

Introduction

If you have advised the Council that there is building work or a change of use that you suspect needs planning permission you will want to know what we will do to investigate it. This is a statement on our planning enforcement processes. It sets out the level of service you can expect.

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 note (NPPG).

A breach of planning control is the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

Development is defined as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

It is not a criminal offence to carry out development without planning permission. It is an offence not to comply with an Enforcement Notice. There are many different ways that the Council can tackle unauthorised development and other breaches of planning control. The National Planning Policy Framework states that enforcement action is discretionary and the Council should act in a proportionate way when responding to suspected breaches of planning control

This means a Council cannot justify taking formal enforcement action against minor breaches of planning control. In other cases a Council may take formal enforcement action to resolve evidenced breaches. Councils may seek a retrospective planning application to resolve a breach of planning control instead of taking action whilst in others they might determine not to take any further action.

The Ministry of Housing, Communities and Local Government Guidance on Enforcement and post-permission matters – Responding to suspected breaches of planning control, provides additional guidance on the powers available to councils nationally. It can be viewed here –

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

NEDDC Overview on Planning Enforcement

The Council recognises that effective planning enforcement is very important for many reasons.

- 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

- 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.

Reporting a suspected breach to NEDDC

To report a suspected breach of planning control please contact us through one of the following contact points –

Email – enforcement@ne-derbyshire.gov.uk

Phone – 01246 217163

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

Please provide as much information as you can about the concerns you have including the location, the nature of the suspected breach, when you first noticed it, the harm it is creating and include any photographs of the site if you can. We also need your contact details so we can keep you informed at key stages of our investigation and discuss any additional information.

Personal data

We will only share your address and contact details with the Officers dealing with the case. If the case does not raise planning issues and should be dealt with by another department in the Council, we will share the details of the case with relevant 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 publish your personal 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 would not normally provide this information if we receive a request for it under the Freedom of Information Act or the Environmental Information Regulations. However, we may have to share your personal details with the police or the courts if, in very exceptional circumstances, the suspected breach of planning control amounted to a criminal offence subject to prosecution.

Matters outside the scope of NEDDC planning enforcement

Often we will be sent notice 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 at <https://planapps-online.ne-derbyshire.gov.uk/online-applications/>

- Boundary or land ownership disputes – you might want to seek advice from your solicitor
- Damage to private property - you might 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 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 matters should be reported to the Highways Department at Derbyshire County Council by telephoning 01629 580000.
- Quarry or waste disposal sites – these should be raised with Derbyshire County Council on 01629 580000.

Investigation Priorities

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 irreversible. These will be investigated within 24 hours of them being reported to us. Examples of high priority cases are unauthorised works to Listed Buildings and to protected trees and hedgerows.

Medium priority cases are those where there is clear harm to planning interests but that harm can be reversed if necessary. Investigation of these cases will be initiated within one week of them being reported to us. Examples of such cases include unauthorised development that conflicts with planning policy or significantly impacts on local amenity or public safety.

Lower priority cases will be those that cause lesser degrees of harm to a neighbourhood. Investigations of such cases will be initiated within two weeks of them being reported to us. Examples of such cases could include unauthorised changes of use, householder development or advertisements.

Initial Investigation

Investigation will be initiated with a desk based review of the allegation, checking our own records of authorised uses and development about the site. A site visit will be made to better understand the nature of the allegation and any other evidence gathered as appropriate. Once we have an understanding of the allegation and the next steps, we will contact you to check that we have correctly understood your concerns and to explain what we can do next.

Planning Interests

In the following paragraphs the term planning interests is used. These are the matters against which planning applications and enforcement cases are assessed. The list of planning interests is long, as too is the list of matters that are not planning interests and cannot be taken into account. Planning interests include (but not limited to) matters such as highway safety; appearance and character of an area; residential amenity; ecology and environment; Green Belt and the countryside; heritage issues.

Initial action

We will assess whether the breach of planning control creates a harm to planning interests. If there is we will attempt to persuade an owner or occupier of land to remedy the harmful effects. We will not allow discussions to unnecessarily delay formal action if required.

Minor or technical breaches of planning control

Enforcement action must always be proportionate with the breach of planning control to which it relates. Formal action will not be taken against minor or technical breaches of planning control that causes no harm to planning interests.

Granting unconditional planning permission for unauthorised development

Where development requiring permission has been, or is being, carried out without consent, an assessment will be made to establish if it is likely that unconditional planning permission would be granted. If planning permission is likely to be granted, we may invite the submission of an application for retrospective permission.

Where there is no specific planning objection to the development, further enforcement action will not, normally, be appropriate. The Council will advise an owner or occupier of land that difficulties may arise in the subsequent sale or disposal of that land if no planning permission has been granted.

Granting conditional planning permission for unauthorised development

Where development has been carried out without planning permission, and there is some planning harm that could be mitigated by imposing planning conditions, we may ask for a retrospective application to be submitted. The purpose of this would be to provide us with the opportunity to grant permission with the mitigating conditions attached. If no application is submitted, we may serve an Enforcement Notice to effect the granting of a conditional planning permission.

Unauthorised Changes of Use

Certain changes of use are allowed to take place without the need for planning permission. We must consider the changes against the latest versions of the Use Classes Order. These Orders identify what uses can change to other uses without the need for Planning Permission. Where a change of use has occurred but permission has not been granted, the harm caused by that change will be assessed and appropriate action taken.

Some businesses may be operated from home when the activities remain residential in character. However, if the impact of any home-business causes harm to planning interests, the owner will first be encouraged to re-locate to appropriate premises.

If a suitable site can be identified, a time limit may be agreed for relocation. An Enforcement Notice with a compliance period for relocation may be necessary. If a satisfactory solution or mitigation cannot be found and formal enforcement action is the only way to remove the harm, the appropriate action will be taken.

Unauthorised development is obviously causing harm and mitigation is unachievable.

Where we consider that a breach of planning control has taken place, is causing clear harm to planning interests and it is also clear that no mitigation measures are achievable to acceptably reduce that harm, no application will be invited and the land owner shall be asked to stop the activity or development. Failure to do so and clear evidence of the continued harm will lead to us serving an Enforcement Notice and any other measures as may be appropriate. Although we may not invite an application, if one is made we must give it due consideration and fair determination.

Variance from approved plans

Where development is carried out, but is not strictly in accord with the approved plans, an assessment will be carried out on the harm created by the variation.

Where the changes are minor and raise no changes in planning interests a non-material amendment application will be invited to regularise the difference. Whilst we do not condone unauthorised works being carried out, we do recognise that, in many instances, minor variations do not cause harm.

Where the change introduces new planning issues that need to be properly assessed a variation application will be invited. If no application is forthcoming an assessment of those planning issues will be carried out as best as possible and a decision taken on whether formal action is necessary.

Non-compliance with planning conditions

Where planning permission has been granted for development, subject to conditions, and those conditions have not been complied with, consideration will be given to an Enforcement Notice or a Breach of Condition Notice.

Monitoring building activity and compliance with conditions

Effective controls are necessary to make sure development is carried out in accordance with approved plans. Often non-compliance with conditions is drawn to our attention by people who live close to sites. When resources permit officers will routinely visit major application sites to monitor conditions. Normally any variance will be rectified after discussion with the developer. In all cases the extent of the harm to planning interests as a result of the variance will be the determinant of what action would be proportionate and appropriate.

Derelict or unsightly land or buildings

The condition of some buildings and land can cause harm to the appearance or residential amenity of an area. Consideration will be given to serving an untidy land notice. This will specify measures to remedy the condition of the land and the period for compliance.

Time Limitations

One criterion for determining whether formal action can be taken is whether the unauthorised harmful development or use remains within time to take action. For most developments this is four years from the date of completion. For most changes of use this is ten years from the use starting. However, if the change of use relates to a use for a house, the time limit for taking action is four years from its practical completion. Often when this matter is in question, applications for Certificates of Lawfulness are necessary. In assessing such applications we must review the legal evidence supporting the length of time and not the planning issues or adverse effects the development or use might be having.

Appeals

Some forms of formal notice like Enforcement Notices give rights of appeal to the recipient. Such appeals are heard by independent Planning Inspectors. Others, such as Breach of Condition Notices do not give rights of appeal. Appeals to Magistrates Courts are available against untidy land notices. You will be advised if a case you have drawn to our attention and leads to a formal notice that is the subject of an appeal.

Different types of formal action

There is a range of ways of tackling breaches of planning control. In each, the case officers and a senior planner 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 are also involved in making these decisions 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. It must be understood that not all of these would be appropriate for all cases and that it is only a small minority of cases investigated that lead to one of these notices being appropriate.

Enforcement Notice

An Enforcement Notice will set out what the breach of planning regulation is, why we believe it necessary that a notice is served, the action needed to remedy the breach and a timescale for doing so. There is a right of appeal against an Enforcement Notice. The recipients have 28 days to appeal before the Notice will come into effect. Lodging an appeal defers the Notice coming into effect until the appeal has been decided.

Stop Notice

A Stop Notice can be served with an Enforcement Notice to prohibit any or all of the activities which comprise the alleged breaches continuing ahead of the deadline for compliance in that enforcement notice. A Stop Notice will specify an effective date and this must normally be no less than three days. The harm identified by the activity continuing must be specified. Where the associated Enforcement Notice is quashed, varied or withdrawn or the Stop Notice is withdrawn we may be liable for compensation in certain circumstances. Therefore we will not use Stop Notices unless there is exceptional demonstrable harm resulting from the activity identified and the cost and benefits have been assessed.

Temporary Stop Notice

A Temporary Stop Notice requires that an activity which is a breach of planning control should stop immediately. A Temporary Stop Notice must state the date the temporary stop notice has been served, the activity that has to cease, and that any person contravening it may be prosecuted for an offence.

The Council does not need to have served an enforcement notice before it issues a temporary stop notice. We may consider issuing a temporary stop notices in some high and medium priority cases when it is essential to take immediate action to safeguard amenity or public safety or to prevent serious or irreversible harm to the environment.

A temporary stop notice expires after 28 days. It allows us to assess and discuss with the recipient of the Notice what action is required within this period to deal with the breach and overcome the objections to it in an environmentally and legally acceptable way. The stopped activity can continue after 28 days unless an Enforcement Notice and Stop Notice is served.

Breach of Condition Notice

A Breach of Conditions Notice requires its recipient to comply with the terms of a planning condition. The Notice specify steps to comply and a compliance period. They are mainly intended as an alternative to an enforcement notice for remedying a breach of condition – but it may also be served in addition to an Enforcement Notice, perhaps as an alternative to a stop notice, where we consider it expedient to stop the breach quickly and before any appeal against the Enforcement Notice is determined.

Although there is no right of appeal to the Secretary of State, the validity of the Breach of Condition Notice or propriety of serving it can be challenged in the High Court.

Injunction

We can apply to the High Court or County Court for an injunction whether or not we have used any of their other powers to enforce planning control. However, starting proceedings for an injunction is one of the most serious types of enforcement action that the Council can take. If a person fails to comply with an injunction they may be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made.

We would generally only apply for an injunction as a last resort and only if there have been persistent breaches of planning control over a long period and/or other enforcement options have been, or would be, ineffective. The Court will expect us to fully explain our reasons on this issue in our application for Injunctive proceedings.

Prosecution

Although most breaches of planning control are not criminal acts a small number may constitute a criminal offence in their own right. These include unauthorised works to protected trees, removal of important hedgerows and unauthorised works to listed buildings. Non-compliance with Enforcement Notices can also lead to prosecution. Planning Officers and Planning Enforcement Officers will work with the Council's Solicitors to decide when prosecution is appropriate and how to proceed to take the case to the relevant Court.

Monitoring

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

On a quarterly basis, District Councilors will also receive a list of suspected breaches of planning control that have been reported to the Council or that have been identified by officers over the last three months so they have the opportunity to discuss these cases or check progress with officers if necessary. A half yearly report will also be produced, 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 single issues, turn out to have many issues and complexities. Furthermore, if an enforcement notice is served, officers have no control over how long the Planning Inspectorate will 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 -

- The percentage of high priority cases that are visited within 24 hours of us being first notified of the suspected breach.
- The percentage of medium priority cases that are visited within one week of us being first notified of the suspected breach
- The percentage of medium priority cases that are visited within two weeks of us being first notified of the suspected breach

We will monitor our performance against these standards and publish the results on a half-yearly basis. 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 with a reduction in cases to investigate would be a significant measure success.

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

More information can be found in the

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