

Introduction

1.1 The enforcement of the planning regulations is an important part of the planning service provided by any Council. The National Planning Policy Framework (NPPF) states:

Effective enforcement is important as a means of maintaining 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. Local planning authorities should consider publishing a local enforcement plan to manage enforcement pro-actively, 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 it is appropriate to do so.

1.2 This planning enforcement policy provides guidance for businesses, developers and the general public. It explains the Council's commitment to the Enforcement Concordat; how it prioritises cases; its procedures and, where appropriate, the timescales involved.

1.3 The Council has the power to take enforcement action to remedy a planning breach if it considers such action to be appropriate but the exercise of this power is discretionary and must be exercised reasonably. The carrying out of development without the benefit of planning permission is not, in itself, an offence. Some breaches of control e.g. alterations to listed buildings, works or felling of protected trees are summary offences which may result in prompt legal action but a decision to take planning enforcement action is generally governed by the principles set out in the NPPF, this policy, the merits of the case and other material planning considerations.

1.4 The majority of breaches of planning control are resolved by negotiation and more formal action, in accordance with the NPPF, only takes place where it is expedient to do so and other means to resolve the issue have failed.

2.1 The Role of Planning Enforcement

2.2 In the majority of cases development takes place with the necessary planning permission first having been obtained and most developments are undertaken in accordance with the approved plans and the terms of the planning permission. Where development takes place without, or in contravention of a planning permission, then the Council has enforcement powers.

The Council's Director of Economic Growth has full delegated powers to carry out the enforcement of the planning regulations. Officers in the department will investigate matters such as;

- unauthorised construction and development works
- unauthorised changes of use of land or buildings
- unauthorised works to a listed building
- unauthorised display of signs or advertisements
- unauthorised work to protected trees, including those in Conservation Areas
- land or buildings adversely affecting the neighbourhood (untidy land)

- non-compliance or breach of planning conditions attached to a planning permission
- any other breaches of planning control where this is linked to breaches of other legislation

3.1 Statement of Principles

3.2 The Council has adopted the Enforcement Concordat published by the Cabinet Office in 1998 which sets out the principles of good enforcement practice. In undertaking planning enforcement investigation and other enforcement duties the principles of the Concordat will be applied as follows:

Standards

This document sets out the level of service and performance the public can expect to receive.

Openness

We will provide information and advice in plain English and be open about how we undertake our work.

Helpfulness

We will work with others to advise on and assist with compliance. We will provide a courteous and, within available resources, an efficient service and staff will identify themselves by name. We will provide a contact point and telephone number. Wherever practicable we will ensure that our enforcement service is coordinated with other services or agencies in order to minimise delays.

Complaints about the service

We will provide details of the Council's complaints procedure on request.

Proportionality

Any action considered to be required will be proportionate to the risks and seriousness of the case.

Consistency

The Council will undertake all duties in a fair, equitable and consistent manner. We will have arrangements in place to ensure consistency, including appropriate management and liaison with other Councils and service providers.

4.1 Prioritisation of Cases

4.2 Complaints will be given a priority classification and an investigation will be carried out in accordance with the timescales for dealing with different types of complaint. Some complaints will be more serious and urgent than others and these are given higher priority. An initial investigation will be carried out in accordance with the priority allocated to the complaint.

Cases will be prioritised as follows:

Priority 1

- Unauthorised works to listed buildings and the unauthorised demolition of unlisted buildings and structures in Conservation Areas
- Unauthorised works or felling of trees covered by a Tree Preservation Order (TPO) or in located in a Conservation Area or protected by a planning condition
- Any unauthorised development including building operations or changes of use that cause immediate and serious harm and, in respect of which, it is appropriate to take immediate action

Priority 2

- Unauthorised development resulting in moderate nuisance or loss of amenity
- Unauthorised advertisements
- Unauthorised works to a non-listed building already substantially complete
- Unauthorised works where construction work is underway and planning permission has not been granted
- Non-compliance with or breach of planning conditions

Priority 3

- land adversely affecting the amenity of a neighborhood
- minor breaches with no apparent or minimal impact on amenity
- other breaches not falling under definition 1 or 2 above

4.3 Irrespective of the classification of a complaint every reported contravention is potentially a breach of planning control and will be investigated. Should enforcement action be warranted it will be undertaken without regard to priority status and in accordance with this policy.

4.4 Breaches of planning conditions identified or brought to the attention of the department's Compliance Officer will be dealt with in accordance with the above priorities.

5.1 Response Times

5.2 Notification of a complaint will be acknowledged in writing or verbally within 10 working days of receipt. The acknowledgement will provide the investigating officer's contact details.

5.3 Wherever possible the site will be visited by the case officer within 10 working days of the complaint being received in Priority 1 cases, 15 working days for Priority 2 cases and 20 working days for Priority 3 cases.

5.4 Within 25 working days of the complaint being made, the Council will notify the complainant as to actions to date and what further action it is proposed to pursue in respect of the alleged breach (this may include gathering additional information and evidence over time). Complainants will be notified of progress at appropriate stages of the investigation but in any case, will be updated every 30 working days.

6.1 Procedure for Dealing with a Breach of Planning Control

6.2 Information on a breach of planning control may be submitted by telephone, letter, e-mail or via the Council's website. The Council will need to know the address or location

of the property or site concerned and full details of the alleged breach (with dates and times if relevant) and an indication of any harm caused or other impacts or harm being caused by the breach.

6.3 On receipt of a complaint and after checking the planning history of the site, the complaint will be recorded and given a reference number. The complaint will then be prioritised in accordance with this policy and assigned to a case officer for investigation. The case officer will investigate the alleged breach of planning control in accordance with timescales set out in this policy. After an initial investigation the Council will aim to advise the complainant of the outcome of the investigation within 30 working days or sooner.

6.4 When it is clear that there is a breach of planning control the Council will draw this to the attention of the person responsible for that breach and advise them of the following possible courses of action.

- ▶ If permission is unlikely to be granted the Council will ask for the use to cease or unauthorised development to be removed voluntarily. A reasonable period of time will be allowed for compliance with such a request taking into account the action required to remedy the breach.
- ▶ Minor breaches causing no significant harm will not usually lead to enforcement action being taken.
- ▶ In the case of development considered by officers to be acceptable, developers will be invited to submit a planning application. This will be for retrospective permission and such applications will be dealt with in accordance with the department's business procedures and planning policy. The fact that works have commenced or are being completed is not a material planning consideration in arriving at a decision on that application but the Council will normally suspend enforcement proceedings whilst considering a valid retrospective planning application. Exceptionally, and depending on the nature of the case and the use of the Council's resources, enforcement action may be suspended pending the outcome of any appeal against the refusal of planning permission.
- ▶ If the breach is immune from enforcement action under the provisions of the Act or is exempt from planning control then it may be appropriate to make an application for what is termed a Certificate of Lawfulness.
- ▶ As a last resort and where the unauthorised development is not considered by officers to be acceptable and it has not been possible to negotiate an acceptable solution, formal enforcement action will be commenced. The decision to take enforcement action is discretionary and is made on a case-by-case basis. An Enforcement Notice will set out the breach and the remedy. In very serious cases where irreparable or unacceptable harm is occurring or where other action has failed, the Council may seek a court injunction to remedy the breach.
- ▶ Where the requirements of a valid notice have not been complied with or after the dismissal of an enforcement appeal, the breach continues, the person responsible for the breach may face prosecution with penalties including fines and imprisonment.
- ▶ Very occasionally, urgent action is necessary to prevent serious breaches of planning control e.g. unauthorised works to a listed building. In such cases the Council has power to serve a Stop Notice requiring immediate cessation of the works.
- ▶ In the case of non-compliance with condition(s) on a planning permission or a section 106 legal agreement the developer will be asked to comply with the

condition(s) or agreement and given a timescale within which to do this. Failure to comply within this timescale may result in the service of a Breach of Condition notice or Enforcement Notice. In the case of a section 106 agreement action will be taken to secure compliance with the contract.

6.5 It is important to note that any person who carries out development without the necessary permission under the Act and carries on with that work despite officer advice to suspend or cease works, does so entirely at their own risk.

7.1 Rights of Appeal

7.2 There is a right of appeal to the Secretary of State (The Planning Inspectorate) against the service of an Enforcement Notice. If you decide that you want to appeal against a notice you must ensure that you lodge your appeal at Inspectorate within the time stipulated in the notice. Late appeals may not be accepted by the Inspectorate and in those circumstances a notice will come into effect and must be complied with. If an appeal against an enforcement notice is lodged, the Council will notify interested persons including, where appropriate, the complainant, to give them an opportunity to be part of the appeal process to provide written submissions or appear in person at any hearing or inquiry if they wish.

8.1 Works to Protected Trees (TPO, Trees in Conservation Areas, Trees Protected by Planning Conditions)

8.2 If a complaint is received a check will be made of the departmental records to confirm if the tree(s) are covered by a Tree Preservation Order, are located in a Conservation Area or are protected by a planning condition. Unauthorised works or felling of a protected tree is a summary offence which may result in a prosecution and fine. It should be noted that landowners, contractors and those persons commissioning the works may have a liability in such cases. If the trees are not protected and are on private land then works can be carried out with the owner's permission but without the need for any consent from the Council. Special arrangements also apply to trees, including those that are protected, that are dead, diseased or represent an urgent or serious safety risk but before works or felling are carried to such trees landowners are advised to notify the Council to ensure that the required exemptions apply, in some circumstances there is a duty to replace trees which are removed.

9.1 Land Adversely Affecting Amenity of a Neighbourhood (Section 215 Notices)

9.2 The planning service also deals with enquires and complaints about untidy land and buildings. In instances of untidy land or premises which are demonstrably adversely affecting the amenity of a neighbourhood the Council may serve a Section 215 Notice. The Notice will require steps to be undertaken to deal with the impact on amenity, such as clearing up fly-tipped or overgrown sites or gardens or improvements the external appearance of buildings, within a defined period of time. Failure to comply with such a notice is an offence which may be actioned by prosecution with a possible fine.

10.0 The Opportunity to Put Matters Right

10.1 The person(s) responsible for the breach of control will always be given the opportunity to put matters right and enforcement and planning officers will assist in trying to find a solution to remedy the situation prior to any formal enforcement action being

taken, unless the breach is so serious as to warrant immediate action. Where immediate action is considered necessary an explanation of why such action is being taken will be given at the time and confirmed in writing within 3 working days. A full and objective investigation will always be undertaken before deciding on any enforcement action. In circumstances where breaches are a summary offence, the Council will consider immediate prosecution but it would normally only proceed to prosecution if serious harm is being caused, where there is a serious and deliberate blatant disregard of planning regulations or there is a history of repeat offences.

11.0 What is not covered under Planning Legislation

11.1.1 For reason of law the Council's planning service cannot deal with the following complaints;

- neighbor disputes
- land boundary or land ownership disputes
- the enforcement of private covenants on land
- works to party walls (such matters are dealt with under the Part Wall Act 1996)
- the lawful use of, or development on, the public highway
- breaches of control dealt with by other regulations or legislation unless there is a planning issue to be examined at the same time

12.0 Planning Conditions

12.1 Securing planning permission should not be seen as a conclusion but rather a step in the development process. Planning conditions are often imposed to enable the Council to regulate certain aspects of new development and to ensure that a development is carried out correctly. Planning conditions may require the submission of additional information, such as materials to be used, they may temporarily regulate the development process e.g. hours of working, or regulate the use of land e.g. hours of opening or delivery times of shops and takeaways.

12.2 Advice on the use of planning conditions is set out in Government Circular 11/95 (Use of Condition in Planning) and the NPPF. Policy guidance sets out six 'tests' which planning conditions must meet, any condition which fails the tests may be difficult to enforce or may be removed on appeal. Planning conditions must be;

- necessary
- relevant to planning
- relevant to the development being permitted
- enforceable
- precise
- reasonable in all other respects

12.3 It is important that development is carried out in accordance with the approved plans and any conditions attached to a planning permission. Some conditions will require the submission and approval of additional information to the Council before the development can commence on site, such conditions are termed a 'conditions precedent'.

12.4 Applications seeking the discharge of conditions should be submitted in a timely fashion and before it is intended to start the development. Although the Council will deal

with requests as quickly as possible, in some cases it may take time to consider more technical information. If a submission is not acceptable then the Council may refuse to discharge the condition. There is also a right of appeal against a refusal to discharge a condition.

12.5 It is important to be aware that if a development is commenced before the required conditions are discharged, then case law provides that in some circumstances, this commencement of work will be unlawful (despite the fact planning permission has been granted) and would be liable to enforcement action.

13.0 The Procedure for Discharge of Conditions

13.1 When a submission is received an acknowledgement letter will be sent out providing contact details for the officer dealing with the matter. Any additional information which is required to validate the submission will be requested within 10 working days.

13.2 The Council will process applications as quickly as possible and so it may discharge conditions individually or in groups.

13.3 A planning fee (set nationally by the Government) will be charged each time you submit to seek discharge of conditions. Therefore if you are able supply information to comply with all the conditions attached to the planning permission, at one time, you will only be charged one fee. If you submit details for each condition separately a fee will be charged for each application.

13.4 Submissions can be invalid because the appropriate fee has not been received. If no fee has been received within 21 working days of the compliance officer requesting a fee from the applicant the application will be returned.

13.5 There is a fee payable for applications to discharge conditions attached to a householder applications and also for all other developments.

13.6 In exceptional cases a condition may require more than one submission e.g. investigation of contaminated land and the subsequent submission of a validation report, if this is the case, a fee is payable for each part of the condition.

13.7 A fee is not required for the compliance of conditions attached to planning permissions for Listed Building Consent Advertisement Consent or where the Council has removed or amended Permitted Development rights by planning condition.

13.8 In some cases it may be necessary to consult with other Council departments or external agencies and these consultees will be given 21 days in which to respond with any comments. If another agency or service provider has indicated their approval of the details of the planning condition, the condition will not be discharged until the compliance officer received written confirmation that this is the case.

13.9 The Council will seek to determine applications within eight weeks of receipt. A longer period of time may be required on more technical or complex matters, particularly where discussions with other agencies may be required. If a decision is likely to take longer than 12 weeks then the compliance officer will contact the applicant to agree an extension of time.

13.10 Should the Council fail to provide confirmation or notify you that confirmation cannot be provided within 12 weeks of the date of receipt of the information required to comply with the condition and an extension of time has not been agreed, the fee will be returned.

14.0 Monitoring and Compliance

14.1 A key part of the Development Management service is the monitoring of conditions and new development. The compliance officer and enforcement officers will liaise to ensure all necessary conditions are discharged at the appropriate time and that the development is built in accordance with the terms of the planning permission.

14.2 The enforcement and compliance officers receive many complaints each year about non-compliance with planning conditions. As explained above the failure to comply with a 'pre-commencement' condition can render a development unlawful. This may require you to submit a further planning application for the development and for this reason it is important that all pre-commencement conditions are all fully discharged before any development is commenced.

14.3 The Council will, where required, check if planning conditions have been complied with. However, the responsibility for ensuring that conditions are complied with rests with the developer/applicant. Failure to comply with planning conditions could result in the following;

- The development becomes unauthorised and the developer may need to submit a further planning application to regularise the development.
- A Temporary Stop Notice may be served stopping work on site for up to 28 days
- The service of an Enforcement Notice requiring compliance with approved plans and conditions.

14.4 The Council will undertake some routine monitoring in certain cases. Whilst resources may not allow for each site to be monitored, priority will be given to the following;

- sites which support the Council's Corporate Plan priorities
- sensitive sites which have the potential to impact on the environment & amenity
- known contentious sites that have the subject of complaints

14.5 Any breach of planning control, and in particular the failure to comply with planning conditions, can also affect and unnecessarily complicate or delay the future sale of land and it is in a developer's interests to ensure that all conditions are complied with.

15.0 Prosecution

15.1 For some breaches of planning control it may be necessary for the Council to initiate prosecution proceedings in the Magistrates Court or the Crown Court. Each case will be considered on its merits and when considering the suitability of a case for prosecution we will seek advice from the Council's legal officers and apply both evidential and public interest tests.

16.0 Confidentiality

16.1 All complaints and investigations are dealt with and carried out on a strictly confidential basis and complainant's details will not be revealed by the investigating officers. The Council will, as far as is practicable, protect the identity of complainants. The general public does not have access to the Council's planning enforcement files during an investigation. In addition, in most cases, information stored in respect of such matters is exempt from the Freedom of Information Act. A complainant's details will be kept confidential unless they authorise otherwise. It should be noted, however, that if a breach of control proceeds to litigation or to a planning appeal in the form of a hearing or inquiry then the number or nature of complaints may form a key part of the Council's evidence.

17.0 Anonymity

17.1 The Council will not deal with anonymous complaints about alleged breaches of planning control. Complainants will, as a minimum, have to provide their name, address and telephone number/email address so that the Council can respond to the complaint. If you are concerned about lodging a complaint then you may wish to approach your local Ward Councillor who may be willing to take the matter up on your behalf.

18.0 Rights of Entry

18.1 Planning and enforcement officers of the Council have the power to enter land for the purposes of investigation of alleged breaches of control. This right will only be exercised where there are reasonable grounds to enter land to determine whether a breach of planning control has or is taking place. In the case of a residential property 24 hours' notice has to be given prior to officers entering a property unless the occupier agrees to an inspection. It is an offence to willfully obstruct an officer seeking to lawfully enter land and, if necessary, the Council will apply for a Warrant to enter the land or premises. The willful obstruction of officers seeking to discharge their duties is an offence which may lead to prosecution and a fine.

18.2 Council officers carry identity cards bearing their name, post title and photograph and details of the legislation which gives them the powers to enter land for the purposes of investigating planning enforcement complaints. Officers are required to display this ID card at all times and to produce it on request to confirm their identity.

19.0 Human Rights, Regulation of Investigatory Powers Act (RIPA) Police and Criminal Evidence Act (PACE)

19.1 In undertaking all planning enforcement duties, due regard will be paid to the Human Rights Act, the Regulation of Investigating Powers Act (RIPA) and the Police and Criminal Evidence Act.

20.0 Performance and Monitoring

20.1 The performance of the enforcement team will be monitored in terms of the response times and the number of cases resolved. An annual monitoring report will be prepared. The Council aims to investigate 80% of planning complaint cases within the

target times set out above. The Council will keep a public register of all Enforcement Notices served.

21.0 Service Complaints

21.1 The Council is committed to providing an effective and efficient planning enforcement service but occasionally things do go wrong, or you may be dissatisfied with service provided. If a person involved in an enforcement case is not satisfied with the service provided by officers, they should write to, or discuss any concerns with the department's Regulatory Services Manager. If the concerns are not addressed to a person's satisfaction the Council has a formal complaints procedure details of which are on the Council's web site or can be provided on request.

21.2 Advice

21.3 Officers in the Development Management team are always available to give advice on planning enforcement and related matters; the service is free and impartial and available during the Council's normal office hours. Whilst the advice is informal, and no officer has the power to bind the Council to a particular course of action, those parties involved in such issues will better understand the Council's policy and procedures and such advice often allows parties to come to an agreed resolution without the need for formal enforcement action.

Key Contacts

Clive Watts (Senior Enforcement Officer)
Tel 01287 612394
clive.watts@redcar-cleveland.gov.uk

Claire Griffiths (Development Services Manager)
01287 612629
claire.griffiths@redacr-cleveland.gov.uk