

North East Lincolnshire Borough Council

Listed Building Prosecution Procedure

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Introduction

1. Heritage forms an important element of our environment, whether buildings, landscapes or archaeological in nature. These heritage assets are an irreplaceable and finite resource and should be enjoyed for their contribution to the quality of life and of existing future generations. The council fully supports heritage led regeneration and recognises heritage gives places their character and individuality and that creates a focus for community pride, a sense of shared history and a sense of belonging.
2. This Policy outlines the procedures used by North East Lincolnshire Borough Council when responding to complaints about unauthorised works to Listed Buildings and should be read in conjunction with the Council’s Planning Enforcement Plan and Heritage Enforcement Plan.

1. The National Planning Policy Framework (NPPF) states that Local Planning Authorities should have ‘a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats.’ This Plan sets out a proactive approach for the Council’s use of its enforcement powers in relation to Listed Buildings.
2. Policy 39 of the North East Lincolnshire Local Plan 2013-2032 (adopted 2018) states, ‘Proposals for development will be permitted where they would sustain the cultural distinctiveness and significance of North East Lincolnshire's historic urban, rural and coastal environment by protecting, preserving and, where appropriate, enhancing the character, appearance, significance and historic value of designated and non-designated heritage assets and their settings.’
3. Listed Buildings are of national, sometimes international, importance and are an irreplaceable asset. North East Lincolnshire Borough Council is committed to protecting the area’s historic environment. Where unauthorised works to Listed Buildings take place it is essential that they should be resolved in a consistent, balanced and transparent manner.

**The Evidential Test**

1. When considering whether a caution, administrative penalty or a prosecution is appropriate it is necessary to determine whether there is enough evidence to prosecute the matter. This is known as the *evidential test.* If the case does not pass the evidential test it **must not go ahead** no matter how serious or important the case may be.
2. For a case to pass the evidential test there must be enough evidence to provide a **‘realistic prospect of conviction’** against each defendant on each charge. As part of this process the Council must consider what the defence case is and how it is likely to affect the prosecution case.
3. A realistic prospect of conviction is determined by applying an objective test; it means a jury or a bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. When deciding whether there is a realistic prospect of conviction officers should have regard to whether the evidence can be used in court and whether or not it is reliable.

**The Enforcement Options**

1. Once it is decided if that the evidential test has been satisfied the most appropriate way of dealing with the matter will be assessed. The formal options available to the Council are the caution and prosecution.
2. The Formal Caution

The formal caution allows the Council to deal quickly and simply with less serious offenders whilst also reducing the chance of them reoffending. There is no need for the matter to be taken to court reducing officer time necessary to deal with the matter.

1. For a caution to be issued a number of conditions need to be met. There must be evidence of the offender’s guilt sufficient to give a realistic prospect of conviction, the offender must admit the offence and the offender must understand the significance of the caution and give informed consent to being cautioned.
2. Prosecution

The Council may decide to instigate criminal proceedings against a claimant. Prosecution will be considered in the most serious cases.

**The Public Interest Test**

1. When considering which course of action is most appropriate a Public Interest Test should be undertaken. The more serious the offence the more likely a prosecution will be needed in the public interest. The following lists of public interest factors are not exhaustive. The factors that apply will depend on the facts in each case.

**Public Interest Factors used to determine whether to commence Prosecution proceedings**

**A prosecution is likely to be needed if**

* A conviction is likely to result in a significant sentence.
* The defendant was in a position of responsibility or trust.
* The evidence shows the defendant was an organiser of the offence and the offence was carried out by more than one person.
* The defendant’s previous convictions or cautions are relevant to the present offence.
* The evidence shows there was an element of financial gain.
* The offence, though not in itself serious, is widespread in the area where it was committed.
* There is evidence the offence continued following initial contact with the Local Planning Authority.
* The offence continued over a significant length of time.
* The features altered or destroyed significantly affect the buildings character as a building of architectural or historical significance.
* The damaged or destroyed features cannot be repaired or reinstated.
* The defendant is alleged to have committed the offence whilst under an order of the Court.

**A prosecution is less likely to be needed if:**

* The court is likely to impose a very small or nominal penalty.
* The offence was committed due to a genuine mistake or misunderstanding.
* The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement.
* There has been a long delay between the offence taking place and the date of the trial UNLESS the offence is serious, the delay was caused in part by the defendant, the offence has only recently come to light or the complexity of the offence has meant there has been a long investigation.
* A prosecution is likely to have a significant detrimental effect on the defendant’s physical or mental health, always bearing in mind the seriousness of the offence.
* The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated.
* The defendant has put right the loss or harm to the building that was caused to the satisfaction of the Local Planning Authority. However, the defendant must not avoid prosecution simply because they have repaired the damage.

**Conclusion**

14.This policy is designed to ensure there is clarity, proportionality, consistency and fairness in the principles applied to the investigation of Listed Building offences which may require prosecution. It is intended to ensure that defendants who commit such offences are treated fairly but prosecuted or dealt with in other ways effectively.

**Further Information**

15.Further government information about the enforcement of Listed Building offences can be found here:

<http://planningguidance.communities.gov.uk/>

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7705/321530.pdf>

National Planning Policy Framework 2019:

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

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