

Blaby District Council: Planning Enforcement Policy

Version 4: February 2020

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1. INTRODUCTION

- 1.1 The integrity of the planning process (development planning and development control function) is underpinned by the Council's ability to take enforcement action where needed. These three aspects work together as a trinity, ensuring the effective control of development across the district. There are two strands to planning enforcement which are:
- a) Reactive enforcement – investigating complaints received by the Council.
 - b) Proactive enforcement – ensuring compliance of development with planning permissions and associated conditions.
- 1.2 This Policy recognises that the majority of people want to comply with legislation; and is designed to support them to do so, whilst ensuring that we can at the same time take a firm position with those who do not.

2. PURPOSE

- 2.1 Blaby District Council has produced this Planning Enforcement Policy to set out clearly the approach it will take in relation to planning enforcement; and to provide its customers with a concise and transparent understanding of the enforcement process.
- 2.2 It also sets out our service standards, at Appendix 1, so that our customers know what to expect of us.

3. WHAT IS PLANNING ENFORCEMENT

- 3.1 Planning enforcement investigates and takes action against alleged breaches of planning control and is a vital part of the planning process. It is a very complex area because the Town and Country Planning Act seeks to strike a balance between the freedom of owners to use or alter their property as they wish, with the need to safeguard the amenities of an area against significant and irreparable harm.

4. SHOULD ENFORCEMENT ACTION BE TAKEN

- 4.1 When it is technically possible to take enforcement action against unauthorised development, in law the Council is required to decide whether such formal action would be 'expedient'. Planning is a permissive regime and is not punitive which means that formal action is a discretionary tool and all the relevant planning circumstances must first be taken in to consideration.

- 4.2 The vast majority of breaches of planning control are resolved informally by negotiation with the owner/occupier. Formal action, in accordance with the law, only takes place where it is expedient to do so and where other means to resolve the problem have failed. Ordinarily formal action will only be taken as a last resort and where the breach of planning control is causing significant or irreparable harm to the amenity of the area or is a breach of planning policy. The impact of some unauthorised development is more harmful than others and therefore enforcement action must always be appropriate and proportionate to the seriousness of the breach of planning control.

5. THE HARM SYSTEM

- 5.1 The Harm system allows breaches of planning control to be scored according to its seriousness. Scoring is based on the following criteria:

- a) Status of a breach
- b) highway safety issue
- c) other safety issues
- d) if the breach causes or potentially causes a statutory nuisance
- e) the age of the breach
- f) if harm exists and whether it is irreversible
- g) is there a breach of a planning condition
- h) if the breach occurs in a conservation area or a sensitive site
- i) if the development sets an undesirable precedent

- 5.2 Each case will be scored following a set format in order to provide a consistent result. However, provision is provided to allow for exceptional circumstances to be taken into consideration whilst making an assessment of a breach of planning control.

6. PRINCIPLES OF ENFORCEMENT

- 6.1 The District Planning Authority believes in firm but fair regulation. Underlying this are the principles of:

- **Expediency**

In deciding whether it is appropriate and reasonable to take enforcement action the degree of harm the unauthorised development is causing, or is likely to cause, will be carefully considered. Action will only be taken when it is expedient to do so.

- **Proportionality**

The question as to whether enforcement action should be taken rests entirely with the District Planning Authority. It is a discretionary tool to be used to protect the amenity of an area from serious harm. In deciding whether to take enforcement action it is necessary to show that there is a breach of planning control, that the breach is causing harm and that it is in the public interest to take action. Any action taken must be reasonable and proportionate to the breach.

- **Consistency**

All investigations and actions should be fair and consistent with full and proper consideration given to the material circumstances of each case following advice from Government legislation, guidance, planning policy, best practice and relevant case law.

- **Transparency**

Transparency is essential in maintaining public confidence in the service provided to regulate breaches of planning control. It forms an integral part of the role of the enforcement function, by providing throughout an investigation explanations of what is occurring and why it is occurring to both the complainant and the transgressor.

- **Targeting**

Ensuring that service resources are focussed primarily towards unauthorised developments that cause the most harm and seriousness of planning regulations.

7. TAKING FORMAL ACTION

- 7.1 Except in cases where unauthorised works or uses are causing immediate serious harm, formal enforcement action is taken only when attempts to amicably resolve the breach have been tried and failed. Such negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development. However the Council will not allow essential enforcement action to be delayed by protracted negotiations when unauthorised development is unacceptable in planning terms and is causing significant harm. If the Council is unable to negotiate an acceptable resolution in a reasonable timescale the Council will initiate formal enforcement action.

7.2 Formal action can consist of:

- a) Service of a legal notice – There are various formal notices that the Council can serve in an attempt to remedy a breach of planning control, each for differing purposes with varying timescales. However in all cases the Council will seek to use the most effective tools available to remedy a breach of planning control.
- b) Prosecution – Non compliance of the requirements of a formal notice such as an Enforcement Notice, Breach of Condition Notice, or a Stop Notice can lead to prosecution. It may also be necessary to prosecute for offences such as advertisements, Tree Preservation Order trees, and conservation area and listed building breaches, as well as for non compliance with Planning Contravention Notices and s330 notices. When initiating prosecution proceedings where there is evidence, the following public interest factors shall be taken into account when deciding on whether to prosecute
 - The effect of the offence on the environment
 - Intent of the offender
- c) Direct action – There will be occasions where enforcement notices and prosecutions will not have the desired effect and compliance with planning control is not obtained. In such cases, the Council will consider undertaking direct action to ensure remedial works are completed to comply with the relevant notice and/or prosecution and will look to recover the costs of such action.
- d) Injunctions - In certain cases it may be appropriate to seek an Injunction, to cease and pre-empt breaches of planning control.

Appendix 2 provides some brief information on the use and process of various formal actions available to the Council.

8. RESPONSIVE ENFORCEMENT MONITORING

- 8.1 Many planning permissions approved by the District Planning Authority are granted subject to conditions and any development can be monitored in accordance with these.

The Council monitors the progress of developments for a number of purposes including:

- Compliance with S106 legal agreements
- Building regulations approvals and compliance
- Council tax monitoring

- 8.2 If during the course of this monitoring, information is received which suggests that development may not be taking place in accordance with conditions, this will be passed to the enforcement team for further investigation. Failure to comply with the imposed conditions or not building in accordance with approved plans could result in the District Planning Authority taking enforcement action.

9. PERFORMANCE INDICATORS

- 9.1 The Council will monitor the enforcement service using performance indicators which focus on the number of enforcement cases, time taken to investigate, and the outcome. These are updated monthly, and reported through the Council's performance reporting system.
- 9.2 These indicators will be reviewed monthly and reported to Council periodically.

10. CONFIDENTIALITY

- 10.1 The name and address of those informing the Council of a possible breach of planning control will be kept confidential. However, requests for total confidentiality with regard to the information supplied limits the ability of the Council to take action and cannot be guaranteed if the case were to be considered in the Courts. Should this arise the complainant will be advised at the appropriate time.

11. ANONYMOUS COMPLAINTS

- 11.1 Anonymous complaints are difficult to investigate, particularly where extra information is required. They also prevent us from being able to provide feedback on the outcome of any investigation. For these reasons, complaints will only be investigated where contact details are provided unless the nature of the complaint falls within the following categories:

Advertisements; Listed Buildings; works to trees in a Conservation Area or protected by Preservation Orders; works to protected hedges; unauthorised development within an area subject to an Article 4 Direction.

12. FURTHER INFORMATION

- 12.1 If you wish to discuss an alleged breach of planning control or require information please contact a member of the Planning Enforcement Team at planning.enforcement@blaby.gov.uk , 0116 2727521, or visit the Council's website www.blaby.gov.uk
- 12.2 Information on new cases are provided on a monthly basis to Parish Councils and Councillors, In providing information, the council reserves the right to withhold anything considered sensitive or confidential.
- 12.3 This document can be made available on request, in other languages and formats (large print, Braille or on audio recording).

Document Title	Planning Enforcement Policy	Date approved	
Version	4 – February 2020	Date Modified	
Review due	February 2023		
Author	Jonathan Hodge	Sign & Date	
Owning Service	Planning & Economic Development		
Equality Impact Assessment	Date undertaken		
	Issue found	None	

APPENDIX 1 - SERVICE STANDARDS

It is important that the Council keeps its customers informed of the progress in enforcement investigations. The Council has set the following service standards in relation to enforcement.

1. Once a report of an alleged breach of planning control is received it will be registered on the Planning Enforcement system within 3 working days of receipt and correspondence of confirmation will be sent to the complainant.
2. Following registration of an alleged breach of planning control an Enforcement Officer will aim to visit the site within 5 working days.
3. An assessment of an alleged breach will then be carried out using the Harm System described in the Planning Enforcement Policy.
4. Following assessment of an alleged breach the complainant will be informed of the Council's findings within 15 working days.

The Council recognises that delays can be a source of considerable frustration for complainants and although it is not always possible to anticipate the timescale for resolution of a case, affected parties will be kept informed of the significant stages throughout the course of an investigation.

APPENDIX 2 – FORMAL ACTION

As outlined at 7.2, the Council has various powers of formal action which it can exercise at its discretion in regards to planning enforcement. A sample of these powers are briefly set out below; however this is by no means an exhaustive list and is not intended to explain the full detailed legal considerations, but simply a general overview of some of the powers available. It is important to note that every case is different, and may require a different course of action.

- i. **Enforcement Notice** – These notices can be served in relation to unauthorised development and uses where the development can be remedied by alteration, complete demolition or the ceasing of the unauthorised use. They are served on persons who have an interest in the land (e.g. owner, tenant, lenders) to which the notice relates. They have a statutory 28 day period before the notice comes into effect; during which time there is a right of appeal to the Planning Inspectorate. The notice is effectively suspended during determination of any appeal lodged.
- ii. **Stop Notice** – These notices are usually served where there is significant and irreparable harm being caused and the usual enforcement process would be too slow. A notice can come into effect within three days however must be served either in conjunction with or after the aforementioned Enforcement Notice.
- iii. **Breach of Condition Notice** – These notices are used in regards to the non-compliance of a specific condition relating to a planning permission, which needs to be corrected within a specified deadline. There is no right of appeal against these notices; however penalties for non-compliance are relatively minor compared to other notices.
- iv. **Section 215 Notice** – These notices are used in relation to buildings and land that have become significantly untidy and are considered to adversely affect the amenity of an area. They are served on persons who have an interest in the land to which the notice relates and once complied with (e.g. the land has been cleared or tidied) there is no ongoing requirement and the notice has been satisfied. There is a right of appeal against these notices via the Magistrates Court and non-compliance constitutes a criminal offence for which recipients may be prosecuted.
- v. **Injunction** – These are mainly used where a breach of planning is severe or where there is a severe threat. They can also be used in established cases where other actions have proved unsuccessful and the harm is still to be resolved. However injunctions are very time, labour and cost intensive due to their legal nature. As such the Council will always endeavour to recover the costs of taking this sort of action.