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Introduction

The Local Planning Enforcement Plan sets out how the Council manages development in North East Derbyshire, including the investigation of suspected breaches of planning control and monitoring of approved development. This Plan is a statement on our planning enforcement processes. It sets out the level of service you can expect and where and why we might prioritise one thing over another.

National Context for Planning Enforcement

This Enforcement Plan is prepared under the requirements of the Town and Country Planning Act 1990, the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (PPG)

The Ministry of Housing, Communities and Local Government (MHCLG) Guidance on Enforcement and Post-Permission Matters provides additional guidance on the powers available to Councils nationally. It can be viewed online here –

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

All relevant and current legislation and planning policies will be taken into account when assessing a breach of planning control.

In addition to national policy and legislation, breaches of planning will also be considered against the policies of North East Derbyshire Local Plan 2014-2034 and associated local guidance as published on the Council's website, including adopted Supplementary Planning Documents (SPDs).

Our investigations are not the same as those undertaken by the Police or other regimes where an offence is 'punished' by the law. The Courts have emphasised the role of planning enforcement is 'restorative' focusing on the remedy of breaches and this is a fundamental principle that underpins how we conduct investigations.

Planning Practice Guidance (paragraphs: 003 & 011 updated 22 July 2019) also states that '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.' This makes it clear that immediately initiating formal action is neither best practice nor in the public interest.

North East Derbyshire District Council Overview on Planning Enforcement

The Council has a duty to investigate alleged breaches of planning. The Planning Enforcement Team plays a key role in delivering an effective Planning service.

Effective planning enforcement is very important for many reasons. The Council aims to carry out its enforcement function in a transparent, accountable, proportionate, consistent and targeted manner. In doing so-

- It tackles breaches of planning control that have an unacceptable adverse impact on the character and appearance of our district, or have an unacceptable adverse impact on the living conditions of our residents,
- Breaches may be unintentional and therefore any action should be proportionate to the breach of planning control to which it relates.
- It maintains the integrity of the decision-making process by tackling unauthorised development that would not normally be granted planning approval, and,
- It maintains public confidence in the Council's decision-making processes by ensuring planning conditions and planning obligations are complied with.

What is a Breach of Planning Control

A breach of planning control is the carrying out of development without the required planning permission, or failure to comply with conditions or limitations attached to a planning permission (Section 171A of the Town and Country Planning Act 1990 as amended).

- Carrying out **operational development**, including building and engineering operations without the required planning permission.
- Carrying out **material changes of use** of land and buildings without planning permission.
- **Failing to comply with a condition or limitation** attached to a planning permission. This includes a failure to agree details before a start onsite, or operational controls such as hours of operation.
- Carrying out certain **works in a Conservation Area** without relevant permission(s).
- The display of certain **advertisements** without consent.
- The **neglect of land or buildings** to an extent which causes harm to amenity.

Other issues the Council can investigate-

- **High hedges** – Part 8 of the Anti-social Behaviour Act 2003 allows local councils to deal with complaints about high hedges whose area contains the land on which the hedge is situated.
- **Breaches of S106 Legal Agreements** – any deviation from planning obligation such as a failure to provide agreed developer contributions.

Some breaches are a **criminal offence from the outset**. This is generally where the harm is irreversible, or a formal notice issued by the Council has not been complied with-

- **Unauthorised works to a listed building** – Any works for the demolition of the building or for its alteration or extension in a manner which affects its character as a building of special architectural or historic interest, without listed building consent
- **Demolition in a conservation area** – demolition of a building with a volume of 115 cubic metres or more and any gate, fence, wall or other means of enclosure with a height of one metre or more if next to a highway, waterway or open space; or a height of 2 metres or more elsewhere
- **The display of unauthorised advertisements** – an advertisement not having the benefit of deemed consent granted by Regulation 6 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended). For more detail see link: [Outdoor advertisements and signs: a guide for advertisers – GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/121221/outdoor-advertisements-and-signs-a-guide-for-advertisers.pdf).
- **Unauthorised works to trees covered by Tree Protection Orders (TPO) and protected trees in conservations areas (on private land)** – works which cut down, uproot, top, lop, wilfully damage, or wilfully destroy a protected tree subject to a TPO and trees in a Conservation Area with a trunk diameter of more than 75mm when measured at 1.5m from ground level (or more than 100mm if reducing the number of trees to benefit the growth of other trees). Where a hedge has grown into a line or row of trees, they may be protected.
- **Failure to comply with a formal notice issued by the Council** – such as an Enforcement Notice, Temporary Stop Notice or Breach of Condition Notice.

Reporting a suspected breach to NEDDC

Before making a report, you may want to check the planning history of a site, to see if it has planning permission. You can do this online at <https://planapps-online.ne-derbyshire.gov.uk/online-applications/> and enter search terms such as the site address or postcode

In order to submit all of the details required to start an investigation, the preferred method is using the Council's self-service portal. You will find the form under 'Enforcement – Report a Breach' <https://myselfservice.ne-derbyshire.gov.uk/planning>

Alternatively, you can report a suspected breach of planning control through one of the following contact points –

Email – enforcement@ne-derbyshire.gov.uk

Post – Planning Department, NEDDC, Mill Lane 2013, Wingerworth, Derbyshire, S42 6NG

When making a report, please provide as much information as you can about the concerns you have including:

- The location (e.g. address, postcode, what3words etc.)
- The nature of the suspected breach
- When you first noticed it
- The harm it is causing and include any photographs of the site if you can,
- if known, the name, address, email/telephone number of the person/s carrying out the works

Please provide your contact details so that we can keep you informed at key stages of our investigation and discuss any additional information. (These details are all captured using our online form).

How you can expect to be updated

If you report a breach through our on-line report form or to our email address, you will receive an automated response explaining how you can expect to be contacted and the timescales.

The level of communication we have with you will vary from case to case. Particularly for the more complex and protracted cases, it may be several months without progress, for example where landowners are relying on specialist advice and services to prepare planning application documents.

It is not possible to provide regular updates on progress with an enquiry due to the significant number of cases reported each year. To do so would take valuable resources away from dealing with the issues.

We will provide updates at key stages of a process, such as if formal action is taken, or an application is submitted. However, we ask that if you have an ongoing interest in a breach you have reported, then you contact the Council's planning enforcement team enforcement@ne-derbyshire.gov.uk for an update.

Your personal data

We will only share address and contact details with the Officers dealing with the case. If the case should be dealt with by another department in the Council, we will share details with Officers in that department. However, we will not share personal contact details with any external third parties without that person's consent.

We will not disclose or discuss your name or contact details. We treat these in confidence because we recognise that many people will not have the confidence to report a suspected breach of planning control if their identity were to be made public.

For these reasons, the Council will not normally provide this information if we receive a request for it under the Freedom of Information Act or the Environmental Information Regulations. However, in exceptional circumstances we may have to share your personal details with the police or the courts if the suspected breach of planning control amounted to a criminal offence subject to prosecution.

Who to contact for matters outside the scope of planning enforcement

Often, we will be sent a report of a suspected breach that cannot be investigated by the Planning Enforcement Team. Regular examples include –

- Approved development – you can check this on the Council website using the search page (see above) at [https://planapps-online-ne-derbyshire.gov.uk/online-applications/](https://planapps-online.ne-derbyshire.gov.uk/online-applications/)
- Boundary or land ownership, or party wall disputes – you may want to seek advice from your solicitor
- Damage to private property - you may want to seek advice from your solicitor
- Dangerous structures – this should be reported to Derbyshire Building Control Partnership who can be contacted on 0333 880 2000 or by email to info@dbcp.co.uk
- Fly tipping, light pollution, vermin, noise, dust or odour nuisance – these should be reported to the Council's Environmental Health Department by telephoning 01246 231111 or by emailing EnvironmentalHealthAdmin@ne-derbyshire.gov.uk
- Any matters on Highway Land – these should be reported to the Highways Department at Derbyshire County Council by telephoning 01629 580000 or through their website at <https://www.derbyshire.gov.uk/transport-roads/roads-traffic/report-a-road-fault/report-a-road-fault.aspx>
- Quarry or waste disposal and waste transfer sites – these should also be raised with Derbyshire County Council on 01629 580000.

Our approach

When investigating alleged breaches of planning control, the team will follow central government advice. That advice is contained in the National Planning Policy Framework and National Planning Practice Guidance: Ensuring Effective Enforcement.

During each investigation we aim to answer the following questions:

- Is there development?
- Is there a breach?
- Is the breach causing harm?
- Can the breach be resolved through negotiation?
- Is enforcement action expedient?
- What enforcement action is proportionate to deal with the breach?

Material planning considerations.

The council can only give weight to 'material planning considerations' when considering planning enforcement. The list of material considerations includes, but is not limited to:

- Overlooking/loss of privacy
- Loss of light or overshadowing
- Parking and Highway safety
- Noise
- Impact on a listed building, conservation areas and their setting
- Layout, design, appearance and materials
- Landscape character
- Nature conservation
- Government policy
- Disabled persons' access
- Spatial policies in the Development Plan (e.g. land allocations)

- Previous planning decisions (including appeal decisions)

The protection of private interests cannot be material considerations. The Courts have decided that planning is concerned with development in the public interest, and the interests of society usually trump private rights. The list of non-material planning matters includes, but is not limited to-

- Impact of a development on the value of a property
- The loss of a view,
- Private access rights
- Legal covenants

Investigation Priorities

We will investigate based on the information provided. Where we think a breach of planning control has occurred, then we will screen the allegation using our harm assessment form. Appendix 1 of the Plan details the 'Harm Assessment Triage Scheme'.

The aim is to exclude minor breaches or reports driven by non-planning motives, as these often consume disproportionate resources at the expense of more significant cases.

If the score is above the threshold, the case will be investigated by a planning enforcement officer and the case will be processed in accordance with the Local Enforcement Plan.

If the harm is below the threshold, the case will be closed as not expedient and inform you of this in writing.

Investigation Process

Investigations start with a desk-based review of the allegation. We will check the planning history and records of other Council Departments (e.g. Council Tax, Business Rates). A site visit may be carried out to understand the allegation and gather evidence as appropriate.

We will normally write to the owner to initiate contact using information already held by the Council, such as email addresses (e.g. from planning application forms) or from Land Registry information.

We can often gather enough documentary and photographic evidence at this stage to decide if there is a breach of planning control.

Officers may attempt to arrange a site visit with an owner or occupier before visiting a site. However, for efficiency and resource reasons, it is not always possible or

convenient to do so. For example, if numerous site visits are being carried out in one day, it is very difficult to arrange and keep to agreed times.

Planning Enforcement officers have the right to enter onto the land to investigate alleged breaches of planning control under Section 196A -196C of the Town and Country Planning Act 1990 and Section 88 of the Planning (Listed Building and Conservation Area) Act 1990.

If a matter appears to be a high priority case, it may be necessary to carry out an immediate visit and exercise rights of access. It is an offence to wilfully obstruct an officer when exercising a right of entry. To access a building used as a dwelling, the Council must give at least 24hrs notice.

If you have reported a breach, we may come back to you for further information if necessary to do so.

To manage cases reported to us efficiently, we have set the following case type priorities and aim to make initial investigations within timescales that reflect this.

High priority cases are cases where the harm being done is significant and irreversible. Investigations will be initiated within 24 hours or next working day. If necessary, a site visit will be undertaken within 48 hours of a high priority case being reported to us.

Examples of high priority cases are as follows:

- Unauthorised development likely to lead to substantial and/or permanent irreversible damage (i.e. demolition of a listed building, or part of a listed building, felling of a protected tree).
- Unauthorised demolition or development within a Conservation Area or other site of special control likely to lead to substantial and/or permanent damage to heritage assets
- Unauthorised development that may present a physical danger to members of the public.
- Unauthorised operational development and/or material changes of use likely to cause severe or permanent damage to the environment/amenity.
- Breaches of planning control which would otherwise be likely to acquire immunity from enforcement action due to the passage of time.
- Any breaches of planning control which would lead to serious traffic hazards; contamination and/or pollution being created.

Medium priority cases are those where there is clear harm, but that harm can be reversed. Investigations will be initiated within 10 working days including a site visit if necessary.

Examples of such cases are as follows:

- Engineering operations, construction works or changes of use of residential properties to inappropriate uses that conflict with planning policy or are having significant impacts on local amenity or public safety.
- Alleged breaches causing serious harm and/or loss of amenity to affected neighbours and/or the environment
- The commencement of any major planning permission without compliance with relevant pre-start conditions. Significant deviations from plans and details approved as part of a planning permission.
- Unauthorised development which would adversely affect the character / appearance of a conservation area or the setting of a listed building
- Any on-going breach of a formal notice or injunction

Lower priority cases will be assessed using the harm assessment form (Appendix 1). Those cases that score below the threshold will be closed. If the case scores above the threshold, investigations will be initiated within 30 working days and a site visit carried out if necessary.

Examples of low priority cases are as follows:

- Changes of use of already developed land
- Householder development such as domestic extensions and outbuildings.
- Unauthorised advertisements and fly posting
- Minor breaches of planning conditions
- Unauthorised works where there is limited or no evidence of long-term harm or loss of amenity
- Unauthorised fences, walls and or gates
- These cases are typically those where formal action is not a proportionate option.

Minor or technical breaches of planning control

Enforcement action must always be proportionate to the breach of planning control to which it relates. Formal action will not be taken against minor or technical breaches of planning control that cause no harm to material planning considerations. Government guidance states enforcement action should be avoided where:

- There is a trivial or technical breach of planning 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 its assessment, the Council consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.

No Breach of Planning Control

The Town and Country Planning Act 1990 excludes some activities from the definition of development, in which case no enforcement action can be taken. Examples include–

- The maintenance, improvement or other alteration of any building or works which affect only the interior of the building, or do not materially affect the external appearance of the building
- Changes of use within the same Use Class, unless the activity amounts to ‘intensification’
- The use of any land for the purposes of agriculture or forestry
- Certain works of demolition

In many cases, the initial inquiries with the owner or developer will reveal that there is no breach of planning control. The case officer will contact the enquirer to explain that the Council is unable to take any action through its planning enforcement powers.

Permitted Development

Permitted Development rights (“PD rights”) are an automatic grant of planning permission by the Government. They are intended to allow owners or occupiers of land and buildings to carry out small scale and generally non-contentious developments without having to apply to the Council.

PD rights are set out in the General Permitted Development Order (2015) (as amended) (“the GPDO”). The most common examples we see (correct at the date of publication) –

- Temporary uses of land for up to 28 days per annum of which no more than 14 can be used for holding a market. This allows any land to be used for any purpose other than the lawful use.

- Temporary use of land for a recreational campsite, including motorhomes, for up to 56 days per annum
- Extensions and alterations to a dwelling. For example, rear and side extensions, porches, dormer windows.
- Outbuildings incidental to the dwelling. For example, summerhouses, sheds, home office, gym.
- Hard surfaces incidental to a dwelling. For example, new or replacement driveways, patios, decking.
- New vehicular access to the highway

PD rights are granted subject to 'limitations' which cover such things as its physical attributes (location, dimensions) and the organisation carrying out the work (e.g. a Statutory Undertaker). If any of these limitations are breached, then planning permission will be required.

Where an alleged breach has been reported, we will assess the development against all aspects of the GPDO. This is very important since it is a ground of appeal against enforcement action.

PD rights are constantly being amended and updated, in most cases to provide greater flexibility to carry out development.

The GPDO can be viewed on the Government website here-
<https://www.legislation.gov.uk/ukxi/2015/596/contents>

A useful technical guidance for householders is available here-
[Permitted development rights for householders: technical guidance - GOV.UK](#)

There is an element of planning judgement in deciding whether a development is PD, and this can be a significant area of disagreement, even between planning professionals. If you are unsure whether a development is allowed by the GPDO, you are advised to speak to the Council in the first instance.

Potential Breach of Planning Control

In some cases, it is not possible to come to an immediate conclusion on whether there is a breach of planning control. It may be necessary to carry out more observations over a period of time before we can decide. We may ask the complainant to keep diary sheets to record incidents to establish if there is a breach. In such cases, the complainant will be advised that further investigations and monitoring is needed.

In other situations, legal case law and the planning history needs to be researched before determining if a breach has occurred. Legal advice may need to be sought.

In all cases, the Council may be able to make a decision on whether there has been a planning breach based on submitted written and photographic evidence, in which case a site visit may not be necessary.

The complainant and the property owner/occupier will, as far as practicable, be kept informed as an investigation progresses and will be notified of the final result when the matter is resolved. In cases where a breach of planning control has occurred but the Council does not deem formal enforcement action to be expedient or appropriate, a statement as to the reason for that decision will be provided.

Confirmed breaches of planning control

What can I expect if I carry out work without permission?

Where we have established a breach of planning control, an officer from the Planning Enforcement Team will contact you. Officers will inform you of the action required to resolve the breach and seek to agree a timeframe for making things right. This may include:

- Ceasing the unauthorised use/development or removing the structure/extension.
- Detailing works required to make the breach comply with an approved scheme/ conditions/permitted development rights.
- Inviting a retrospective application to determine whether planning permission should be granted.
- In some cases, it may be necessary for the Council to take formal action (such as issuing an Enforcement Notice) while negotiations are on-going to prevent the development from becoming immune from enforcement action (see Time Limits for Enforcement, below).

The Council will normally write to the owner before issuing a formal Notice giving them the opportunity to voluntarily remedy the situation. This may not be appropriate in all cases, for example where there is a serious risk of harm to amenity or the environment. In these circumstances, the Council may consider it necessary to apprehend a breach immediately without delay.

Deciding Whether to Take Formal Enforcement Action

If it is expedient to do so, then the Council will commence with formal enforcement action. This may include the issuing of a statutory notice or, where a criminal offence has been committed, issuing a formal caution or instituting prosecution proceedings.

In deciding whether to take formal enforcement action the Council will have regard to:

- Its own Planning Policy contained within the North East Derbyshire Local Plan
- Government advice in the form of the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG).

National Planning Policy Guidance (NPPG) provides the following guidance:

“In deciding, in each case, what is the most appropriate way forward, local planning authorities 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; 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.

Enforcement action is discretionary and in line with the guidance, the Council may decide that it is **‘not expedient’ to take enforcement action**. ‘Not expedient’ is a difficult concept to explain, but essentially means that the Council, having taken all relevant factors into account, considers the breach of planning control causes sufficient harm to warrant formal enforcement action. For example:

- De minimis, e.g. something which is only slightly over a limit, and if below that limit would have been classed as permitted development.
- A development where planning permission would be likely to be granted if it were applied for.

The Council can, and will, only take action where it is expedient to do so, where it is clear that material harm is being caused, and that planning permission would not be granted for the development or change of use.

A considerable number of breaches are reported each year. Many of these cases are complicated and can take months to resolve. The remedy may be season dependent (e.g. replacement landscaping). We will always try to resolve every breach of planning control following the processes, but there are occasions where we have exhausted all reasonable avenues, and it is not in the public interest to continue. It is normally at this point we decide that it is not expedient, to take formal enforcement action.

The Council will keep a properly documented record of the investigation of each case including the reasons why we decide to take, or not to take, enforcement action. Customers will be kept informed of these decisions and the reasons for them as cases progress.

How Breaches are Resolved

Planning enforcement is not punitive, which means we do not punish people for wrongdoing. Its purpose is restorative, which means we look to put right any harm.

There is a range of tools available to the planning enforcement team to tackle breaches of planning control:

Informal Action

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. The offender will be advised what steps are required to resolve the breach within a specified timeframe outlining the risks of formal action if the breach is not resolved. If the steps are followed, the case will be closed. If not, then formal action will be considered.

Planning/listed building applications can be used to regularise unauthorised works or to seek confirmation that amendments to the unauthorised works would be acceptable. Simply put, it would be unreasonable for the Council to require a development to be demolished, if it is acceptable in planning terms. Retrospective applications are a fundamental part of the planning process and is set out in s.73 of the 1990 Act.

If there is a breach of planning control but it is not expedient to take formal action, we will invite the submission of a planning application to regularise the breach.

The Council may, where appropriate, decide that enforcement action is appropriate but hold it in abeyance pending determination of a planning application or appeal. However, it may be necessary to proceed with action where a development/use would otherwise acquire immunity due to the passage of time.

If planning permission is refused or an appeal dismissed, and there are no material reasons not to do so, then formal enforcement action will normally follow.

Formal Action

There is a range of formal ways to address breaches of planning control. In each case, officers will determine which of the options is both the most effective way of dealing with the breach and the most proportionate for securing a resolution. The Council's Solicitors may also be involved in making these decisions especially in the more complex cases or where the implications of the action can have more significant consequences.

The following are some of the formal actions that could be taken. Not all of these would be appropriate for all cases, and that it is only a small minority of cases investigated that may lead to one of these notices being appropriate.

At any stage of the investigation the investigating officer may pass the matter to another Council Service (e.g. Environmental Health, Highways etc.) if it is believed

that action or professional input by that Service may be required. The Council may also pass the matter on to, or liaise with, other bodies e.g. neighbouring local authorities, the police etc

- **Planning Contravention notices** – A PCN is a legal notice which allows us to bring the breach to the attention of the owner or occupier and requires the alleged offender to provide certain information. It also invites the offender to respond constructively to us about how any suspected breach of planning control may be satisfactorily remedied. The offender has 21 days to respond. It is a criminal offence to fail to respond or provide misleading information to a PCN.
- **Enforcement notices** – These are formal legal documents that require the owner or occupier to follow specific steps to correct the planning breach in a set time. If the notice is not complied with, the planning breach will become a Criminal Offence which can be prosecuted in the courts. We may decide not to require action to be taken to remedy the whole of a breach of planning control. This is known as “under enforcement”. A copy of the notice will be entered on the local land charges register and the local planning authority’s register of enforcement notices.
- **Enforcement Warning notices** – can be issued where a planning breach is not sufficiently harmful to require an immediate enforcement notice but requires regularisation by way of a conditioned planning permission. There must be a reasonable prospect that permission would be granted if it is sought. The permission can be a conditional one.
- **Breach of Condition notices (BCN)** – can be issued where the unauthorised activity is in breach of a condition attached to a planning permission. A BCN will require compliance with the conditions within a specified period. A breach of the notice will have taken place if the condition(s) has not been complied with, specified steps have not been undertaken or activities not ceased. There is no right of appeal against these notices except directly to the Court. A copy of the notice will be entered on the local land charges register and the local planning authority’s register of enforcement notices.
- **Section 215 notices** – can be used to take steps requiring land or buildings to be cleaned up when its condition adversely affects the amenity of the area. If it appears that the amenity of part of an area is being adversely affected by the condition of land and buildings, a notice can be served on the owner requiring that the situation be remedied. There is no right of appeal, although before the notice takes effect an appeal can be made to a Magistrates Court by those served with the notice or any other person having an interest in the land.

The Council, in its published Council Plan 2023 - 2027 (<https://www.norfolk.gov.uk/documents/council-plan-2023-2027/download>), has a clear direction and specifically recognises the proactive use of Section 215 action as a way of creating places to live that people value.

Consideration will be given to serving notices under section 215 of the Act proactively or in response to complaints, where considered appropriate to do so. Notices specify measures to be taken to remedy the condition of the land and the period for compliance.

S.215 action generates a 'ripple' effect and so publicising the Council's willingness to use s215 notices and to actively pursue landowners who do not comply is a very strong tool.

- **Section 225A notices** – can be used to remove and dispose of any display structure, such as an advertisement hoarding, which is used for the display of advertisements in contravention of the regulations. Before we can take this action, we must first serve a 'removal notice' upon the person who appears to be responsible for the erection or maintenance of the structure. Under Section 225B, a person served with a removal notice or a 'permitted appellant' (an owner or occupier who has not been served with the notice) may appeal against the notice to the Magistrates' Court.

Under s.225, the Council can also remove or obliterate any posters and placards displayed in contravention of the regulations. Where the owner or person responsible can be identified, the Council must first put in writing their intention to remove the poster or placard. The costs associated with removal can be recovered.

- **Discontinuance notice** – requires the display of a particular advertisement with deemed consent (or the use of a particular site for displaying advertisements with deemed consent) to cease. This action can only be taken where it is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. "Substantial injury" to the amenity of the locality is a more rigorous test than the "interests" of amenity that applications for deemed consent are assessed against. When an enforcement notice is served and the case becomes 'formal' (all cases other than the serving of a PCN) details of the case will be made available online.

The following remedies can be used to bring a quick stop to development where a breach is causing serious or irreparable harm and immediate action is justified or where other actions have failed:

- **Stop notices** – can prohibit any or all of the activities comprising the alleged breach(es) of planning control specified in the related enforcement notice. A stop notice cannot be served without an accompanying enforcement notice. A stop notice's requirements must only prohibit what is essential to safeguard amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. A stop notice may not prohibit the use of any building as a dwelling house. Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable. A full assessment of the likely consequences of serving the notice will be made.

- **Temporary stop notices** –require an activity which is considered to be in breach to cease immediately. The notice does not have to wait for an accompanying enforcement notice to be issued. It cannot be used to get someone to do something such as remove an extension or stop the use of a building as a dwelling house. A temporary stop notice expires 56 days after the display of the notice on site (or any shorter period specified). At the end of the 56 days there is the risk of the activity resuming if an enforcement notice is not issued and a stop notice served.
- **Injunctions** – An application can be made to the High Court or County Court for an injunction to restrain a breach of planning control. Proceedings for an injunction are the most serious enforcement action that can be taken because if a person fails to comply with an injunction they can be committed to prison for contempt of court. The first stage is to formally warn the offender of an injunction and require them to sign a legal undertaking which confirms that the alleged breach will cease. If this undertaking is breached an application is then made for an injunction.

There may be occasions when an Injunction needs to be served without the other side knowing, such as in cases where a possible breach of planning control needs to be apprehended, or the person(s) involved are not known or is unclear.

Prosecutions, confiscation orders and direct action

Failure to comply with a Statutory Notice such as an Enforcement Notice is a Criminal Offence, and the Council can prosecute for non-compliance with such Notices.

It is also an offence to knowingly give false or misleading information in response to a Planning Contravention Notice and/or a planning application form and the Council will consider a prosecution or caution in these cases.

In deciding whether to initiate prosecution proceedings, we will have regard to the Crown Prosecution Service's tests of prosecution:

- The evidential test
- Does the prosecution have a realistic prospect of success?
- Is it in the public interest to prosecute?

Where it is appropriate, we may apply for a Confiscation Order under The Proceeds of Crime Act 2002 ("POCA") where an offender has failed to comply with the terms of an enforcement notice and has financially benefitted from their unlawful activity.

We would then recover any expenses reasonably incurred by undertaking this work from the person who is then the owner of the land (under Regulation 14 Town and Country Planning General Regulations 1992).

Powers of Entry

As well as prosecuting, the Council has powers to enter land that is subject to an enforcement notice and carry out the requirements of the notice ourselves (section 178 of the Town and Country Planning Act 1990) often referred to as 'Direct Action'. It is an offence to wilfully obstruct anyone who is exercising those powers on the Council's behalf.

A decision as to whether this is appropriate will be taken having regard to all the circumstances of a particular case. However, it can be the easiest way to ensure compliance with an enforcement notice.

We would then recover any expenses reasonably incurred by undertaking this work from the person who is then the owner of the land.

Time Limitations

One criterion for determining whether formal action can be taken, is whether the unauthorised development remains within time for action to be taken against it. For all developments completed after 25 April 2024, this is 10 years from the date of the completion of operational development and 10 years from the start of any material change of use.

Often when the matter of lawfulness is in question, the Council will seek out evidence and information from all available data sources to validate the version of events being presented. This may involve contacting neighbours, landowners and any other information sources for information and evidence.

In some cases, applications for Certificates of Lawfulness may be necessary. In assessing such applications, we must review the legal evidence supporting the length of time a use or development has been in place. The planning issues or adverse effects the development or use might be having are not relevant.

Appeals

An Enforcement Notice gives a right of appeal to the recipient. Once an appeal has been made, the Notice is held in abeyance until determined by the Planning Inspectorate. The appeal can be made on several grounds each of which is considered before formal action is commenced. The grounds of appeal include, that the Council has erred in describing the breach, that planning permission should be granted, or that planning permission is not required. The timescale for deciding appeals is strictly set out by the Inspectorate and is outside the control of the Council.

Breach of Condition Notices do not carry the same rights of appeal, and the appeal may only be made to the High Court. Appeals to Magistrates Courts are available against s.215 notices. If you have reported a matter to us, then you will be informed if your enquiry is subject of an appeal.

Enforcement Notice Register

Local planning authorities must maintain a register of enforcement and stop notices (section 188 of the Town and Country Planning Act 1990 and article 43 of the Town and Country Planning (Development Management Procedure (England) Order 2015)).

The Council, as soon as possible, must enter details of the following actions on the register:

- Enforcement Notices
- Stop Notices
- Breach of Condition notices
- Planning Enforcement Orders
- Enforcement Warning Notices

A request to view the register can be made at any time by-

Email – enforcement@ne-derbyshire.gov.uk

Phone – 01246 231111

Post – Planning Department, NEDDC, Mill Lane 2013, Wingerworth, Derbyshire, S42 6NG

We are working on making the register available digitally on our website, and we hope to deliver this before the next enforcement plan review.

Internal Liaison and Monitoring of Cases

The Enforcement Team is committed to delivering a high quality and value for money service. We have a range of metrics which we will be scored against to ensure the team is performing well and standards are being maintained.

Ward Councilors will normally be informed when officers take formal action in respects of any suspected breach of planning control in their ward area where the case is sensitive or contentious.

A half yearly report will be produced to the Council's Planning Committee, giving reference to performance standards associated with the varying case priority levels. The nature of planning enforcement means that it is not possible to target a timescale in which to close cases. Some cases can prove more difficult to investigate than others for a range of different reasons. Cases which at the start seem to raise a single issue often turn out to have many issues and complexities. Furthermore, if an enforcement notice is served, the Council has no control over how long the Planning Inspectorate take to deal with any subsequent appeal against that enforcement notice and cannot guarantee the outcome of that appeal.

Monitoring must therefore relate to the service standards that are to a greater extent specific, measurable and achievable. These are –

- 60% of reported cases being resolved in 6 months.
- The percentage of high priority cases where an investigation has been initiated and/or a site visit has been undertaken within 48 hours of us being first notified of the suspected breach.
- The percentage of medium priority cases where an investigation has been initiated and/or a site visit has been undertaken within 10 working days of a medium priority case being reported to us.
- The percentage of low priority cases where an investigation has been initiated and/or a site visit undertaken within 30 working days of a low priority case being reported to us.
- Issue four notices per annum under s.215 of the Town and Country Planning Act 1990, to tackle the derelict and dilapidated land and buildings

We will monitor our performance against these standards and publish the results on a half-yearly basis by report to the Council's Planning Committee. These results will be assessed to see whether this Plan is working or needs to be reviewed.

Achieving a culture of compliance across the district would be a significant measure of success. However, by improving the ease by which breaches can be reported, and people having confidence that their report will be actioned, has increased the overall workload for the team.

The Local Enforcement Plan will be reviewed every four years and otherwise if and when there are any substantial changes to relevant legislation, national policy or guidance.

More information on planning enforcement can be found at <https://www.gov.uk/guidance/ensuring-effective-enforcement>

HARM ASSESSMENT – TRIAGE SCHEME

Procedure for initial processing reported breaches of planning control.

Purpose

This document sets out the council's harm assessment procedure in relation to the handling of identified breaches of planning control. It assesses the "planning harm" the breach is perceived to cause and provides a process for the efficient closure of cases.

Background

In the past when the council considered an alleged breach of planning control the case was not closed until the breach of planning control had been remedied or significant resources invested chasing up planning applications for development that was acceptable. This resulted in the enforcement team continuing to use resources to pursue minor breaches of planning control that were not causing harm to public amenity and/or interest.

The Scheme

The assessment is applied to all allegations made to the council identified by officers as being in breach of planning control. The scheme allows the team to assess the information and grade the "harm" of that breach against a series of scored planning criteria.

The agreed level of harm triggering the initiation of an investigation (the score) is 5 and above. Where the cumulative score is 4 and under, it is not considered to be expedient to pursue the breach as the impact on public amenity and/or interest will be/is considered negligible.

Cases that don't meet the threshold will be closed and advisory correspondence will be sent to the informant that no action will be taken.

Breaches of planning control that attract a score of 5 or more will be investigated by officers.

Operational Aspects

The harm assessment form will be completed as part of the triage process within 5 working days of a report being received, except where the matter is clearly a high priority case warranting action within 24/48hrs as appropriate. If no further action is to be taken, then the informant will be contacted in writing and informed of the outcome of our assessment. If the threshold is exceeded, then the case will be prioritised in accordance with the priorities set out in the Enforcement Statement and allocated to an enforcement officer for further investigation.

Conclusion

The harm assessment approach provides:

- A quantitative and qualitative assessment of harm to public amenity/interest.
- A procedure that is open and transparent.
- A quick and effective processing of incidents.
- A flexible system to make efficient use of resources.
- Equality of treatment of dealing with incidents.

The criteria and scoring are considered an effective way to identify minor/trivial breaches of planning control, as well as providing an opportunity for it to be used in prioritising of other breaches of planning control to be progressed by the enforcement team.

The details of the scheme will be reviewed on an annual basis

TRIAGE HARM ASSESSMENT FORM

Each new allegation identified as a breach of planning control will be allocated scores as set out below to assess its harm. The total will provide its harm score. Cases below the threshold of 5 will not be visited and a decision made based in a desk assessment only.

Points Allocation			Score
1.	Is the breach:	A breach of condition (3) Worsening/ongoing (2) Stable (0) Score each issue	
2.	Highway safety issue:	Yes (2) No (0)	
3.	Other safety issues:	Yes (2) No (0)	
4.	Causing/potential to cause statutory or serious environmental nuisance.	Yes (1) No (0)	
5.	Age of breach:	Within 12 months of immunity (2) Over 12 months to immunity (0)	
6.	Is there planning harm:	Widespread (2) Local (1) None (0)	
7.	Irreversible harm: Biodiversity Protected species Trees Conservation area Listed Building	Yes (2) No (0) (2 points per issue)	
8.	Flood Risk	Zone 3 (2) Zone 1-2 (1)	

		NFR (0)	
9.	Listed building (or affecting the character or setting of a listed building)	Yes (3) No (0)	
10.	Particularly sensitive site e.g. Conservation area SSSI Green Belt Scheduled monument Listed garden Archaeological importance	Yes (1) No (0) (1 point per designation)	
11.	Cumulative impact?	Yes (1) No (0)	
TOTAL POINTS (HARM SCORE)			