p><b>Urgent Priority</b></p> <ul style="list-style-type: none"><li>➤ <b>Breaches involving Listed Buildings where demolition or substantial harm to the fabric of the building is reported as taking place.</b></li><li>➤ <b>Unauthorised development, including the display of advertisements, which represents a serious public danger.</b></li><li>➤ <b>Works on protected trees where they are under threat and likely to be removed or damaged beyond recovery.</b></li></ul>
<p><b>High Priority</b></p> <ul style="list-style-type: none"><li>➤ Breaches of planning control, including breach of conditions, which result in serious visual harm or serious loss of residential amenity.</li><li>➤ Unauthorised development which, without intervention, would be nearing immunity from enforcement action.</li><li>➤ Breaches involving Listed Buildings or in Conservation areas not considered to fall within the urgent priority.</li><li>➤ Breaches of the requirement of an Enforcement Notice or Breach of Condition Notice.</li><li>➤ Works carried out on protected trees not considered to fall within the urgent priority.</li><li>➤ Illegal advertisements where there is potential danger to highway users.</li></ul>
<p><b>Medium Priority</b></p> <ul style="list-style-type: none"><li>➤ Breaches of planning control, including breach of conditions, not resulting in serious harm or loss of residential amenity.</li><li>➤ Illegal advertisements in the open countryside or on business premises in central shopping areas and other areas excluded from the Area of Special control for advertisements where there is no potential danger to highway users.</li><li>➤ Breaches of planning control on and adjacent to strategic routes into and out of the Borough.</li></ul>
<p><b>Low priority</b></p> <ul style="list-style-type: none"><li>➤ Anonymous complaints not resulting in serious visual harm or causing serious loss of residential amenity</li><li>➤ Unauthorised development that would be likely, following an initial assessment, to gain retrospective planning permission should an application be submitted</li></ul>

**Table 2 – Response Times**

Priority	Site Visit	Response time in writing to interested parties
<b>Urgent</b>	1 working day	5 working days
<b>High</b>	3 working days	5 working days
<b>Medium</b>	10 working days	10 working days
<b>Low</b>	15 working days	15 working days

**Identifying if there has been a breach**

17. It may not be apparent, during an initial visit, as to whether there has been a breach of planning control. In these circumstances the officer will carry out further research and visits as appropriate to gather sufficient information to decide if a breach has taken place. Only once this has been undertaken will a course of action be decided. The collection of evidence by a person reporting a complaint can also sometimes assist with an investigation.
18. Where no breach has occurred the complainant and owner/developer will be informed within the timescales set-out above and the reasons for this will be explained.

**Determining the action to be taken**

19. Once it has been established that a breach of planning control has taken place, a decision will be taken as to whether enforcement action is to be taken. The decision to use formal planning enforcement powers is at the discretion of the Council. Enforcement action will only be taken when it is considered expedient to do so. National government guidance advises that the enforcement action North East Lincolnshire Council takes must be proportionate to the breach of planning control.
20. A decision on whether or not to pursue formal enforcement action is usually made by Officers under a system known as 'delegated powers'. However, in certain cases, for example where there is significant public interest in the outcome, a report will be presented to the Planning Committee who will determine the direction of the investigation under guidance from Senior Officers and the legal team.
21. Planning Enforcement matters decided by the Planning Committee are held in a closed session to protect the confidentiality of those who may have reported the alleged breach of planning legislation and in order to avoid prejudicing any future legal action which may be deemed necessary.

22. There are normally five options available depending on the nature of the breach as shown in table 3.

**Table 3 – Enforcement Options**

<p>Not expedient to take further action</p> <ul style="list-style-type: none"><li>➤ <b>If a breach of planning control is considered acceptable in planning terms, without the need for the imposition of conditions, no further action will be taken; even if an application for retrospective planning permission has been requested and is not forthcoming. In such cases the decision not to take any action against a breach of planning control will be taken by Planning Committee if requested by a Ward Councillor.</b></li><li>➤ <b>On occasions the circumstances relating to a breach can alter and should circumstances change, so that enforcement action may be necessary, the case will be reopened and further investigations undertaken.</b></li></ul>
<p><b>Negotiation</b></p> <ul style="list-style-type: none"><li>➤ Enforcement Officers will seek to negotiate a resolution in all cases where possible. However, this will not delay formal enforcement action where it is considered to be of an urgent or high priority or where there is harm to the wider amenity and residential amenity.</li></ul>
<p><b>Retrospective Planning Application</b></p> <ul style="list-style-type: none"><li>➤ A retrospective planning application is sought, to be submitted within a set time scale. This option will only be followed when there is a senior planning officer's opinion that the application is likely to be approved.</li><li>➤ A letter is sent to the alleged offender requesting that they remedy the alleged breach.</li></ul>
<p><b>Formal Enforcement Action</b></p> <ul style="list-style-type: none"><li>➤ With the exception of unauthorised works to a listed building (which is a criminal offence), the Council has the discretion to use these powers to remedy the breach where it considers it expedient to do so. Notwithstanding this, formal enforcement in itself cannot remedy a breach of planning control. It is designed to coerce the alleged offender into doing so. Only once there has been non-compliance with an Enforcement Notice, or Breach of Condition Notice, has an offence been committed that could lead to prosecution, injunction or direct action</li></ul>

### **Formal Enforcement Action**

23. Where it is established that a breach of planning control has occurred the Council will consider using its statutory powers to take action to remedy the breach. The use of these powers, listed in table 4 below, is discretionary and will only be used when it is considered expedient to do

so. Any action taken must be proportionate to the breach of planning control.

**Table 4 – Formal Enforcement Proceedings**

#### **Enforcement Notice**

- **An Enforcement Notice may require a wide range of steps to be taken to make a development comply with the terms of a planning permission or for removing or alleviating any injury to amenity caused by the unauthorised development.**
- **The wording of a notice will clearly state the measures to be taken to remedy the breach of planning control so as to enable compliance to be effective and speedy.**
- **Failure to comply with an Enforcement Notice may lead to prosecution.**
- **There is a right of appeal against a notice.**

#### **Stop Notices**

- Can be served with or after the service of an enforcement notice if it is considered expedient and urgent that an activity should be quickly stopped due to its impact on amenity/ public safety.
- There is no right of appeal against a Stop Notice.

#### **Temporary Stop Notices**

- Where the Council considers that there has been a breach of planning control, that should cease immediately in order to safeguard the amenity of the area, it may issue a Temporary Stop Notice.
- A Temporary Stop Notice can be served without the prior service of an Enforcement Notice and its effect is immediate.
- National legislation makes it clear that a Temporary Stop Notice may not prohibit the use of a building as a dwelling house.

#### **Injunctions**

- Legal powers are available for North East Lincolnshire Council to apply to the Courts for an injunction to restrain an actual or alleged breach of planning control.
- Injunctions are a discretionary power and an assessment will be made of the likely outcome prior to commencing proceedings.
- A decision to grant an Injunction is at the discretion of the High or County Court.

#### **Breach of Condition Notice**



- Where there has been a failure to comply with the requirements of a condition attached to a planning permission the Council may serve a Breach of Condition Notice. The service of a Breach of Condition Notice may be used as an alternative to an Enforcement Notice so as to ensure compliance with a condition.
- There is no right of appeal (to national government) against a Breach of Condition Notice although there can be defence pleas should the matter result in a court prosecution.

#### **Certificate of Lawful Use or Development**

- Where the investigation of a complaint establishes that it is unlikely that Enforcement Action would be pursued or would be successful, the alleged offender will be invited to apply for a Certificate of Lawful Use or Development.
- Whilst this does not constitute a grant of planning permission, it provides documentation to a person responsible for a breach of Planning Law to establish the lawfulness of an existing situation. It also serves to avoid the possibility of a further investigation being pursued by the Council at a later date.

#### **Non-Compliance with Enforcement**

- Where an offender fails to comply with the requirements of a legal notice an offence has been committed and formal legal action will then usually be pursued.
- Prior to beginning the prosecution process offenders will normally be given warning of the Council's intention to prosecute.

#### **Cautions**

- When resolving simpler and less serious issues it may be expedient to issue a formal caution rather than taking the matter to court as this normally leads to a swifter outcome. If future offences are committed the Council can cite previous cautions in any court hearings.

#### **Prosecutions**

- Notwithstanding that each case is unique and should be dealt with on its own merits an assessment of the case will be made prior to pursuing a prosecution.

### **Keeping you informed**

24. Open Enforcement investigations can be monitored via the Planning Home Page on our web site at:

<http://planning.nelincs.gov.uk/portal/page/portal/NELINCS/enforcement>. Information is available showing when a case is being investigated and whether formal notices have been served. However, it is not possible to provide full details regarding the status of the investigation as to do so could prejudice any future legal action that may be required.

### **Further Information**

25. Further government information about planning enforcement can be found here:

<https://www.gov.uk/guidance/ensuring-effective-enforcement>

### **Contact Details**

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2 George Street  
Grimsby  
North East Lincolnshire  
DN31 1HB

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