

APPENDIX 23

MEMBER / OFFICER PLANNING ENFORCEMENT PROTOCOL

1. INTRODUCTION

- 1.1 Planning enforcement is a process to investigate cases where development without planning permission is alleged to be taking place, and where appropriate to take enforcement action, and to ensure that development with planning permission accords with the approved plans and planning conditions.
- 1.2 Local planning authorities have the discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations.
- 1.3 It is recognised that it is important that unauthorised/unlawful development is investigated and action is taken where it is expedient to do so to avoid undermining public confidence in the planning system.
- 1.4 The purpose of this document is to set out guidance and procedure in respect of the task of planning enforcement. It aims to set out current procedure, identify how Members can become involved in planning enforcement and what obligations are placed upon officers to keep Members informed on the progress of certain enforcement cases. The reference to Members is to Borough Councillors.

2. CURRENT PROCESS

- 2.1 As set out in the Council's Planning Enforcement Policy (PEP) (February 2009), all complaints regarding breaches of planning control should be confirmed in writing. Anonymous complaints are not acted upon unless it is in the wider public interest to do so. Where members of the public have particular concern over disclosing their identity they are encouraged to ask their Borough Councillor, or if applicable, their Parish or Town Council to report the issue on their behalf.
- 2.2 When complaints are received a case is set up and allocated to an officer (generally the Enforcement Officer who carries out the initial investigations). An acknowledgement is sent to the complainant providing the name of that officer and reference number of the case, which should be used in all subsequent correspondence.
- 2.3 All complaints received are treated as confidential and a complainant's identity is not generally revealed without their consent unless the Council is required to reveal that information by law. Access to enforcement case information is therefore restricted to maintain such confidentiality.
- 2.4 It is current policy to advise the complainant, on all but the cases that are more significant as having the greatest impact within 30 working days, of

one of the following:

- No breach of planning control has been identified
- It has been concluded that it is not expedient to take action
- Discussions have been entered into to remedy the breach
- A retrospective application has been invited to be submitted.

2.5 These cases are category 2 and 3 cases as defined in the PEP. For those the cases that are more significant have the greatest impact (category 1 cases as defined in the PEP), the complainant should be advised, verbally, if immediate action is considered necessary and given an explanation of why such action is required which is then confirmed in writing within 10 working days.

2.7 In addressing the expediency of taking formal enforcement action, consideration is given as to whether such action would be in the public interest. The investigating officer must judge the overall impact of the unauthorised development, doing so with reference to national and local planning policies as set out in the Development Plan and to any other material considerations. A report is prepared setting out such considerations.

2.8 If a breach does not result in 'demonstrable harm', (because planning permission would be likely to have been granted for the development in any event) then it is not expedient to take action. In such circumstances a retrospective planning application is often requested to regularise the breach of planning control and, where necessary, to impose restrictions or secure amendments to the unauthorised development to make it acceptable in planning terms. A report is prepared on the retrospective planning application setting out the key planning considerations, as with any other planning application. Where a retrospective application is not received but it is nonetheless not expedient to take enforcement action, a file note, and in some cases a report, is prepared setting out the reasons why such a conclusion was reached.

2.9 Both the Planning Committee and the Executive Director of Regeneration and Development have, in the existing Scheme of Delegation, authority to exercise the Council's powers of enforcement of planning control. This authority must mean both to take and also not to take enforcement action with respect to such breaches of control.

2.10 The presumption is that the decision on whether or not there is a breach and whether it is expedient to take enforcement action will be made under delegated powers by:

- Senior Planning Officers on breaches of planning control relating to householder developments (except where they are themselves the case officer),
- The Development Management Team Manager on all other matters except for breaches of planning control relating to Major Development (other than where they are the case

officer).

- The Head of Planning on breaches of planning control relating to Major Development

2.11 Where such matters are reported to Planning Committee, following a decision by the Head of Planning that it is appropriate to do so or by the request of Members, the relevant reports are cleared by the Development Management Team Manager except where the case officer or the breach relates to Major Development in which case the Head of Planning would clear the report.

2.12 The decision arising from the decision by Planning Committee or under delegated authority is whether it is expedient to take action and if so what steps are necessary to rectify the breach and the timescales within which such steps should be taken. Legal advice is generally sought as to the type of action that is appropriate to the breach of planning control identified as there are a number of different notices and/or actions that are able to be taken by the Local Planning Authority. These can be summarised as follows:

- Enforcement Notice
- Breach of Condition Notice
- Stop Notice
- Temporary Stop Notice
- Section 215 Notice
- Injunctive Action
- Formal Cautions
- Planning Enforcement Order

Further information about each of the above can be found within the online Planning Practice Guidance (PPG) and in particular the section on Ensuring Effective Enforcement.

2.13 It should be noted that enforcement action is taken in respect of a specific breach of planning control and the breach of planning control alleged will be identified in any Notice that is served. If the Notice is not complied with within the specified time period the Local Planning Authority can seek to prosecute with respect to that non-compliance. Notices are specific as to the breach of planning control identified within them. Any other breaches of planning control that take place subsequently are not covered by the action already taken and as such it will not be possible to seek to prosecute such matters pursuant to the Notice already served. Such breaches will need to be the subject of separate enforcement action if it is expedient to take action.

3. MEMBER INVOLVEMENT

3.1 Members become aware of planning enforcement issues through various means. It may be brought to their attention by those affected by the breach or they may identify a potential breach themselves. In certain cases Members are approached for advice by individuals who are the subject of the complaint.

- 3.2 Members of Planning Committee also receive monthly lists of the new enforcement cases received in the previous month and **it is intended to provide all Members with a weekly list of new cases received in their Ward as part of this new protocol.** The information contained within the lists should be treated as confidential as should any more detailed information obtained from the Planning Service with regard to the breach of planning control.
- 3.3 Given the number of cases that are received it would not be possible to provide Members with updates on all cases received, however **information will be provided upon request.** In addition **if Members wish to receive regular updates on particular cases these can be provided upon request.** In such cases **updates will be given as soon as practicable after an event has occurred (such as a site meeting, correspondence with the individuals who are the subject of the complaint, or a key milestone has been reached) or every month following the request whichever is sooner.** Any requests for information or for regular updates must be made in writing through email to planningenforcement@newcastle-staffs.gov.uk.
- 3.4 If a Member considers that a enforcement case should be reported to the Planning Committee for their information or for a decision to be reached as to whether enforcement action should be taken and in what form, they **should send a request in writing to the Chair of Planning Committee asking that the matter is to be brought to Committee setting out why that is considered appropriate.** The Chair of Planning will upon receipt of such a request consult with the Head of Planning and the decision of the Chair on that request shall be final. Where the Chair asks for a report to come to Committee officers will aim to bring such a report either to the next meeting of the Committee or the following one. Where a case is reported to the Committee, a Ward Member who is not on Planning Committee will be entitled to speak on the item on the same terms as the public speaking protocol provided that the item is not being dealt with as a confidential item where Committee resolve that the public (including Members not on Planning Committee) are to be excluded. Any Members of Planning Committee are under an obligation to disclose any interest in an enforcement case that is being considered at the meeting as with any other item on the agenda.
- 3.5 A Member may wish to set up a meeting to discuss an enforcement case that includes other interested parties, such as the MP or a Parish Council. **If that is the case a request should be made in writing to the Development Management Team Manager.**
- 3.6 Quarterly reports are taken to Planning Committee as follows:
- Open Enforcement cases – providing background information regarding the scale of the enforcement case load, to enable the Committee to undertake its oversight role. The report identifies the number of new cases opened within the last Quarter and

the overall number of open cases at that point in time. A Table is provided showing the number of open cases for previous years.

- Progress on Enforcement Cases where Enforcement Action has been authorised – providing details of progress made on those cases where enforcement action has been authorised either by the Planning Committee or under delegated powers. It includes details of all the cases, the progress made within the last Quarter, and the targets for the next Quarter.

3.6 In all cases where enforcement action has been authorised the case officer will provide monthly updates to the Chair and Vice-Chair of Planning Committee and Ward Members in addition to the reporting of such cases in the quarterly report referred to above.

4. REVIEW OF THIS PROTOCOL

4.1 The operation of this Protocol shall be reviewed 12 months after it has been brought into effect.

5. RELEVANT ENFORCING AUTHORITY

5.1 Newcastle-under-Lyme Borough Council, as Local Planning Authority, is the appropriate enforcing authority for the majority of breaches of planning control. Where enforcement involves activities relating to mineral extraction, waste disposal and recycling Staffordshire County Council is the relevant enforcing authority dependent, in the case of waste disposal upon the scale of such activities and the purpose for which the waste is being deposited on site.

5.2 Where the unauthorised activity results in, or has the potential to result in, pollution, the Environment Agency may be the relevant lead enforcing Authority.

5.3 Where the activities involve a statutory nuisance the Council's Environmental Health Division may be better placed to take action.

5.4 The County Council, as Highway Authority, are the relevant enforcing authority where the breach of planning control is taking place entirely on a public highway and if it does not relate to a breach of condition of planning permission.

5.6 Where a complaint relates to unstable/dangerous buildings such complaints should be directed to the North Staffordshire Building Control Partnership.

5.7 There are a number of complaints that are received that don't relate to breaches of planning control and as such are not matters that the Borough Council has any powers to take action against. Where such complaints are received the Planning Service endeavours to direct the complainant to the relevant enforcing authority. Some of the typical complaints and the relevant enforcing authority are as follows:

- Obstruction of the highway and other road traffic issues – the Police
- Operation of care homes – Ofsted
- Safety of building sites – Health and Safety Executive

6. KEY SOURCE MATERIAL AND LEGISLATION

- [Town and Country Planning Act 1990](#) – This forms the current primary legislation
- [Planning and Compensation Act 1991](#) and the [Planning and Compulsory Purchase Act 2004](#) – these two Acts are secondary legislations which amend and add to the provisions of the Town and Country Planning Act 1990.
- [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#)
- [Localism Act 2011](#)
- [National Planning Policy Framework](#) (NPPF) (July 2018)
- [Planning Practice Guidance](#) (PPG) including a section on [Ensuring Effective Enforcement](#)
- [Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)
- [Newcastle-under-Lyme Local Plan](#) (NLP) 2011
- [Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) (as amended)
- [Town and Country Planning \(General Permitted Development\) Order 2015](#) (as amended)
- [Town and Country Planning \(Use Classes\) Order 1987](#) (as amended)
- [Town and Country Planning \(Control of Advertisements\) \(England\) Regulations 2007](#)
- [Regulation of Investigatory Powers Act 2000](#)
- [Police and Criminal Evidence Act 1984](#)
- [A Councillor's Workbook on Planning](#) by the Local Government Association – this includes a short section on planning enforcement.
- [Probity in Planning for Councillors and Officers](#) by the Local Government Association and the Planning Advisory Services
- [Newcastle Borough Council Members Protocol on Planning Matters](#) September 2018