

HARROGATE BOROUGH COUNCIL

LOCAL ENFORCEMENT PLAN

September 2018

1.0 Introduction

- 1.1 This document has been formulated in the context of local and national policy and guidance. It is intended to assist the Planning Enforcement Team at the council in undertaking its planning enforcement work, and inform all parties involved transparently and accountably how it will decide if it is expedient to exercise its discretionary powers in response to suspected breaches of planning control.

2.0 National and Local Guidance

- 2.1 This plan has been prepared in accordance with the advice contained within the National Planning Policy Framework (NPPF) (July 2018) issued by the Department for Communities and Local Government which states:

“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.”

- 2.2 The council also adheres to the advice and procedures contained in the National Planning Policy Guidance (NPPG). Other policy and guidance documents that are relevant are listed in Appendix B of this document. Our approach is carefully aligned to the priorities set out in the Harrogate Borough Council Corporate Plan 2018 - 2022 which are:

- **A strong and local economy**
- **A sustainable environment**
- **Supporting our communities**
- **Excellent public services**

3.0 What the Planning Enforcement Team investigates

The council are responsible for investigating alleged breaches of planning control. A breach of planning control is development carried out without the requisite express permission of the council.

4.0 When is there a breach of planning control?

- 4.1 A breach of planning control is defined at Section 171A of the Town and Country Planning Act 1990 as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”.
- 4.2 Section 55 of the Town and Country Planning Act 1990 defines development as “the carrying out of building, mining, engineering or other operations in, on, under or over land, or the making of any material change in the use of any buildings or other land”.
- 4.3 It is a breach of planning control to carry out development that requires permission without first obtaining it, but it is not a criminal offence.

5.0 When a complaint has been received but a breach of planning control has not occurred

- 5.1 The first stage of any investigation is to determine whether or not there has in fact been a breach of development control. If there is no breach of control, the case will be closed with no further action being necessary.
- 5.2 Permitted development
Some building works or changes of use benefit from being permitted development under the Town and County Planning (General Permitted Development) Order 2015 (as amended) and are not breaches of planning control. These must be conducted in accordance with specified size limits / criteria detailed in the planning legislation and do not need the express permission of the council so long as the tolerances contained in the planning legislation are not exceeded. These types of ‘permitted development’ may need to be investigated (for example to accurately measure the dimensions of an extension), but may be confirmed as permitted development.

6.0 How we implement the principles of good enforcement where a breach of planning control has occurred

- 6.1 Courses of Action
It is clearly unsatisfactory for anyone to carry out development without first obtaining any required planning permission. The council does not condone such actions. However enforcement action will not be taken solely because the development is unauthorised. It may be that the development is acceptable on its planning merits and enforcement action would not be

expedient or in the public interest. A breach of control may be the result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy, but where serious harm is being caused action will be taken.

6.2 Expediency

Where a breach of planning control is established, the first step is to consider if it is expedient to take formal enforcement action. Enforcement action is not compulsory and can only be considered, at the discretion of the council, where the works done or a change of use undertaken requires planning permission. In considering whether it is appropriate to take enforcement action the degree of harm the unauthorised development is causing, or likely to cause, will be carefully considered having regard to the Development Plan and other material considerations.

6.3 Proportionality

In considering any enforcement action, the decisive issue for the council is whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Any action must always be proportional to the seriousness of harm being caused. It should not be taken 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, or solely to 'regularise' development which is otherwise acceptable on its planning merits but for which planning permission has not been sought.

6.4 Minor Works and the 'de minimis' principle

It may be that, although technically development, the council considers some work to be 'de minimis', i.e. so minor that they would practically fall outside the scope of planning. Whether works are de minimis is a judgment to be made by the council on a case-by-case basis based on fact and degree. Where it is concluded that it is not expedient to take action the case will be closed in accordance with the scheme of delegation set out in the council's constitution.

6.5 Negotiations

Where possible the council will initially attempt to negotiate a solution to regularise or remedy unauthorised works. In carrying out negotiations officers will have regard to the specific circumstances in each case. If negotiations fail within a reasonable timescale or it is clear from the outset that the breach is not capable of remedy through negotiation, formal enforcement action will be considered where it is deemed expedient.

6.6 Inviting a retrospective planning application

Where it appears that there is a reasonable prospect planning permission would be granted for the development, those responsible for the development will be encouraged to submit a retrospective planning application.

Retrospective applications are dealt with in the same way as any other planning application, the full planning considerations are taken into account. Planning considerations are considered in the context of public interest and not personal or private interests. Consequently, a failure to seek planning permission prior to the development being carried out will not influence the council's decision or penalise the applicant.

6.7 No Further Action

Where a breach has occurred but the council does not consider formal action is required a No Further Action Report will be produced to explain this decision.

6.8 Taking formal action

The full range of powers available to the council are set out in detail in Appendix A. The use of these powers will vary depending on the nature of the breach and level of harm caused. Failure to comply with formal enforcement action can be a criminal offence and the council may take prosecution action in such cases. Although use of the criminal process is an important part of enforcement, prosecution action it is not taken lightly or for purely punitive reasons. Prosecutions must be in the public interest and there are evidential and public interest tests set down in the Code for Crown Prosecutors which must be satisfied prior to taking prosecution action. Failure to comply with a Notice can result in the council entering the land, taking direct action and recovering reasonable expenses from the owners by a charge on the land in question that is recoverable when the land is sold. The council will consider this option if it is deemed expedient to do so and funding is available.

6.9 Time limits

Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The council cannot serve a notice after four years where the breach of planning control involves building operations, or the change of use of any building to a single dwelling house, from the commencement of the breach. Other unauthorised changes of use and breaches of conditions are subject to a 10 year time limit. Serving an enforcement notice in respect of a development stops the clock in relation to the above time limits. Therefore where the council feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a development becoming lawful. After these periods the council cannot take action and the use becomes lawful.

7. Appeals against enforcement action

- 7.1 When an appeal is lodged against an enforcement notice the notice is suspended pending the outcome of the appeal. The council must await the outcome of the appeal decision before determining an appropriate course of action. The Planning Inspector appointed by the Secretary of State to decide the appeal can uphold, quash or revise the Notice. This decision will be binding upon the council.

8.0 Monitoring and compliance

- 8.1 When planning permission is granted, the development should be carried out in accordance with the approved plans and any conditions attached to the permission. The council recognises the importance of compliance with planning conditions and will consider formal action where there is a breach that comes to its attention. The council employs a Compliance Officer to proactively monitor condition compliance and deal with cases where breaches occur.

9.0 Reporting breaches of planning control

- 9.1 Any alleged breach of planning control should be reported in writing (via post, email or on our website) to the enforcement team. In order to investigate the complaint, the following information is required as a minimum:
- Name and full address of the customer. This must be provided as we may be required to contact the customer for more detailed information during the course of the investigation. Where no contact details are supplied the request will not normally be investigated.
 - Full address of property or detailed location to which the breach relates
 - Details of the alleged breach and the harm it may be causing (and any other relevant information such as when the alleged breach started/took place, the nature of any building work/uses of the property, previous and current uses of the property, names, addresses, telephone numbers of persons responsible if known).

In addition to these requirements the following information is very helpful:

- Email address of complainant
- Mobile or landline telephone number of complainant
- Any photographic evidence of the alleged breach

9.2 Confidentiality and Disclosure of Information

Customers who are reluctant to give their details because they fear repercussions are advised that their details are treated with the strictest confidence in accordance with government legislation¹. However, if an individual is still reluctant to provide contact details we would advise them to use their local councillor to act on their behalf.

9.3 Acknowledgement

Customers will receive a written acknowledgement of their request for service within 3 days of logging a complaint which will include the name and contact details for the allocated enforcement officer dealing with the case and the assigned priority.

9.4 Ward councillors and parish councils will be informed when a new enforcement matter is to be investigated in their area. They will receive a written notification of the location and nature of the matter along with the name and contact details for the enforcement officer dealing with the investigation.

9.5 Time to Resolve

Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. Consequently, it is not possible to give a standard time for resolving enforcement cases.

9.6 Updates on Progress

Within 28 days of the complaint, the council will update the complainant on the progress of the investigation. If the investigation remains ongoing then further updates will be provided every 56 days thereafter. Additional updates will also be provided where there is a significant development in the consideration of a complaint. A significant development would include for example, the submission of an application, the serving of an enforcement notice or the closure of the investigation.

9.7 Case Priorities

Although priorities are assigned on a case by case basis, they will follow the following classification. The target response times below indicate the timeframe in which the case officer is to make a site visit:

¹ 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.

High Priority (Target response – 1 working day)

- Matters that result in danger to public safety;
- Permanent or irreparable harm, such as loss of a protected tree or unauthorised demolition, partial demolition or significant alteration to a listed building or building within a conservation area
- Activities that have the potential to cause irreparable harm to the environment, especially within Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty.

Medium Priority (Target response – within 5 working days)

- Unauthorised development / activity which causes significant and continued harm by adversely affecting amenity, such as building work which is unlikely to be granted planning permission or unauthorised uses of a residential property;
- Breach of a condition attached to a planning permission which results in harm by adversely affecting amenity of an area
- Unauthorised development / activity, which is the source of significant public complaint.

Lower Priority (Target Response – within 15 working days)

- Unauthorised development / activity which is not classed as being high or medium priority;
- Cases where there is a breach of planning control but little or no immediate harm to amenity;
- Minor breaches of conditions attached to planning permissions.
- Unauthorised advertisements and untidy land issues.

9.8 What to do if you are dissatisfied with the way your complaint is dealt with

If you have a complaint about something the council has done, or has failed to do, please use the feedback form and give us the opportunity to deal with it. For more information and advice, please see complaining to the council and the council's Complaints Procedure.

9.9 If you are not satisfied with the response after we have tried to deal with your complaint, and you believe that you have suffered injustice through maladministration by the council, you can make a complaint to the Local Government Ombudsman (LGO). The LGO provides free, independent, impartial and prompt investigation and resolution of complaints.

Appendix A: Types of formal enforcement action

Enforcement Notices

The enforcement notice will state the reasons for action being taken and specify the steps which the council require to be taken in order to remedy the breach. There is a right of appeal to the Planning Inspectorate.

Listed Buildings Enforcement Notices.

Listed building consent is required from the council to carry out any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. There are no time limits for taking enforcement action with respect to listed building offences. There is a right of appeal to the Planning Inspectorate.

Breach of Condition Notices (BCN)

Served in addition to or as an alternative to an enforcement notice where development has taken place without compliance with a condition(s) of a planning permission. There is no right of appeal for these notices.

Stop Notices

Where a breach of planning control is causing such serious or irreparable harm which is so harmful that the outcome if the enforcement notice could not be waited for, we may serve a stop notice at the same time, or after the service of an enforcement notice. There is no right of appeal against a stop notice, only the enforcement notice to which it is attached.

Temporary Stop Notices

May be served where a harmful unauthorised development or use needs to be stopped immediately. A TSN can be served before an enforcement notice has been served in order to cease an unauthorised activity on the land (for a maximum of 28 days). There is no right of appeal for these notices.

Section 215 Notices

May be served where condition of a building or land is considered to be adversely affecting the amenity of the surrounding area. There is a right of appeal in the Magistrates' Court.

Planning Contravention Notice

The notice will contain relevant questions relating to the alleged breach. Failure to respond within the specified timescale is a criminal offence which can result in prosecution in the Magistrates' Court.

Section 330 Notices

Require information about interests in land from any occupier of land. There is no right of appeal against a s330 notice and failure to respond is an offence.

Appendix B: Examples of Planning/Non Planning Matters

Planning Issues

Examples of breaches that we investigate include, but are not limited to:

- including unauthorised operational development – carrying out of building works, for example construction of buildings or extensions;
- unauthorised works to listed buildings that affect its character as a building of special architectural or historic interest;
- unauthorised material changes of use – changing the use of a building or land, for example, using agricultural land for residential purposes;
- unauthorised demolition of buildings (total or substantial) within a conservation area;
- unauthorised works to protected trees and removal of hedgerows in the open countryside;
- breaches of conditions – breaching conditions attached to planning permissions, for example, conditions restricting hours of operation;
- unauthorised display of advertisements; and
- poor condition of private land which is affecting the amenity of an area.

Non-Planning Issues

We receive many requests for service regarding issues that do not involve a breach of planning control. To ensure these are dealt with effectively, it is important to identify those issues which are relevant to planning and those that do not come within our remit. Examples of issues that may not be planning matters include:

- Unauthorised use of/development on the highway, footway or verge that is covered by highway legislation - please contact North Yorkshire Highways on 01609 780780;
- Dangerous structures/subsidence – please contact our Building Control section on 01423 500600;
- Fly tipping – please contact our Safer Communities section on 01423 500600
- Internal refurbishment of buildings that are not Listed;
- Neighbour disputes/boundary, party wall and land ownership or land grab disputes – these are civil matters that the council cannot get involved in – further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau; and
- Pests or vermin – please contact our Environmental Protection section on 01423 500600

Appendix C: Further information (policy and guidance)

The following is a list of the main policy and guidance documents that are especially relevant to the work of the planning enforcement team. This list is **not** exhaustive:

Policy

- Town and Country Planning Act 1990 (as amended)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Town and Country Planning (General Permitted Development) Order 2015
- Town and Country Planning (Use Classes) Order 1987 (as amended)
- Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Harrogate Borough Council Planning Policies

Guidance

- The Planning Portal – Do You Need Permission?
- The Planning Inspectorate - Enforcement Appeals
- National Planning Practice Guidance (NPPG)
- Section 215 Best Practice Guidance
- Planning Inspectorate – enforcement appeals guidance

Appendix D: Useful contacts

Planning Contact details

Planning Enforcement Team

P.O.Box 787, Harrogate, HG1 9RW

Telephone: 01423 500600

Email: enforcement@harrogate.gov.uk

Planning (for general enquiries)

P.O.Box 787, Harrogate, HG1 9RW

Telephone: 01423 500600

Email: dmst@harrogate.gov.uk

External agencies and organisations

Health and Safety Executive (health and safety on building sites)

North Yorkshire Police

North Yorkshire County Council (highways, footpaths, verges)

Royal Town Planning Institute – National Association of Planning Enforcement

Considerate Constructors Scheme

Citizens Advice Bureau

Local Government Ombudsman