



# Planning Enforcement Plan (PEP)

Adopted September 2020

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## **PART ONE – GENERAL PRINCIPLES**

### **1. Introduction**

This Plan has been the subject of a public consultation exercise carried out between 22<sup>nd</sup> June and 31<sup>st</sup> July 2020. The Plan was considered by the Economic Development Committee and approved on the 9<sup>th</sup> September 2020.

This Plan sets out the general principles that form the standard operating procedures and function of the Planning Enforcement Service, within the Planning Development Business Unit of Newark and Sherwood District Council. This policy/ plan should be

#### **1.1 Why is a planning enforcement plan important?**

The National Planning Policy Framework states that the Council should act in a proportionate way when tackling breaches of planning control and formal enforcement action should be used as a last resort. In addition, it is not a criminal offence to carry out unauthorised development (unless, for example, the development relates to a listed building, advertisement or is in breach of an enforcement notice), and there are many different ways that the Council can tackle unauthorised development and other breaches of planning control. This means the Council cannot normally justify taking formal enforcement action against minor breaches of planning control and may decide not to take formal action against some cases.

Therefore, in some cases, the Council may seek a retrospective planning application to resolve a breach of planning control instead of taking action whilst in others the Council might determine not to take any further action because the works that have been carried out do not cause any harm. However, in other cases the Council may take formal enforcement action to resolve a breach of planning control and it is important that we can show how we decide when we will take formal enforcement action.

The Council also has to prioritise cases to ensure there are sufficient resources to make sure serious breaches of planning control are dealt with urgently and to ensure other cases are dealt with effectively and efficiently. This means that whilst we will take a consistent approach to planning enforcement: different cases may well be dealt with differently depending on the individual circumstances of the case. In these respects, it is important that we can show how we decide to deal with some issues urgently and how long we will normally need to deal with less urgent cases.

Therefore, the preparation and adoption of a local enforcement plan is important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the Local Planning Authority will decide if it is expedient to exercise its discretionary powers; and,
- provides greater certainty for all parties engaged in the development process.

## **1.2 Aims of the Policy**

In order to provide the best possible service, it is essential that the Council gives clear information on what it is able to do and how the service is prioritised, given the available resources.

This document is written with due consideration to relevant Government Policy, Legislation and Guidance, to provide a clear statement of the decision-making framework that will enable the effective provision of a Planning Enforcement Service through the implementation of sound procedures and working practices.

## **1.3 General Statement**

The Council's primary objective is to achieve regulatory compliance and to protect the amenity, privacy and overall well-being and prosperity of the residents and businesses of Newark and Sherwood district.

Where it becomes necessary to take formal action in respect of breaches of planning control, the Council ensures such action is taken, where it can be shown to be expedient and in the public interest to do so in accordance with the principles contained within this policy.

There is a wide range of enforcement tools available to the Council to remedy breaches of planning control, with prosecution and direct action being the most serious. The Council will always choose an enforcement sanction that is commensurate with the breach of planning control to which it relates. This policy is built around a process of escalation. In most circumstances the Council will only issue a formal notice where a breach of planning control has caused, or is likely to cause, material loss or harm to amenity, and where informal negotiations have been or are expected to be unsuccessful. Where there is a 'technical breach of planning control', but that breach is not considered to be causing 'harm', the Council may decide that further enforcement action is not expedient.

## **1.4 Relationship with the Council's Corporate Enforcement Policy and Corporate Targets and Objectives**

The District Council adopted its Corporate Enforcement Policy on 4<sup>th</sup> June 2015. This policy provides operational guidance to authorised officers and information to Elected Members and the public in relation to breaches of planning control.

The Corporate Policy, which deals with general enforcement matters common to all service areas, is applicable to all Council employees working in enforcement roles and those from other service areas who support the delivery of those functions. It is also applicable to agency/contract staff working on behalf of the Council.

The purpose of this policy is to set out the steps Newark & Sherwood District Council will use to secure compliance with the law whilst minimising the burden on individuals, businesses and the Council.

The District Council has identified the following as its priority objectives within the Corporate Plan:

- Improve the cleanliness and appearance of the local environment;
- Reduce crime and anti-social behaviour, and increase feelings of safety in our communities;
- Improve transport infrastructure to reduce congestion and facilitate growth;
- Build more homes and provide an excellent housing management service;
- Increase visits to the District and the use of visitor attractions by local residents;
- Protect, promote and enhance the district's natural environment and deliver the Council's environmental ambitions;
- Enhance and sustain the town centres;
- Improve the quality of life and social mobility in target areas;
- Improve the health and wellbeing of local residents;
- Increase participation with the Council and with local communities; and
- Continue to modernise working practices and embed a stronger commercial culture to improve value for money, generate more income and increase residents' satisfaction.

The Planning Enforcement Team contributes to the achievement of a number of the Council's priority objectives by:

- Protecting the amenity of those who live and work in the district from the harmful effects of unauthorised development and the neglect of land and buildings through negotiation but where necessary by taking appropriate formal enforcement against perpetrators.
- Protecting both the natural and built historic environment
- Ensuring that environmental, economic and social benefits negotiated through planning applications are achieved
- Enabling businesses to operate in such a way that maintains economic competitiveness without this being achieved at the expense of the environment and/or public amenity.

## **PART TWO - KEY PRINCIPLES OF PLANNING ENFORCEMENT**

### **2.1 Why is effective planning enforcement important?**

Effective planning enforcement is important to:

- tackle breaches of planning control that have an unacceptable adverse impact on the character and appearance of the local area, or have an unacceptable adverse impact on the living conditions of local residents;
- maintain the integrity of the decision-making process by tackling unauthorised development that would not normally be granted planning approval; and
- maintain public confidence in the Council's decision-making processes by ensuring planning conditions and planning obligations needed to make development acceptable in planning terms are complied with.

### **2.2 Investigation**

The Council's planning enforcement function is responsible for the investigation and enforcement of 'breaches of planning control'. Breaches of planning control are restricted to matters falling within the scope of 'development'.

Development is defined as:

*"Except where the context otherwise requires... 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"*

s.55 Town and Country Planning Act 1990 (as amended).

### **2.3 What is a Breach of Planning Control?**

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."

A breach of planning control can include the following:

- 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;
- Non-compliance with conditions attached to a planning permission: and
- non-compliance with a planning obligation contained in a s.106 legal agreement attached to a planning permission; and

There are also other legislative codes which fall within the remit of the enforcement function. Breaches of this legislation can include the following:



- Works being carried out to a Listed Building which affect its character without listed building consent being granted;
- Non-compliance with conditions attached to a listed building consent;
- The display of advertisements for which express consent is required but not granted;
- The removal of protected trees and/or trees situated within a Conservation Area for which notification or consent is required but not given: and
- unauthorised removal of important hedgerows.

Not all development or change of use requires planning permission from the local planning authority.

The Town and Country Planning (Use Classes) Order 1987 (as amended) allows for certain changes of use without the need for planning permission. For example, the change of use from a dry cleaners to a travel agents does not require permission.

The Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) grants permission for some developments without the need to apply for consent from the Council. Development granted by virtue of the Order is considered to be '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.

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, high hedges or the improper use of the highway. Any complaints with regard to these issues will be passed onto the relevant department.

The Council is required to operate its enforcement function within government guidelines and in accordance with Council policy and therefore must determine whether or not a breach of planning control is a breach of policy and then whether the breach unacceptably affects, amenity or the general quality of life, such that enforcement action is warranted and justifiable.

## **2.4 Duties of the Enforcement Function**

The Enforcement Team plays a key role in helping the Council to deliver an effective Development Management service. The team forms part of the development management activity to deliver good community outcomes in line with the adopted Development Plan.

The planning enforcement process is not an isolated activity simply limited to reacting to complaints about breaches of planning control. The Council does not have sufficient resources to monitor every planning permission that is implemented across the District. The team therefore, receives support from Town and Parish Councils, as well as some ad-hoc monitoring of development by planning case officers. However, we

need to rely on reports of suspected breaches of planning conditions by neighbours and other interested parties to be able to identify problems.

Investigation of suspected breaches of planning control is a statutory function. Investigation will determine whether a breach has taken place and also to determine whether enforcement action is necessary. However the Council does not have a duty to take enforcement action.

To carry out work or change the use of land or buildings without first obtaining planning permission is not a criminal offence. It is unauthorised, but not illegal, and in the majority of cases the Council is likely to provide the opportunity to submit an application for retrospective planning permission, in accordance with Section 73A of the Town and Country Planning Act 1990 (as amended) and guidance issued by [Government](#). Occasions where the Council is not likely to encourage a retrospective application would be when an unauthorised development is so harmful (for example to highway safety) that it would be highly unlikely to gain permission.

## **2.5 Expediency**

For all investigations where a breach of planning control has been identified, the Council must assess any actual and/or potential harm caused by the breach. This assessment of 'expediency' ensures that the Council fully considers the implications of each breach of planning control before determining the most appropriate course of action. Therefore, the breach of control is not in itself sufficient to merit enforcement action.

National planning policy, namely 'National Planning Policy Framework (NPPF)', states that:

*"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."*

Newark and Sherwood District Council promotes this approach. Planning enforcement should not be used as a punitive system. Where a breach of planning control is acceptable based on planning merits, it should not become the subject of enforcement action. In short, planning enforcement action will not be taken solely to regularise development that is otherwise acceptable.

An assessment of 'expediency' will be required in all cases where a breach of planning control has been identified. An 'expediency' test involves the Council assessing the planning merits of the unauthorised development and the impact of the Council's enforcement powers, to determine whether action is required to control the unauthorised development or require its cessation/removal. The Council has a statutory duty to assess the expediency of enforcement action to ensure consistency and quality of decision-making. The assessment of expediency is based on a variety of factors.

## 2.6 Decision Making

All planning enforcement decisions must be made with regard to the interests of the public as a whole. It is not the role of the planning system or planning enforcement to protect the interests of one party against those of another. As such, breaches of planning control are not subject to public consultation. The following factors cannot be taken into account when assessing expediency:

- Breaches of restrictive covenants;
- Private disputes;
- Competition between businesses;
- Damage to property;
- Boundary or other land disputes; or
- Reduction in value of land or property.

Where necessary the views of various partner agencies and statutory consultees such as Nottinghamshire County Council, the Environment Agency, Natural England and Historic England may be sought in order that the Council makes an informed decision. The views of other agencies will be of particular importance where their technical or specialist knowledge is required.

However, harmful unauthorised development should be pursued to ensure it is either made acceptable by the imposition of additional requirements or limitations by way of conditions. If it is not possible to alter development to make it acceptable then action will be considered to require the unauthorised use/development to cease or be removed. Formal action will not be taken solely because development has started without the benefit of planning permission without first examining whether there are sound and valid reasons for doing so. The Council is not automatically required or committed to take action on breaches of planning control. The particular circumstances of every case must always be considered. It is not usual for formal action to be taken against a minor breach of control that causes no real harm. Enforcement action will be taken urgently where it is considered commensurate with the seriousness of the breach of planning control and expedient and in the public interest to do so.

All of the Council's decisions will have regard to the following current statutory guidance and codes of practice:

- [Planning Practice Guidance](#)
- [The Statutory Code of Practice for Regulators](#)
- [The Code for Crown Prosecutors](#)
- [The Human Rights Act 1998](#)
- [National Planning Policy Framework \(NPPF\)](#)
- [Police and Criminal Evidence Act 1984 \(PACE\)](#)

Emerging or replacement statutory guidance and codes of practice will be given regard alongside this plan as appropriate.

The UK planning system has generated a significant amount of case law. When it is derived from the High Court and above, this sets a legal precedent that dictates how the law should be interpreted by decision makers and investigators. Legal precedent is subject to continual change as new cases are put before the Courts, and it is in the best interests of the Council to be well informed on this subject as such changes can significantly enhance or impair the actions of the Council when dealing with breaches of planning control.

Given the high number of applications which are received each year, it is not possible to monitor all developments. Priority will be given to key identified sites which will undergo direct monitoring to ensure the development is being carried out in accordance with the approved plans.

In adopting a proactive enforcement approach, this will assist in a move towards an effective development management service enhancing the traditional reactive approach of enforcing contraventions.

The Council is responsible for the investigation of all breaches of planning control that are 'District matters'. District matters comprise all breaches of planning control, with the exception of mining and mineral extraction, and waste deposit and disposal. These are 'County Matters' that are investigated and enforced by Nottinghamshire County Council. Often District and County matters will overlap, and in these circumstances should enforcement action be required then the most appropriate form of enforcement action will be agreed after consultation with Nottinghamshire County Council, bearing in mind the nature of the breach and enforcement 'tools' available.



## **PART THREE – ENFORCEMENT CASE PRIORITY SYSTEM**

### **3.1 Prioritisation Overview**

It is acknowledged that some alleged breaches need to be given a higher priority than others. Priority will be given to cases where there is the possibility of the greatest harm being caused. Accordingly, the priority performance standards for the delivery of the service have been designed to reflect this.

The following priority system will apply to each case received. On receipt of a complaint, it will be prioritised according to the following categories. The category of each case may change following the initial site visit and depending on the level of harm being caused. The Council also recognises that not all alleged breaches of planning control require an immediate site visit, as such the system of prioritisation reflects the urgency that some form of 'action' is required. This may be a site inspection, however it could also be less 'direct', such as a phone call to a developer/ property owner or an initial piece of correspondence.

### **3.2 What is a high priority case?**

High priority cases are cases where there is an immediate and serious risk of harm or irreparable damage resulting from the unauthorised works that might be taking place. We will aim to investigate these cases on the same day that they are reported to the Council where this is a business working day, or the next day the Council offices are open. We will then decide what further action to take, if any, within 24 hours. Examples of high priority cases are as follows:

- Demolition in a Conservation Area;
- Destruction of an important hedgerow;
- Hazardous substances;
- Unauthorised works to protected trees; and
- Unauthorised works to listed buildings.

### **3.3 What is a medium priority case?**

Medium priority cases will not normally require immediate action to prevent serious harm. They will include suspected breaches of planning control that would not normally get planning permission because they are contrary to local planning policies and/or have a harmful impact on the amenity of the area. We will aim to start starting investigation within 14 days of receiving a complaint. If a complaint is received on a non-working day, the timescales start from the first working day after. We will then decide what further action to take, if any, within four weeks of the site visit. Examples of medium priority cases are as follows:

- Unauthorised development that contravenes local planning policy;
- Unauthorised development that significantly impacts on local amenity and public safety;
- Unauthorised development that results in harm to the setting of a listed building.

- Unauthorised development that results in harm to the character of a Conservation Area;
- Unauthorised development in Green Belt;
- Operational building works;
- Unauthorised changes of use;
- Erection of unauthorised advertisements that have a detrimental impact on highway safety or within Newark/ Southwell town centre locations; and
- Breaches of 'conditions precedent' attached to planning permissions

### **3.4 What is a low priority case?**

Low priority cases will be minor breaches of planning control. We will aim to start investigating cases that are likely to be a low priority by visiting the site within four weeks of receiving a complaint. If a complaint is received on a non-working day, the timescales start from the first working day after. We will then decide what further action to take, if any, within six weeks of the site visit. Examples of low priority cases are as follows:

- Running a small business from a residential property;
- Unauthorised advertisements;
- Unauthorised fences and walls;
- Other breaches of planning conditions
- Unauthorised householder developments; and
- Untidy land and buildings.

### **3.5 Performance Standards**

We will seek to acknowledge all complaints within 5 working days. In most cases this is by the same method through which the complaint was received. Complaints should be received in writing or logged through the Council's website reporting form and provide a minimum level of information in order for the alleged breach to be properly investigated. Where insufficient information has been provided, we will not always be able to investigate.

The timescale for completing an investigation varies depending on the complexity of the case, workloads of officers and the need to regularise the alleged breach of planning control. We will try to notify the complainant at significant points in the investigation. However the statutory process we have to follow means that, quite often, extended periods of time will pass without any apparent progress. For example where the Council has to allow time for a planning application to be prepared and submitted, and then determined, a period of four months may be typical. Serious cases that result in the service of formal notices, a resultant appeal and possible challenges through the courts can, and do, take many years to resolve.

It is important to emphasise that statutory notices can only be issued in relation to confirmed breaches of planning and listed building control. It is not possible to issue Notices where it is suspected that a breach of planning might occur at some point in the future.

## **PART FOUR - PLANNING ENFORCEMENT INVESTIGATION PROCESS**

Following the receipt of the complaint, an investigation will be carried out according to the priority system as set out above, which most often will also necessitate in a site visit being undertaken. From the evidence collected during the site inspection, an assessment will be made as to whether there is a breach of planning control and if so, whether planning permission is required for the works.

### **4.1 Powers of Entry**

In all but the most straightforward cases, officers will undertake a site visit to try to establish whether a breach of planning control has taken place. The majority of site visits are made without prior arrangement, and officers are required to identify themselves as enforcement officers as soon as they enter the site.

The Council's planning enforcement officers have powers of entry, for the purpose of investigating alleged breaches of planning control, under the following provisions:

- Town and Country Planning Act 1990 (as amended);
- Town and Country Planning (Listed Building and Conservation Areas) Act 1990 (as amended);
- Planning (Hazardous Substances) Act 1990 (as amended);
- Planning (Hedgerow Regulations) Act 1997;
- Local Government (Miscellaneous Provisions) Act 1976, 1982; and
- Planning (Consequential Provisions) Act 1990 (as amended)

Where site visits are made and no occupier can be found at the time of visit, officers have powers to inspect the land in their absence. Officers do not have powers to force entry into any dwellinghouse. Where appropriate, officers will leave a business card requesting the occupier of the land to contact the Council. If during a site visit officers are refused entry onto land or buildings, the Council has the right to apply to the Magistrates' Court for a warrant to enter the property. This course of action will only be taken in cases where it is considered both necessary and proportionate to the alleged breach under investigation.

### **4.2 Gathering Evidence**

Whilst on site, officers may ask questions of any occupiers present, and may take measurements and where appropriate photographs. Any information gathered will be used to ascertain whether a breach of planning control has taken place. If a breach has occurred, this information will be used to assess the most appropriate course of action to resolve the matter.

Where a complaint relates to an alleged unauthorised use of land, officers will make a reasonable attempt to determine whether a breach has taken place. In most cases a 'reasonable attempt' will consist of undertaking site visits at days and/or times deemed most suitable for the allegation. This approach ensures that the Council's resources are used efficiently. Where officers can find no evidence of a breach of

planning control the investigation will be closed and no further action taken. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.

Officers may also make use of the 'planning contravention notice' if they have reasonable suspicion that a breach of planning control is likely to have occurred. This tool will be used in accordance with [Government guidance and best practice](#).

Officers may use a variety of other methods to determine whether or not a breach of planning control has taken place, including obtaining information from witnesses to an alleged breach, and consultation with the Council's Planning Development Team. The Council may also seek clarification from case law or obtain legal advice where the subject of an investigation is complicated or contentious.

#### **4.3 No Breach of Control**

In most cases, the initial site visit/ investigation will reveal that the matter does not constitute a breach of planning control. This can be because the matter does not constitute development or benefits from permitted development rights. In such instances, the case officer will undertake to contact the complainant to explain that the Council is unable to take any action through its planning enforcement powers in line with the performance standards set out in paragraph 3.5.

#### **4.4 Potential Breach of Control**

Due to the complex nature of the planning regime, in many cases it is not possible to come to an immediate determination as to whether or not a breach of planning control has occurred. This is particularly relevant in relation to complaints regarding a material change of use. In these cases, it is often necessary to carry out additional observations over a period of time before a determination can be made as to whether there has been a breach of planning control.

In instances such as this, it may be necessary for the investigating officer to contact the complainant to request further information or observations.

#### **4.5 Breach of Control Identified**

When it is determined that planning permission is required, we will contact those believed to be responsible and set out the appropriate course of action so that the breach can be resolved.

In many cases a retrospective application will be invited in order to resolve the breach. This is in accordance with national policy and allows for a full formal assessment to be carried out on the development with statutory consultation with consultees and neighbours.

If the Council has not been successful in securing the submission of a valid planning application or remedial actions have not been carried out, a Section 330 or Planning



Contravention Notice (PCN) may be issued. These notices can be used in order to gain additional information to further investigate a breach of planning control and/or to enable the service of a formal notice. The owner will be advised that it is in their best interests to resolve the breach, as any outstanding notice served will appear on any land search which may affect any future sale of the property.

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 voluntarily. A suitable period of time is usually given depending on what needs to be done.

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; and
- Untidy land and run down or derelict buildings that result in a poor quality environment.

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

## **PART FIVE - FORMAL ENFORCEMENT ACTION**

Formal enforcement action is only instigated when it is considered expedient and all other avenues to resolve the problem have failed. Any action taken must meet the tests as set out in government guidance and be proportionate to the breach of planning control to which it relates.

Under the adopted scheme of delegation, the decision to take formal enforcement action or to instigate prosecution proceedings, is taken under delegated powers. Enforcement Notices and Notices under Section 215 of the Town and Country Planning Act 1990 (as amended) relating to untidy land may be served by an Authorised Officer and the matter pursued through to prosecution at Magistrates' Court.

### **5.1 What types of formal enforcement action can the Council take?**

There is a range of ways of tackling breaches of planning control available to the Council through formal enforcement action. In each case officers not only have to determine which of the options would be the most effective way of dealing with the breach but also which would be the most proportionate way of securing a resolution.

In these terms, in most medium and in some high priority cases, issuing an enforcement notice will normally be the right approach for officers to take when it appears to them that there has been a breach of planning control and it is expedient to take formal enforcement action when taking into account the provisions of the development plan and any other material considerations (including the guidance in this document).

#### **5.1.1 Enforcement Notices**

An enforcement notice should enable every person who receives a copy to know:

- exactly what, in the Local Planning Authority's view, constitutes the breach of planning control; and
- what steps the Local Planning Authority require to be taken, or what activities are required to cease to remedy the breach of planning control.

There is a right of appeal against an enforcement notice, however it is an offence not to comply with an enforcement notice once the period for compliance has lapsed.

Therefore, it is important that the recipient of an enforcement notice takes immediate action to lodge an appeal against the notice if they think there are good grounds to do so or take immediate steps to comply with the notice.

#### **5.1.2 Stop Notices**

A stop notice can prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in a related enforcement notice, ahead of the deadline for compliance in that enforcement notice. Therefore, a stop notice might be

issued alongside an enforcement notice because it is important to prevent a development from continuing before the enforcement notice comes into effect.

There are very strict limitations on the use of a stop notice including potential compensation to be paid by the Council if a successful appeal is made against the serving of stop notice. The compensation would be for any loss or damage directly attributable to the prohibition effected by the notice. It is therefore unlikely that officers will consider issuing a stop notice unless there are very serious risks of irreparable harm from on-going development. For example, a stop notice may be considered where an unauthorised development involves the demolition of an unlisted building in a designated Conservation Area and an agreement to stop demolition with immediate effect has not been reached. A stop notice cannot prohibit the use of any building as a dwellinghouse.

#### **5.1.3 Temporary Stop Notices**

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 and officers 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 in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area.

A temporary stop notice expires after 28 days, so officers will consider what further action is required within this period if an alternative way of dealing with the breach which would overcome the objections to it in an environmentally and legally acceptable way cannot be agreed with the recipient of the temporary stop notice.

#### **5.1.4 Breach of Condition Notice**

A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition. Officers will consider issuing a breach of condition in addition to an enforcement notice, as an alternative to a stop notice, where officers consider it is expedient to stop the breach of conditions quickly and before any appeal against the enforcement notice is determined.

A breach of condition notice is therefore most likely to be used in some high or medium priority cases when immediate action is required to stop a continuing breach of conditions in the interests of safeguarding amenity or public safety in the neighbourhood; or to prevent serious or irreversible harm to the environment in the surrounding area. There is no right of appeal to the Planning Inspectorate against a breach of condition notice.

### **5.1.5 Injunction**

The Council can apply for an injunction whether or not it has exercised, or proposes to exercise, 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 because if a person fails to comply with an injunction (once it has been granted) 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.

Therefore, officers will only consider applying for an injunction if there have been persistent breaches of planning control such as failure to comply with the requirements of an enforcement notice over a long period and/or other enforcement options have been, or would be, ineffective in the event of a serious breach of planning control that would cause substantial and/or immediate harm to the local area.

### **5.1.6 Prosecution**

When officers are dealing with high priority cases, many of the breaches of planning control may constitute a criminal offence subject to prosecution including unauthorised works to protected trees, removal of important hedgerows and unauthorised works to listed buildings.

Officers will take further legal advice in these cases with a view to pursuing a prosecution in the event of a serious breach of planning control that has resulted in substantial harm to the local area. It is therefore important that a person that is contacted by officers about a high priority case makes every effort to stop any unauthorised works or activities on site immediately.

Officers will also take further legal advice with a view to pursuing a prosecution in the event of non-compliance with the requirements of an enforcement notice, breach of conditions notice, stop notice, temporary stop notice, listed building enforcement notice, community protection notice or a section 215 notice.

### **5.1.7 Listed Building Enforcement Notice**

Although broadly similar, there are a number of important differences between planning enforcement notices and listed building enforcement notices including the fact that there are no time-limits for issuing listed building enforcement notices.

Officers will consider issuing a listed building enforcement notice in medium and high priority cases where works have been carried out without the necessary listed building consent, or a condition attached to that consent has not been complied with when such works materially detract from the historic or architectural significance of the building and there is no agreement to put those works right in any other way.

### **5.1.8 Community Protection Notices**

Officers have the power to issue a Community Protection Notice under the Anti-Social Behaviour, Crime and Policing Act 2014 and these Notices can be used to tackle a wide range of issues including:

- untidy land / buildings;
- unauthorised use of land; and
- unauthorised buildings / structures.

Where any of the above problems are causing ongoing detrimental effects to the living conditions of the local community, a Community Protection Notice can contain reasonable requirements:

- to stop doing specified things;
- to do specified things; or,
- to take reasonable steps to achieve specified results.

Officers will consider issuing a Community Protection Notice if an earlier written warning that a Notice may be issued has been ignored and may be used as an alternative to a section 215 Notice.

### **5.1.9 Section 215 Notices (Requiring proper maintenance of land)**

Section 215 of the 1990 Act provides the Council with the power, in certain circumstances, to take steps requiring land to be cleaned up when its condition adversely affects the amenity of the area. If it appears to officers that the public amenity of part of the District is being adversely affected by the condition of neighbouring land and buildings, they may consider serving a section 215 notice on the owner requiring that the situation be remedied.

These notices will set out the steps that need to be taken, and the time within which they must be carried out. The Council also have powers under s219 of the 1990 Act to undertake the clean-up works itself and to recover the costs from the landowner.

### **5.1.10 Other default powers**

The Council can prosecute for a failure to comply with an enforcement notice but it can also consider using its default powers under s.178 of the 1990 Act to enter enforcement notice land and carry out the requirements of the notice itself.

It is an offence to willfully obstruct anyone who is exercising those powers on the Council's behalf and Council can recover from the person who is then the owner of the land any expenses reasonably incurred by them in undertaking this work.

Officers will only consider using these default powers when all other methods to persuade the owner or occupier of land to carry out any steps required by an enforcement notice have failed

### 5.1.11 Advertisements and fly-posting

Where signs, adverts or fly-posting are unauthorised and are damaging the character and appearance of the local area, officers will normally serve advance written notice to anyone who can be identified as the person responsible, that:

- in the Council's opinion the advert or sign is displayed illegally;
- the Council intends to remove it after the expiry of a period specified in the notice; and
- may include the issuing of fixed penalty notices or a prosecution. We may also recharge our costs for removing any posters from any party gaining benefit from the advert.

Officers can then remove the sign or adverts 2 clear days after the notice was served.

However, the Council need not give any notice to remove fly-posters where a placard or poster does not give the address of the person displaying it and officers do not know that address and are unable to ascertain the relevant address after making reasonable enquiries.

Our aim, in line with the Council's Community Plan is to keep the local highways clear of litter, street furniture clean and property free of graffiti, a view shared by the Council, residents and all who use our services. In addition, the businesses involved are gaining an unfair advantage over law abiding businesses by not paying for advertising space.

The planning department will not usually deal with complaints about any structures, advertisements, A-boards or any other operations, such as cars sales for example, that have taken place on land within the boundaries of a highway, which will normally include grass verges, footpaths and pavements and other highway infrastructure like barriers, lampposts and bridges, as well as the road itself.

Concerns regarding structures or advertisements on a County Road can be reported to Nottinghamshire County Council at [enquiries@nottscc.gov.uk](mailto:enquiries@nottscc.gov.uk), or by telephoning 0300 500 8080. For issues taking place on the strategic road network such as the A1 or the A46, Highways England can be contacted at 0300 123 5000 or by emailing [info@highwaysengland.co.uk](mailto:info@highwaysengland.co.uk).

#### **Charitable/community events**

Although the organisers of some charitable or community events choose to advertise on the public highway, this is contrary to the Highways Act 1980. Adverts on the public highway, be they on lamp columns, traffic signs or signals, trees or pedestrian barriers, highway verges, can pose a danger to both pedestrians and motorists, and they also make an area look untidy and create an eyesore.

However, we will not generally take any action to remove charitable 'fly posting' or prosecute the organisers. A charitable event may be for religious, educational, cultural, political, social or recreational purposes. Any event must be for purely

charitable purposes and cannot be for any commercial purpose. We require that organisers observe the following conditions:

- Adverts should only be affixed to lamp columns, and not to traffic signs, traffic signals, trees or pedestrian barriers. They should not be on telegraph poles, bus stops or utilities boxes.
- Adverts should not be placed within 5m of a traffic junction.
- The method of affixing the advert must not damage the lamp column in any way.
- Adverts should not be affixed earlier than seven days before the event, and removed within 24 hours after the event.
- All fixings must be removed when the advert is removed.
- Thought should be given to the size, design and number of adverts. Large banners will not be acceptable. Typically no more than A4 in size and a minimal number sited local to the event.
- The adverts should state the name of the charity that is benefiting from the event. Also include charity registration number where available.
- Please note that we may remove and confiscate any adverts that do not observe these conditions, or pose a danger, are offensive, or too numerous.
- The event must be purely for charitable reasons and not have a commercial element or be solely commercial.

Advertising any local event should be undertaken in a variety of methods including social media and local publications and not rely on the public posting of such events.

## **5.2 Appeal against an Enforcement Notice**

There is a right to appeal to the Planning Inspectorate (who act on behalf of the Secretary of State) against an Enforcement Notice. If an appeal is lodged, the Notice does not come into effect and the requirements to comply with the Notice are suspended until the outcome of the appeal is decided.

If the appeal is allowed, no further action can be taken. If the appeal is dismissed, the requirements of the Enforcement Notice come into effect from the date of the decision letter from the Planning Inspectorate. The Inspector has the ability to vary an Enforcement Notice provided that he or she is satisfied that it does not cause injustice to either party.

Failure to comply with an Enforcement Notice constitutes a criminal offence and the Council may instigate prosecution proceedings against the parties concerned in the Magistrates' Court. Accordingly, formal enforcement action is in many cases, not straightforward and can be a lengthy and time consuming process.

## **5.3 Other forms of Enforcement Action**

The Council can also carry out other formal enforcement proceedings including:

- Service of a Breach of Condition Notice where development has taken place without compliance with a condition(s) of a planning permission;
- Service of a notice requiring the proper maintenance of land or building;
- Prosecution in connection with unauthorised advertisements;
- Prosecution for unauthorised works to a listed building;
- Prosecution for unauthorised works to a protected tree; and
- Completion of a Section 106 Planning Obligation.

#### **5.4 Immunity from Enforcement Action**

When investigating breaches of planning control, officers must identify whether or not a breach is immune from enforcement action. Where a breach of planning control continues undetected and therefore without any intervention by way of formal enforcement action it will become lawful by the passage of time. In such circumstances the breach becomes immune from enforcement action, which means the Council is unable to remove or mitigate the development.

Immunity timescales are as follows:

- Four years where the breach consists of the carrying out of building, mining, engineering or other operations without planning permission.
- Four years for a change of use of any building to use as a single dwelling house.
- Ten years in any other case.

However, deliberate concealment of a breach of planning control in order to gain immunity from enforcement action does not necessarily benefit from the statutory immunity timescales. New powers inserted into the Town and Country Planning Act 1990 (as amended) by the Localism Act 2011 allow the Council to apply to the Magistrates' Court for a Planning Enforcement Order, where a deliberate concealment of a breach of planning control becomes evident. Where such a breach of planning control is discovered, consideration will be given to the expediency and anticipated success of using such powers. The application can be made at any time within six months of the date on which there was sufficient evidence to justify the application.

#### **5.5 What types of complaints cannot be dealt with by planning enforcement?**

Before reporting a suspected breach of planning control, it is important to check that the matter is for the Council's Planning Department to deal with so we can avoid any unnecessary work or delay in taking the most appropriate action. The most common issues that are incorrectly reported to the Council's Planning Enforcement Team are listed below.

##### **5.5.1 Approved development or works**

In some cases, we receive reports of suspected breaches of planning control about development or works that have been granted planning permission. We publish details of most planning applications on the Council's website including details of approved plans, planning conditions and planning obligations.



If it is found that works or a development has already got consent and is being carried out in accordance with the permission, then we will not take planning enforcement action. However, a complaint can still be made to the Council's Complaints Department about the way we dealt with an application for planning permission but not about the decision itself.

#### **5.5.2 Boundary disputes**

The planning department cannot deal with boundary disputes. These types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter. We may be able to provide extracts from plans or details of application site boundaries on request but these details will also normally be available on the Council's website.

#### **5.5.3 Damage to private property**

Similar to the above, the planning department cannot deal with reports about damage to private property. These types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or the matter may need to be reported to the police.

#### **5.5.4 Dangerous Structures**

The Planning Department cannot deal with reports of dangerous structures, which should be reported to East Midlands Building Control Partnership who can be contacted on 0333 003 8132 or by email at [info@eastmidlandsbc.com](mailto:info@eastmidlandsbc.com).

#### **5.5.5 Empty Properties**

The Planning Department cannot deal with empty properties, these issues should be reported to Council's Public Protection Business Unit by telephoning 01636 650000 or by emailing [Environmental.Health@nsdc.info](mailto:Environmental.Health@nsdc.info).

#### **5.5.6 Fly-tipping**

The planning department cannot deal with reports of fly-tipping, which should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing [Environmental.Health@nsdc.info](mailto:Environmental.Health@nsdc.info).

#### **5.5.7 Highways Land**

The planning department will generally not deal with complaints about any structures or any other operations that have taken place on land within the boundaries of a highway, which will normally include grass verges, footpaths and pavements and other highway infrastructure like barriers, lampposts and bridges, as well as the road itself.

Complaints about activities taking place on highways land that is connected to the local road network should be reported to the Highways Department at Nottinghamshire County Council (VIA East Midlands) by telephoning 0115 8042100. Complaints about activities taking place on highways land connected to the strategic road network should be reported to Highways England by telephoning 0300 123 5000.

#### **5.5.8 Invasive non-native plants and harmful weeds**

Unless a breach of a planning condition has been identified, complaints about non-native invasive species or harmful weeds cannot be dealt with by the Planning Department and should be reported to the Environment Agency and more information can be found on their website at [www.gov.uk/government/organisations/environment-agency](http://www.gov.uk/government/organisations/environment-agency)

#### **5.5.9 Light Pollution**

Unless a breach of a planning control has been identified, complaints about light pollution cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing [Environmental.Health@nsdc.info](mailto:Environmental.Health@nsdc.info)

#### **5.5.10 Noise Nuisance**

Unless a breach of a planning control has been identified, complaints about noise nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing [Environmental.Health@nsdc.info](mailto:Environmental.Health@nsdc.info)

#### **5.5.11 Odour Nuisance**

Unless a breach of a planning control has been identified, complaints about odour nuisance cannot be dealt with by the Planning Department and should be reported to the Council's Environmental Health Department by telephoning 01636 650000 or by emailing [Environmental.Health@nsdc.info](mailto:Environmental.Health@nsdc.info)

#### **5.5.12 Parking Restrictions & On-Street Parking**

The Council's Civil Enforcement Officers (CEO) or Nottinghamshire County Council Civil Parking Enforcement (CPE) are responsible for the enforcement of parking restrictions in Nottinghamshire. CEOs have replaced traditional traffic wardens and enforce a range of restrictions. Further information can be found on the Council's website via <https://www.newark-sherwooddc.gov.uk/parkingfines/> or Nottingham County Council's website via the following link - [https://www.derbyshire.gov.uk/transport\\_roads/roads\\_traffic/parking/parking\\_enforcement/default.asp](https://www.derbyshire.gov.uk/transport_roads/roads_traffic/parking/parking_enforcement/default.asp) or can be reported to Newark & Sherwood District Council on 01636 650000 or Nottinghamshire County Council on 00345 5201357. For police related offences, please call 101 or 999 in an emergency.

#### **5.5.13 Quarry Sites and Active Mineral Extraction**

All issues relating to quarrying or mineral extraction should be discussed with Nottinghamshire County Council who can be contacted by telephone at 0300 500 8080 or by emailing [enquiries@nottscc.gov.uk](mailto:enquiries@nottscc.gov.uk)

#### **5.5.14 Trespass**

Reports about private individuals trespassing cannot be dealt with by the planning department and these types of problems should normally be dealt with as a private matter by the individuals concerned, which may involve instructing a solicitor or other suitably qualified professional to deal with the matter or reporting the matter to the police.

#### **5.5.15 Vermin**

The planning department cannot deal with reports of vermin or other types of infestation, which should be reported to the Council's Environmental Health Department by telephoning the Council's Environmental Health Department by telephoning 01636 650000 or by emailing [Environmental.Health@nsdc.info](mailto:Environmental.Health@nsdc.info)

#### **5.5.16 Waste sites**

Any complaints about the operation of a waste transfer site including public amenity waste disposal sites and scrapyards should be directed to Nottinghamshire County Council who can be contacted by telephone at 0300 500 8080 or by emailing [enquiries@nottscc.gov.uk](mailto:enquiries@nottscc.gov.uk)



## **PART SIX - REPORTING A BREACH OF PLANNING CONTROL**

### **6.1 Reporting**

The majority of investigations into breaches of planning control result from complaints from members of the public and local councillors. The assistance of the public is therefore important to the success of an effective enforcement function.

Complaints can be made in person via our Customer Service Centre, in writing or by email at [planning.enforcement@neward-sherwooddc.gov.uk](mailto:planning.enforcement@neward-sherwooddc.gov.uk)

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 may 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.

Given that the complainant's details are entirely confidential, we do not usually investigate anonymous complaints. If complainants feel uncomfortable in providing their contact details they are advised to contact a ward councillor or Parish/ Town Council to make the complaint on their behalf. In this scenario an officer will be able to advise on the best course of action and provide an update of the outcome of the enforcement investigation.

## **PART SEVEN - MANAGEMENT SYSTEMS**

### **7.1 Equalities and Human Rights**

Equality issues have been considered when drawing up this policy. The application of this Enforcement Policy will be objective and equality will be achieved by ensuring decisions are not influenced by a person's age, disability, race, religion or belief, sex, sexual orientation, gender re-assignment, marriage and civil partnership, pregnancy or maternity status. Officers will comply with the Human Rights Act and only depart from those requirements in exceptional circumstances. Officers will ensure that all enforcement action is justified, auditable, proportionate, authorised, and necessary having regard to the circumstances of the individual case.

### **7.2 How will human rights be taken into account in planning enforcement?**

The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action should be taken, officers, where relevant, will have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

When considering commencing formal enforcement action, officers must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped within the time limits set for compliance or by action to be taken through the courts in the wider public interest. In compliance with Article 6 of the Human Rights Act 1998, a recipient of a formal enforcement notice will also have the right of appeal or the right to a fair trial in the event of non-compliance with a formal enforcement notice or on receipt of a summons.

### **7.3 Data Protection**

The Council needs to hold and process personal information so that it may properly perform its statutory functions. The Data Protection Act 2018 requires that the Council looks after personal information it holds, keep only what is needed and dispose of it in accordance with the Council's Data Retention Schedule. The Council may share personal information held where legislation allows and will have information sharing protocols in place where required. Prior to sharing information, the Council will consider the proposed use of the information, the secure transfer of information and measures that are in place to keep the information secure once it has left the Council's control. For further details please see the Council's Data Privacy Policy <https://www.newark-sherwooddc.gov.uk/yourcouncil/privacy/>.

Information received, including personal data, will be treated in confidence where this is possible and where an overriding public interest does not require its processing. However, should an investigation proceed to legal proceedings then the Council may be required to reveal information such as an individual's identity.

## **7.4 Officer Conduct**

In addition to the principles set out in this Policy, officers will always present themselves professionally and courteously. Officers will introduce themselves and in what capacity they are acting. However there may be occasions when officers legitimately delay identifying themselves until a later stage of an investigation, particularly where they are engaged in authorised covert operations. Officers will carry and show their identify card or authorisation as appropriate.

## **7.5 The Regulators Compliance Code**

The Council has been required by the Legislative and Regulatory Reform Act 2006 (“the Act”) to have regard to the Regulators Code when developing this policy and the operational procedures sitting beneath it, taking into consideration the six core objectives. In so far as it relates to the enforcement sanctions, this enforcement policy is compliant with the Code in that it aims to promote efficient and effective approaches to regulatory inspection and enforcement.

## **7.6 Contact Details**

You may contact a member of the Enforcement Team in several ways:

- **Email:** [planning.enforcement@newark-sherwooddc.gov.uk](mailto:planning.enforcement@newark-sherwooddc.gov.uk)
- **Phone:** 01636 650000; 01636 655801; 01636 655391
- **In person:** Our Customer Services Centre is open between 09:00am until 17:00pm Monday to Friday
- **By Submitting the online form**  
<http://www.newark.sherwood.gov.uk/planningenforcement/reportbreachofplanning/>
- **In writing:** Planning Enforcement Team, Newark and Sherwood District Council, Castle House, Great North Road, Newark, NG24 1BY

## **7.7 Implementation and Monitoring**

### **7.7.1 Who will be responsible for implementing the Planning Enforcement Plan?**

The Director – Growth and Regeneration, the Business Manager – Planning Development and the Senior Enforcement Officer will be responsible for implementing the plan and ensuring the guidelines in this document are followed by officers.

The Director – Growth and Regeneration, the Business Manager – Planning Development and the Senior Enforcement Officer will assist, where appropriate, with deciding what action should be taken when an investigation into a suspected breach of planning control has been completed.

The Council’s solicitors will be consulted before any legal action is commenced and the Council’s solicitors will assist with any legal proceedings including instructing a QC to represent the Council in any court proceedings.

The Enforcement Officer(s) will normally be expected to prepare a statement of case and/or represent the Council at an informal hearing or public inquiry in the event of an appeal to the Planning Inspectorate where an enforcement notice has been served in particularly complex or high profile enforcement cases.

The Business Manager – Planning Development and/or the Senior Enforcement Officer will assist the Enforcement Officer or Planning Officers, where appropriate, to prepare a statement of case in other more straightforward cases.

## **7.8 How will District Councillors be involved?**

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

On a quarterly basis, District Councillors will also receive a report of actions taken on breaches of planning control, together with updates regarding any appeals and further legal action taken.

## **7.9 What service standards will be monitored?**

- The nature of planning enforcement means that it is not possible to target a timescale in which to close a case. For example, 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
- It is also not possible for officers to meaningfully control how many complaints the Planning Department receive about suspected breaches of planning control or how many breaches occur within the District at any particular time, although it is hoped this document will help reduce both.
- However, as previously highlighted, this document sets out the service standards that officers consider are specific, measurable, achievable and realistic. 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 would be one key measure of whether the Plan has been successful.
- The Planning Enforcement Plan will also be reviewed if there are any substantial changes to relevant legislation, national policy or national guidance or within three years after publication depending on whichever is the sooner.