

# **NORTHUMBERLAND**

Northumberland County Council

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### **Strategy for the Monitoring and Enforcement of Planning Control**

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## **1. Introduction – What is planning enforcement?**

This document sets out the context for the operation of the Enforcement function within Northumberland County Council. It sets out the objectives and procedures that we will take when using the wide range of legislative powers available to us in relation to planning matters.

Development Management provides a dedicated specialist planning enforcement team which plays an essential role in delivering an effective and efficient planning service.

The Council has a duty to investigate complaints about development that may have been carried out without permission or consent. Effective enforcement is important to ensure that unauthorised development is dealt with in a way that balances the protection of the environment and the amenity of neighbours whilst at the same time ensuring that owners enjoy reasonable use of their property.

Planning permission is usually required for changes to the use of a building or land, altering or enlarging a building and displaying advertisements. However some changes can be carried out without the need for a formal planning application, this is referred to as permitted development. Permitted development cannot be subject to enforcement action even in instances where development is considered to cause harm. Further information on permitted development is available from the Planning Portal website at [www.planningportal.gov.uk](http://www.planningportal.gov.uk)

It is crucial to note that enforcement action is a discretionary power and is very complex. It should be noted that the legal processes involved are often lengthy and complicated and an ‘instant response’ or resolution cannot be guaranteed.

## **2. What is a Breach of Planning Control?**

In most situations informal action will initially be undertaken to resolve an alleged breach of planning control and before any formal action is undertaken consideration will be made as to the expected results from the action in relation to the level of harm that is being caused and whether it is expedient or reasonable to undertake such a course of action.

The Town and Country Planning Act 1990 defines a breach of planning control as “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.”

The following are examples of matters that can be enforced by the Council under planning legislation:

- Building work and/or a material change of use undertaken without planning permission being granted;
- Development not being carried out in accordance with the approved plans of a planning permission, and
- Non-compliance with conditions attached to a planning permission
- Works to trees protected by a Tree Preservation Order or trees in a Conservation Area.
- Land or buildings in a poor condition affecting the amenity of the surrounding area
- Building work or alterations to Listed Buildings or works which will affect the setting of a Listed Building with Listed Building Consent
- Unauthorised advertisements or signs

The Enforcement Team are not able to assist in matters which are covered by other legislation, for example, complaints in relation to public health matters, or the improper use of the highway. Any complaints with regard to these issues should be directed onto the relevant department. Other issues such as breaches of covenants or ownership disputes will not be investigated as these are civil issues.

The Enforcement Team work within Government guidelines and in accordance with Council policy. We must decide whether the breach affects amenity and whether it is in the public interest to take formal action. Enforcement action will not be taken just because development has started without planning permission and it is not taken against a minor breach that causes no real harm.

### **3. What is not a breach of planning control**

- Land ownership disputes
- Neighbour disputes
- breaches of a covenant attached to deeds
- Noise/odour issues
- Obstruction of the highway
- Parking vehicles on the highway

### **4. Reporting a breach of Planning Control**

We rely on your local knowledge to find out about planning breaches.

When you report a breach, it is useful to supply as much information as possible, ideally in writing. This will help provide an early resolution to the case. You should supply the following information:

- your name, address, telephone number and e-mail address.
- the exact address and location of the site.

- names and addresses of any person involved (if known)
- the nature of the complaint – what is the breach?
- when the activities started and whether they are continuing
- whether you wish to be kept informed of the progress of your complaint

We ask that complainants complete the [online form](#). Alternatively complaints can be made by email or in writing. Complaints received by telephone will also be accepted, although to ensure that the complaint is fully understood, callers will be encouraged to follow up the initial complaint in writing as outlined above. Anonymous complaints will not be dealt with. The address and contact details of the Enforcement Team are set out at the end of this document.

Once a breach of control is confirmed, you might be asked to make a note of your observations and keep a log of any relevant activities. In particular, times, dates, names, addresses, telephone numbers and the registration details of any vehicles.

All investigations are carried out confidentially and the identity of the complainant will not be revealed by the Council. Any information provided by members of the public is treated in confidence unless it is necessary to disclose this information at an appeal or in court when it will be made public. In such cases, the individual's consent will be sought prior to this information being made public. Such occasions are rare and involvement is on a voluntary basis.

With regard to confidentiality, the requirements of the Freedom of Information Act will apply. Any requests under this Act should be forwarded to the appropriate officer and an assessment of what information can be supplied will be made.

## 5. Case Priority

On being notified of a complaint the Enforcement Officer will give the complaint a priority level. It is acknowledged that some alleged breaches need be given a higher priority than others. Priority will be given to cases where there is the possibility of the greatest harm being caused.

The following priority system will apply to each case received according to the following categories:

- **High priority** – cases where there is immediate danger to the public and where unauthorised work is being undertaken which is non-reversible such as works to listed buildings or works to protected trees. For these cases an initial site visit will be carried out within **1 working day** from the receipt of the complaint.

- **Medium priority** – Cases where there is immediate harm to the amenity of the area through such things as noise, traffic, pollution, loss of light, increase in activity or physical impact or where works or operations are in progress. For these cases an initial site visit will be carried out within **10 working days**
- **Low priority** – Cases where there is no specific impact on amenity or where the breach is of a technical nature only. This could include change of use, breach of condition, untidy land, unauthorised advertisements and minor developments. For these cases a site visit will be carried out within **20 working days**.

We will seek to acknowledge all complaints within 5 working days. In most cases this will be in writing or by telephone if no postal or email address is provided. The complainant will be updated within 28 days from the date when the complaint was received to inform them whether there is a breach of planning control and if so how we intend to pursue the matter.

The acknowledgement will describe the nature of the breach, the name and contact details of the Enforcement Officer dealing with the case, the allocated priority level and the timescale in which the complainant should expect to receive a response. It will also explain that the investigation into an alleged breach of planning control can be complicated and in some cases further updates will be given every 28 days until the matter is resolved.

## 6. **Reactive work**

Following the receipt of a complaint an initial assessment is carried out to determine if a site visit is required. An example of a case where a site visit is not needed is where planning permission has already been granted or a retrospective application is in the process of being determined. In most cases a site visit is required.

After undertaking an initial site visit the case may need to be assigned to a different priority level and further investigation may be needed. From the evidence gathered during the site visit an assessment will be made as to whether planning permission is required for the works. Cases will fall into one of the following groups:

- **No breach** - In this case if no breach has occurred or the breach is of such a minor nature that it is not to be investigated further. In this situation the case will be closed and the complainant will be informed of the decision.
- **A Potential breach has occurred** - In many cases it is not possible to come to an immediate conclusion as to whether or not a breach of planning control has occurred. This is particularly evident in relation to

complaints regarding a material change of use. In these cases, it is often necessary to carry out additional site visits over a period of time before a decision can be made. It will be explained to the complainant that further investigations and monitoring is required.

- **Breach identified but works are likely to be granted approval** - In this case the Enforcement Officer will request that a retrospective application is submitted, this allows for a full formal assessment to be carried out on the development and the statutory consultation period will apply. When a retrospective application is not submitted the development will be unauthorised and this will be registered as a land charge. The complainant will be advised of the outcome.
- **Breach identified and is not acceptable** - In cases where it is considered that permission is unlikely to be granted, we will ask for the use to cease or the unauthorised development to be removed. A suitable period of time will be given depending on what needs to be done.
- **Immunity from enforcement action** – In this case a breach has been identified but has been substantially completed for four years or more. In the case of an unauthorised change of use from a building to a dwelling-house this must have been in place for four years or more. In the case of an unauthorised change of use to a building or piece of land this must have been in place for ten years or more. In the case of a breach of condition the breach must have been in place for ten years or more. In these cases officers will request that a Certificate of Lawfulness is submitted.

## 7. Planning enforcement powers

When a breach occurs the level of harm is assessed to determine if formal enforcement action is taken. Harm can be caused through a number of factors including:

- Adverse impact on visual amenity due to poor design or inappropriate materials;
- Loss of protected trees or damage to listed buildings;
- Adverse impact on residential amenity;
- Noise, nuisance or disturbance from the operation of a business.
- Untidy land and buildings in a poor condition.

It is usually considered inappropriate to take formal enforcement action against a trivial or technical breach of planning control which causes no harm to the local amenity.

If the Council has not been successful in securing the submission of a valid planning application, remedial actions have not been carried out or if

negotiation fails to resolve the problem, the enforcement team has a number of tools it can use to obtain information or remedy the breach which can include:

- **Planning Contravention Notice** – to secure information on the ownership of land and the activities taking place. Non-compliance with the requirement of the notice is an offence.
- **Section 330 notice** –to obtain information on the ownership and activities taking place. It usually has a 21 day compliance period and non-compliance is an offence.
- **Breach of Condition Notice** – can be served where there has been a failure to comply with a condition attached to a grant of planning permission. There is no appeal process but usually a minimum of 28 days are given for compliance. The notice should specify the steps to be taken and non compliance is an offence. Non compliance is an offence.
- **Enforcement Notice** – this is served where a breach of planning control has caused harm to the environment or local amenity and it is considered expedient to take formal action. The notice is served on land owners and other interested parties and comes into effect 28 days after it is served. There is a right of appeal within this time although if one is not lodged the remedial works set out in the notice have to be undertaken within the required timescale. Failure to comply is an offence.
- **Stop Notice** – this can only be issued when an enforcement notice has been served and it is considered that the breach needs to cease before the expiry of the time for compliance. It can take effect immediately but normally after 3 days and failure to comply is an offence. If an appeal against the link enforcement notice is allowed there can be costs implications due to loss of income etc caused by the service of the stop notice.
- **Temporary Stop Notice** – this is served when urgent action to stop a breach of planning control occurring/continuing is required. It takes immediate effect and is only valid for a maximum of 28 days but this quickly avoids the problem continuing and gives the opportunity for another form of notice to be served.
- **Section 215 Notice** – this is served on the owner or occupier of land the condition of which is considered to be affecting the public amenity of the area. It sets out the works required to make the land/building acceptable and a timescale for undertaking the works. An appeal will be heard in the Magistrates Court. If the notice is not complied with this is an offence and the works can be done in default with a charge held against the site.
- **Section 225 Notification** – Removal or obliteration of posters or placards. Notification of the requirement for removal of posters and placards can be given under section 225 of the Town and Country Planning Act and if it is not complied with within the required timescale,

that could only be a matter of days, the offending sign could be removed

- **High Hedge Remedial Notice** – this notice can be served on a person responsible for a high hedge if it is considered to be adversely affecting the reasonable enjoyment of a neighbour's home and garden. It sets out what is required to be done to the hedge and a timescale for compliance. Failure to undertake the required works is an offence.
- **Listed Building Enforcement Notice** – this should be served when the demolition of a listed building or works that affect its character have been undertaken without the benefit of listed building consent or contrary to a condition attached to a listed building consent. Unauthorised works to a Listed Building is an offence and can lead to prosecution without the service of an enforcement notice.
- **Injunction** – this may be served in the Courts to restrain any actual or anticipated breach of control. It can be sought at any time during enforcement action but usually when an enforcement notice is being ignored. Failure to comply leads to contempt of court and can lead to imprisonment.
- **Direct Action** – is when the council goes on to the land where the breach is occurring and undertakes remedial work with the costs recovered from those responsible for the breach. This can be used with regard to unauthorised adverts but otherwise is normally only used in exceptional circumstances where no other course of action has been successful.
- **Prosecution** – there is a right of appeal to some of the notices listed above and this effectively suspends the requirements of the notice. However failure to comply with a notice is an offence and prosecution should be pursued where the council has sufficient, admissible and reliable evidence that the offence has been committed and there is a realistic prospect of a conviction. If enforcement is going to be effective this course of action must be pursued when appropriate. To determine whether prosecution is appropriate the Council will assess the case in accordance with the tests set out in the Code for Crown Prosecutors.

## 8. Enforcement Register

The Council is required to have a register available for public inspection that contains copies of all of the following type of notices served:

- Enforcement Notices
- Listed Building Enforcement Notice
- Breach of Condition Notices
- Temporary Stop Notices
- Stop Notices.

At present we are in the process of transferring the register into an electronic format so they will be available to view on the Council's website. In the meantime should you wish to view the register please contact the Enforcement Team directly.

## **9. High Hedges**

They are dealt with under Part 8 of the Anti-Social Behaviour Act 2003. The Council are able to deal with formal complaints about an evergreen hedge provided they have tried and exhausted all other avenues for resolving their hedge dispute. The current fee for providing this service is £400. The role of the Council is not to mediate or negotiate between the complainant and the hedge owner but to adjudicate on whether the hedge is adversely affecting the complainant's reasonable enjoyment of their property. The high hedge complaint form and guidance is available [here](#).

## **10. Performance indicators**

Although there are no mandatory targets concerning the investigation of alleged breaches of planning control, the council has its own performance targets to monitor the progress of enforcement cases. This includes targets to ensure that the complainant is updated within 5 working days from receipt of their complaint. All complainants must be updated on the case within 28 days from the initial complaint. Other targets include an agreed course of action to be in place within 13 weeks from the date of the initial complaint. A target of 60% of cases will have an agreed course of action. With regard to acknowledging and updating the complainant, the targets will be set at 80%.

## 11. Advertisement Enforcement Policy

This policy applies to the way we control unauthorised advertisements as part of our enforcement service for Northumberland County Council. The purpose of this policy is to simplify the processes so they are easily understood. We recognise that controls over advertisements are not widely understood by the public. Through publicity and accurate guidance, our aim is to enable businesses, organisations and individuals to comply with advertisement controls so they can promote their business lawfully.

The display of advertisements is subject to a separate consent process within the planning system. This is set out in the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

Many advertisements, within specified limits, can be displayed without the need to apply for formal advertisement consent. Please click [here](#) to view the guide: Outdoor advertisements and signs: a guide for advertisers.

The proliferation of adverts can make areas unsightly and they can cause a distraction to drivers. If unauthorised signs are not enforced this can escalate with the display of other unauthorised adverts appearing. We understand that advertising is essential when operating a business and we are happy to work with businesses in a way that will meet their needs and also comply with the above regulations.

It is an offence to display an advertisement in contravention of this legislation. Our approach to enforcing unauthorised advertisements is based on a proportionate response to the harm to public safety and/or amenity caused by its display.

When we identify a breach of advertisement control we will normally give the person displaying the advertisement or the landowner the opportunity to remedy the situation voluntarily. We will offer advice on the options, including removing or altering the advertisement or making an application for consent to display it, in order to comply with the legislation.

We will take action in respect of breaches of advertisement control which cause identifiable harm to public safety or amenity. It is not in the public interest for us to take action against a breach of advertisement control which causes no harm.

Our priorities for taking action against unauthorised advertisements are those which:

1. pose a serious risk to public safety
2. cause identifiable harm to the amenity.

3. cause identifiable harm to the setting of listed buildings or conservation areas.

We will always consider all of our options for action, with prosecution being more likely for repeat offenders or where an offender is unresponsive to all other attempts to resolve the breach.

## 12. Contact Details

You can contact a member of the Enforcement Team by phone on 03456006400.

### By Email:

[planningenforcement@northumberland.gov.uk](mailto:planningenforcement@northumberland.gov.uk)

### In writing at:

Planning Enforcement  
Development Management  
Planning & Economy  
Northumberland County Council  
County Hall  
Morpeth  
Northumberland  
NE61 2EF

The Enforcement Officers each cover a specific area in Northumberland. To find out who covers your area please see below:

<b>Liz O'Brien</b>	North
<b>Joseph Turner</b>	West
<b>Stephanie Forster</b>	Central (inc Ponteland, Bedlington & Choppington)
<b>Claire Foster</b>	South East (Former Blyth Valley & Stannington)
<b>Robert Wilson</b>	South East (Former Wansbeck)
<b>Abbie Nendick</b>	Senior Enforcement Officer

Please click [here](#) to view the planning enforcement section of the Council's website.