



Planning Enforcement Policy Protocol

March 2010



1 Introduction

- Within the Development Management service there is a dedicated specialist Monitoring and Enforcement Team which plays an essential role in delivering an effective and efficient planning service.
- This document sets out the context for the operation of the monitoring and enforcement function within Newcastle City Council. It sets out the standards and procedures that we will take when using the wide range of legislative powers available to us in relation to planning matters.

2 Relationship with the City Council's Corporate Objectives

The City Council has identified the following as its priority objectives:

- Strengthening the Economy
- Well-being, health and independence
- Managing environmental impact
- Creating and sustaining quality places to live
- Safer, inclusive and cohesive communities
- Children and young people

The Team contributes to the achievement of the Council's main priority objectives by:

- Protecting the amenity of those who live and work in the city from the harmful effects of unauthorised development and the neglect of land and buildings
- 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 public amenity



3 National Policy

Development Management – Proactive Planning

- The Monitoring and 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 team takes a positive and proactive approach in relation to the monitoring of conditions as well as the monitoring of sites to ensure compliance with approved consents.
- A proactive approach to planning enforcement can make a significant contribution to wider Council objectives in relation to regeneration and sustainable development.
- 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 the move towards an effective development management service enhancing the traditional reactive approach of enforcing contraventions.

National Guidance and Policy on Enforcement

- When investigating alleged breaches of planning control, the Monitoring and Enforcement Team will follow central government advice. Government advice is contained in Planning Policy Guidance 18: Enforcing Planning Control and Circular 10/97 - Enforcing Planning Control: Legislative Provisions and Procedural Requirements.
- The guidance sets out the general approach to enforcement which may include some or all of the following stages:
 - Investigation
 - Assessment of alleged breach
 - Persuasion/Negotiation (remedial action or retrospective application)
 - Consideration of formal enforcement proceedings
 - Possible Instigation of formal proceedings



- Advice contained in PPG18 indicates that in the first instance all breaches of planning control should be resolved voluntarily through negotiation and persuasion.
- If a voluntary resolution is not achieved the Team can consider the use of formal enforcement proceedings in an attempt to secure compliance.
- The guidance sets out that local planning authorities have a general discretion to take enforcement action, when it is considered appropriate and expedient to do so in the circumstances.
- In assessing the need for enforcement action, the Council should be guided by the following considerations:
 - Whether the breach of planning control unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest.
 - We will have regard to the provisions of the development plan and to all other material planning considerations raised by a particular breach.
 - Enforcement action should always be commensurate with the breach of planning control to which it relates.
 - Government advice indicates that it is inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site.

4 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
- 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
 - Untidy land or buildings which affect local amenity
- 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) Order 1995 (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: (www.planningportal.gov.uk)
- The Monitoring and 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.

5 What Happens When You Report a Breach of Planning Control?

- 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, by telephone or by email. The address and contact details of the Monitoring and Enforcement Team are set out at the end of this document.
- All investigations are carried out confidentially and the identity of the complainant will not be revealed by the Council.
- Any information provided by members of the public is treated in confidence unless it is necessary to disclose this information at an appeal or in court when it will be made public. In such cases, the individual's consent will be sought prior to this information being made public. Such occasions are rare and involvement is on a voluntary basis.
- 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, an officer will be able to advise on the best course of action.

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.
- We will endeavour to contact the complainant within 20 working days from the date when the complaint was received to inform you whether there is a breach of planning control and if so how we intend to pursue the matter.
- If the Council decide to take, or not to take enforcement action, we will endeavour to contact the complainant within 10 working days of that decision and the reason will be explained.
- We will acknowledge and update 90% of the complainants within these agreed timescales.
- We will publish our performance against these standards on the Council website.

Case Priority System

- It is acknowledged that some alleged breaches need be given a higher priority than others. Priority will be given to cases where there is the possibility of the greatest harm being caused. Accordingly, the site visit 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.

Priority 1

This category includes complaints relating to work or development which may lead to irreversible demonstrable harm and could include:

- Unauthorised work to a listed building and scheduled monuments
- Unauthorised work to protected trees
- Unauthorised demolition in a conservation area

For these cases the first site visit will be undertaken within **1 working day** from the receipt of the complaint.

Priority 2

This category includes any development or activity which causes clear and immediate harm to the locality and could include:

- Operational building works
- Unauthorised changes of use
- Erection of unauthorised advertisements that have a detrimental impact on highway safety
- Breach of condition

For these cases, the first site visit will be undertaken within **5 working days** from the receipt of the complaint.

Priority 3

This category includes enquiries for which there is less impact in terms of harm being cause and could include:

- Untidy sites
- Unauthorised display of an advertisement(s)
- Minor developments such as sheds, fences, hard standings and satellite dishes

For these cases, the first site visit will be undertaken within **10 working days** of the receipt of the complaint.



6. What course of action will be taken?

Following the receipt of the complaint, a site inspection will be carried out according to the priority system as set out above. From the evidence collated during the site inspection, an assessment will be made as to whether planning permission is required for the works.

No Breach of Control

- In many cases, the initial site visit 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.
- Of the 426 cases which were closed by the Monitoring and Enforcement Team in 2009, 61% of these cases were closed because there was no evidence of a breach of planning control.
- In such instances, the case officer will contact the complainant to explain that the Council is unable to take any action through its planning enforcement powers.

Potential Breach of Control

- 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 evident 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 will be explained to the complainant that further investigations and monitoring is required.

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 this allows for a full formal assessment to be carried out on the development and with the statutory consultation period.



- 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 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. Of the cases ongoing in 2009 where a breach had been identified, 83 percent were resolved informally in this manner.
- A quarterly review will be carried out for all outstanding unresolved cases. If negotiation and persuasion methods have failed to resolve the breach of planning control, an assessment will be made as to the level of harm that is being caused by the unauthorised development.
- Harm can be caused through a number of factors including:
 - Adverse impact on visual amenity due to poor design or inappropriate materials
 - Loss of protected trees or damage to listed buildings
 - Adverse impact on residential amenity
 - Noise, nuisance or disturbance from the operation of a business
 - Untidy land and run down or derelict buildings that result in a poor quality urban 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. In 2009, 10% of all cases received in the year were closed because it was not considered expedient and in the public interest to instigate formal proceedings to resolve a breach.

Formal Enforcement Action

- Formal enforcement action is only instigated when it is considered expedient and all other avenues to resolve the problem have failed.
- 17 percent of cases closed in 2009 were as a result of the compliance with a formal notice.



- 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.
- The decision to take formal enforcement action or to instigate prosecution proceedings is taken under delegated powers by the Head of Development Management.
- An Enforcement Notice can be served on the owner and/or occupier of the land. The notice must explain the nature of the breach of planning control and set out what remedial measures should be carried out and the date by which this should be carried out.
- If the Council consider that an unauthorised development is causing serious harm to public amenity in the neighbourhood of the site, vigorous enforcement action may be taken, including if appropriate the service of a stop notice, to remedy the breach urgently or to prevent further harm being caused to public amenity.
- 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 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 straight forward and can be a lengthy and time consuming process.
- 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



8. Equality and Diversity Statement

- The Development Management Service is committed to the City Council's objective of achieving the Excellent level of the Equality Framework for Local Government (EFLG).
- The Service has assisted in the development of an Equality and Diversity Action Plan for the Strategic Housing, Planning and Transport Division. The purpose of the plan is to ensure that the appropriate infrastructure is in place to embed equality and diversity but primarily, to ensure our customers receive an excellent level of service that is inclusive and meets their needs regardless of which section of the community they belong to.
- If requested we will ensure that documents are translated into the customer's preferred format. Interpreters will also be used for those people who have difficulties understanding English through the use of the Language Line.
- If you require this information in another format or language please phone a member of the Planning Enforcement Team on the contact details set out below.

9. Contact Details

You can contact a member of the Monitoring and Enforcement Team in several ways:

Email

planning.control@newcastle.gov.uk

Phone

(0191) 211 5669; (0191) 277 8939; (0191) 277 8946; (0191) 277 8943

In person

Our Customer Service Centre is open between 08:30am and 04:30pm
Monday - Friday

In writing

Monitoring and Enforcement Team, Development Management, Strategic Housing Planning and Transportation, Newcastle City Council, Civic Centre, Barras Bridge, Newcastle upon Tyne, NE1 8PH