

Introduction

This policy statement relates to Rushcliffe Borough Council's (the Council's) Planning Enforcement service and will describe the purpose of the enforcement service and how the Council will deliver the service to the community.

The policy aims to provide an efficient planning enforcement service in support of the Council's statutory planning service in a clear, consistent, proportionate and open manner, in accordance with the [Corporate Enforcement Policy \(221.32 KB, application/pdf\)](#). It is recognised that establishing effective controls over unauthorised development assists in conserving the natural and built environment whilst helping to protect the quality of people's lives and maintaining the Council's integrity.

Government advice and legislation

The National Planning Policy Framework (NPPF) was introduced in March 2012, and at the time of review of this policy the latest version in force was the December 2023 revision. Paragraph 59 of the Framework 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. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

In addition to the statement made in the NPPF the Town and Country Planning Act 1990 provides the main legislative background regarding breaches of planning control along with the Planning Practice Guidance document entitled “Enforcement and post-permission matters” which was published on 6 March 2014.

The purpose of planning enforcement

The integrity of the planning service depends on the Council's readiness to take enforcement action when appropriate. The Council is committed to providing an effective planning enforcement service.

The planning system is designed to achieve a balance between the rights of landowners to enjoy their property and protecting the amenity of neighbours and the general public. The enforcement of planning control focuses on proportionate resolution rather than punishing those who have acted in breach, sometimes unknowingly. It is expected that land owners and developers will observe the spirit of planning legislation and refrain from carrying out development until the necessary planning permissions have been obtained.

The Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so. The Council will investigate alleged breaches of planning control, to determine whether a breach has, as a matter of fact occurred, and if it has, determine the most appropriate course of action.

The key objectives of the enforcement policy:

- To provide an accessible service that maintains public confidence in the planning system;
- To provide a service that is both reactive and proactive in its commitment to remedy undesirable effects of unauthorised development;
- To provide a service response that is prioritised according to the harm or the potential harm caused by the breach;
- To provide a development monitoring service that is prioritised according to the scale and complexity of the development permitted; and
- To seek resolution of planning breaches through informal and formal action including, where appropriate, prosecution of offenders to uphold the integrity of the planning system.

What is a breach of planning control?

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 (the 1990 Act) as either:

- a. the carrying out of development without the required planning permission; or
- b. failing to comply with any condition or limitation subject to which planning permission has been granted.

(development undertaken which is not in accordance with approved plans would fall under b) above)

Important factors to consider include the extent of the powers of the planning service which is only concerned with 'development'. Section 55 of the 1990 Act provides the meaning of development as "...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."

- a. For the purposes of the 1990 Act, 'development' also includes demolition of buildings but **does not** include: the carrying out for the maintenance, improvement or other alteration of any building of works which:
 - i. affect only the interior of the building, or
 - ii. do not materially affect the external appearance of the building,

A breach of planning control could involve such matters as the unauthorised erection of a building or extension to a building, a material change of use of land or breaches of conditions attached to planning permissions. Other matters that the Planning Enforcement Service might investigate include:

- The display of unauthorised advertisements;

- Works to Listed Buildings without the relevant consent;
- Unauthorised works to trees which are the subject of a tree preservation order (TPO) or are in a conservation area;
- Untidy land adversely affecting the amenity of the area;
- Failure to comply with a Section 106 agreement.

Matters that are not breaches of planning control

- Internal works to a non-listed building;
- Nuisances caused by odour, noise, light or vermin;
- Obstruction of a highway or public right of way (PROW);
- Parking of vehicles on the highway or on grass verges;
- Parking caravans on residential driveways or within the curtilage of domestic properties providing their use remains incidental to the enjoyment of the property;
- Running a business from home where the residential use remains the primary use and there is no material adverse impact on residential amenity;
- Land ownership disputes or trespass issues;
- Covenants imposed on property Deeds;
- Rights of access or access for maintenance to a property;
- Any works that are deemed to be 'permitted development' under the Town and Country Planning (General Permitted Development) Order 2015 as amended and or substituted;
- The display of advertisements that benefit from deemed consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (consent is granted by the regulations);
- Dangerous structures or other health and safety issues;
- High hedge disputes (dealt with by the Council's Senior Design and Landscape Officer).

It is not the function of the planning authority to become involved in private neighbour disputes where no planning issue is evident. Additionally, it is not the Council's role to mediate in private legal disputes such as boundary disputes or damage to private property. Such cases will not be investigated as they are civil matters and customers will be advised accordingly.

Additionally, cases reported to the Council by a party under investigation for a breach of planning control reports themselves, will usually be investigated sequentially and the Council may defer such investigations until after the current matter has been fully investigated.

Who to contact for non-planning issues

Many property and land issues may arise which are not the responsibility of, or within the jurisdiction of, the Council. The following examples are provided as a guide and are not intended to be exhaustive or to cover every situation.

Internal works to a non-listed building are not development and not the responsibility of the Council as Local Planning Authority. If the alterations are structural, these may fall under the remit of the relevant body which discharges the Building Regulations

function, in the case of Rushcliffe this would be the East Midlands Building Consultancy (EMBC). EMBC would also be the responsible body for investigating dangerous structures.

Matters relating to nuisances caused by odour, noise, light or vermin would be dealt with by the Environmental Health department within the Council.

Any matters relating to the highway, including obstruction of a highway or public right of way (PROW) or indiscriminate parking would be dealt with by the Nottinghamshire County Council as Highway Authority, or in some cases the police.

Other issues, such as restrictions imposed by legal covenants which may restrict the parking of caravans on domestic properties, the operation of a business from home, land ownership disputes and issues over rights of way or access to property for maintenance purposes, would be civil matters and advice may need to be sought from a solicitor.

The Council will endeavour to, where possible, pass on details of complaints which relate to other regulatory regimes, particularly those which constitute a criminal offence, such as breaches of Habitat Regulations.

Enforcement action is discretionary

As outlined above, paragraph 59 of the NPPF advises that whilst effective enforcement is important to maintain public confidence in the planning system, enforcement action is a discretionary function.

It is important to note that, just because there may be a breach of planning control, this in itself may not be sufficient reason to take enforcement action. The Council must first decide, having given regard to the policies contained in its Local Development Plan, the National Planning Policy Framework (NPPF) and any other material planning considerations, whether or not it is '**expedient**' to take formal action.

The test of expediency requires a careful assessment of the nature and extent of the breach, or breaches, of planning control and the degree of harm they might be causing to the environment and/or amenity of the area. Therefore, enforcement action is **discretionary** and each case must be assessed on its own merits.

The NPPF also advises that councils should act proportionately with regard to suspected breaches of planning control. Generally, the use of formal enforcement powers should be a last resort, unless the extent and nature of the breach is such that it is causing unacceptable and irreversible harm. Typically the Council will give those responsible for a breach of planning control the opportunity to cease the breach of planning control or seek to regularise the breach before resorting to using its formal enforcement powers. Ultimately the use of such powers must be proportionate and commensurate to the breach of planning control.

This means that the Council may not take formal enforcement action in all cases where there has been a breach of planning control identified.

All complaints will be:

- Given a priority based on the Council's published priority table (see below);
- Investigated, including visiting the site where necessary in line with the published timescales contained in the policy document; and
- Pursued until such a time that the matter is satisfactorily resolved by one of the following:
 - o The breach is ceased/removed following informal negotiations with enforcement officers;
 - o The breach is ceased/removed following informal negotiations with enforcement officers;
 - o The breach is regularised (either by the grant of retrospective planning permission or the taking of formal action);
 - o The alleged breach is found to be lawful;
 - o A decision is taken that it is not expedient to pursue the breach formally.

In the event that a formal notice is served and there is a failure to comply with the requirements of the notice, it is an option for cases to be pursued through the Magistrates' Courts or higher court where necessary.

How to report an alleged breach of planning control

The Council considers a large number of complaints each year concerning alleged breaches of planning control. In order that a complaint can be dealt with as soon as possible it is important to provide the Council with as much information as possible. Below is a list of the type of information that would assist the Council in dealing with a complaint:

- An accurate description of the exact location or address where the alleged breach is taking place;
- A detailed description of the activities taking place that are cause for concern;
- Where known, the names, addresses and phone numbers of those persons believed to be responsible for the alleged breach or the land owner's details;
- The date and times of when the alleged breach first took place and whether it is ongoing;
- If the complaint relates to a material change of use of the land, a description of the previous use and condition of the land;
- Any other information or evidence that may be able to assist (e.g. photographs, vehicle registration numbers);
- The complainant's name, telephone number and address or e-mail address;

Complaints about alleged breaches of planning control will be accepted by either:

- e-mail – planningandgrowth@rushcliffe.gov.uk
- online report - [breach of planning rules form](#)

- letter addressed to - Rushcliffe Customer Service Centre, Fountain Court Gordon Road, West Bridgford, Nottingham, NG2 5LN
- telephone - **0115 981 9911**, or
- in person at the Rushcliffe Customer Service Centre or one of our Contact Points, provided the complainant provides their name, address and telephone number.

It is important for the Council to hold the details of the complainant so that the outcome of the investigation can be communicated to them, or if additional information is required during the course of the investigation. The details of the complainant are normally treated as confidential; however, in some circumstances this may not be possible particularly when matters progress to court and the complainant may be required to give evidence and/or details of the complaint must be disclosed. However, this will be prior discussed with the complainant.

The substance of enforcement complaints are not in themselves confidential. In some cases it may be necessary to rely on evidence from complainants in order to take action and the complainant would need to consider whether they are willing to assist the Council by collecting evidence and potentially acting as a witness at an appeal or in Court. A planning enforcement officer will explain what may be required in these cases.

Once a breach of control has been established, the complainant may be asked to make a note of their observations and keep a log of any relevant activities, this is particularly helpful in cases relating to alleged change of use of land. It is particularly useful to note times, dates, names, addresses, telephone numbers and registration details of any vehicles involved.

Anonymous complaints will not normally be investigated unless the complaint is regarding a potential criminal offence, such as works to a Listed Building or removal of protected trees. Complainants who do not wish to give their personal details are advised to contact either their Ward Councillor or their Parish Council who may then choose to raise their concerns on their behalf.

Vexatious, malicious or repeated complaints that do not have any substantive planning basis will not normally be investigated. Where an initial complaint is investigated and found to be unfounded, the Council may defer to investigate further complaints from the same complainant until a degree of substantiating evidence has been provided. In the case of further complaints, the Council may subsequently request a demonstration of a breach before further involvement to ensure that an appropriate and relevant case can be opened by the Council.

Abusive or unreasonable complainants: The Council will not tolerate any insulting, threatening words or behaviour towards its staff at any time, either in person or via any other means. Any abusive telephone calls will be terminated.

How will we prioritise complaints?

In order to make the best use of resources available it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. This

will initially be decided by the Council following receipt of the complaint. However, this may be subject to change following a site inspection or when further information comes to light.

Priority Categories

Priority 1 (High)

Development causing significant and irreversible damage to the environment or amenity. Typical examples are:

- Unauthorised works to, or demolition of a listed building or building within a Conservation Area;
- Unauthorised development within a Conservation Area (where the development may impact on the character and appearance of the area);
- Unauthorised works to trees protected by a Tree Preservation Order or in a Conservation Area;
- Unauthorised development close to or within a Site of Special Scientific Interest (SSSI);
- Large scale engineering operations within the Green Belt;
- Breaches of statutory planning notices such as Enforcement Notices.

Priority 2 (Medium)

Development causing less significant but continued harm to the environment or amenity, time-sensitive breaches or development that compromises public safety. Examples include:

- Large-scale unauthorised engineering/construction works where a significant impact is felt over a wide area;
- Substantial operational development in the Green Belt;
- Unauthorised changes of use causing significant harm to the amenity of an area, for example car repairs business from a residential property;
- Unauthorised vehicle accesses causing significant risk to highway safety;
- Development/operations which are not in accordance with approved plans/conditions of a planning permission;
- Unauthorised development within a Conservation Area (not falling within Priority 1).

Priority 3 (Routine)

Development causing a limited degree of disturbance to local residents or damage to the environment. Examples include:

- Unauthorised operational development which would be likely to receive planning permission;
- Unauthorised fences/walls/gates (unless public safety is compromised/ attached to or adversely affecting the setting of a listed building);
- Unauthorised telecommunications equipment/satellite dishes/equipment on residential dwellings;

- Display of advertisements not causing significant harm to amenity or public safety.

Timescales for investigations

Enforcement officers will endeavour to carry out an initial site visit for the Priority 1 cases within 1 working day, Priority 2 cases within 5 working days and Priority 3 cases within 10 working days.

Each complaint will be allocated a Priority upon receipt based on the information available at that time. Complaints will be re-categorised should further information become available which suggests a quicker response time is more appropriate.

What are the possible outcomes of an investigation?

No breach established – Following an initial site visit it may be found that there is no breach of planning control because, for example, the activity or operations do not amount to development, the unauthorised use has ceased or the development already has planning permission or is permitted development.

There is a breach of planning control but not considered expedient to pursue – Just because a breach may exist does not automatically mean that formal action will be taken. Enforcement powers are discretionary and minor technical breaches or circumstances where the development is considered acceptable (planning permission would likely be granted) may not be considered expedient to pursue.

The development is lawful or immune from enforcement action – This is when the unauthorised development or unauthorised change of use has occurred over a long period of time without being brought to the attention of the Council. There are certain time limits involved in relation to operational development and changes of use. Enforcement action cannot be taken against developments which are immune under planning legislation due to specific time limits which are:

- 10 years for unauthorised operational development or change of use of a building to use as a single dwelling house;
- 10 years for a material change of use of land and buildings or a breach of a condition imposed on a planning permission.

Note: Where it appears that a person has deliberately attempted to conceal a breach of planning control in order to achieve immunity from enforcement action, the Council can apply to the Magistrates' Court for a "Planning Enforcement Order" in respect of the breach. If granted, the Order allows the Council up to a year to take formal enforcement action against the apparent breach. Such circumstances are normally very rare and the Council must be satisfied that there has been a deliberate attempt to conceal the breach of planning control.

In December 2023, the period for immunity for operational development or change of use of a building to a use as a single dwelling changed from 4 years to 10 years. Should it be found that the development/change of use had met the 4 year period prior

to the change in legislation, which came into effect on December 26th 2023, this would be considered immune from further action.

Negotiations take place to find a solution – In accordance with Government guidance the first priority is to try and resolve any breaches of planning control through negotiation. Only when such negotiations fail to secure a solution should formal action be considered. The Council will not, however, allow negotiations to become protracted where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.

Lack of Evidence – In some cases it may not be possible for the Council to confirm that the alleged breach is taking place. In such cases, complainants will be asked to assist in providing evidence that could be used at both the appeal stage and at any subsequent legal proceedings. A lack of sufficient evidence may result in no action being taken.

It is often necessary to quantify the harm arising from breaches of planning control, and in cases where the alleged harm is in the form of neighbour impacts such as overlooking it may be necessary to visit neighbouring property to quantify the harmful impacts.

Invite a retrospective application – In accordance with Government advice the Council will firstly seek to negotiate an amicable solution to any confirmed breach of planning control. By entering into negotiations with the parties involved, a solution may be found which could involve the cessation of any unauthorised change of use or building operations, the removal of any unauthorised building works or items constituting a material change of use of land, the remedy of any breach by the submission of a retrospective planning application.

A retrospective application will be invited where it is considered that there is a reasonable likelihood that planning permission may be granted in line with local and national planning policies or where unacceptable impacts of development could be mitigated or a development may be made acceptable by way of the imposition of conditions.

Minor or technical breaches of planning control may not be pursued in the event that a retrospective application has been requested and not submitted or where it is not considered expedient or in the public interest to do so.

Formal Action

The Council has a range of formal powers under the Town and Country Planning Act that it can use to remedy breaches of planning control. More information on these powers can be found at Appendix 1.

In addition to the powers detailed above, the Local Planning Authority also has powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 to serve a repairs notice or require urgent works to be undertaken in the interests of preserving a listed building/structure in some circumstances.

Further information is available in [The National Planning Practice Guidance](#) (NPPG)

In addition to the above further action is available including taking direct action to remedy a breach or to instigate prosecution proceedings in The Magistrates' Courts for non-compliance with a formal notice where it is deemed necessary to do so.

The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence. In exceptional circumstances surveillance may be considered to investigate an alleged breach, in these circumstances the Regulation of Investigatory Powers Act 2000 (RIPA) and the Council's policy will apply.

What happens if an allegation is made against you?

If a complaint is received that affects you, the first thing that will happen is either you will be contacted (where your details are known to the Council) or the site in question will be visited by an enforcement officer. The purpose of this initial visit is to establish the facts of the case and whether there is any basis to the allegations made. The officer will, where necessary, take measurements and photographs of the development or activity taking place. This site inspection may be undertaken without any prior notification.

If it is established that a breach of planning control has occurred you will be advised of the details of the breach and of what steps that need to be taken to either rectify the breach or regularise the situation.

You will be given a reasonable period of time (subject to the nature of the breach) to resolve any breach of planning control. If compliance is not secured through amicable negotiations or the submission of a retrospective planning application, formal action may be instigated.

The Council will seek to avoid long drawn-out negotiations intended to hold the council back from taking formal action. In many cases, particularly where the works are likely to be acceptable, you may be invited, without prejudice, to submit a retrospective planning application. In cases where pre-commencement conditions have not been discharged, you may still be able to apply to discharge the condition providing the permission has not lapsed. Alternatively, you may need to submit a new planning application.

If you are served with a formal notice, the enforcement officer can help to explain the general meaning of the notice and assist you to understand its implications. However, the Council's enforcement officers cannot act as your advisors and cannot make decisions on your behalf. In such circumstances you are strongly advised to also seek your own independent legal advice.

The process for dealing with allegations of unauthorised development is set out below:

Notification of alleged breach is passed for investigation.

There are two outcomes:

- No breach - no action necessary, the investigation is closed;
- A breach is identified.

Where a breach is identified there are four possible courses of action:

1. Regularisation is necessary
2. Enforcement action is necessary
3. Immediate action is necessary, or
4. Action is not expedient and the investigation is closed.

Cases where regularisation is necessary

There are two possible routes:

- A planning application is received and approved - the investigation is closed.
- A planning application is not received or refused - this leads to relevant enforcement action where the outcomes could be:
 1. Compliance with enforcement action - investigation is closed
 2. Appeal against action - see below
 3. Non-compliance with enforcement action - potential legal action leading to compliance - the investigation will be closed.

Cases where an appeal is made against the enforcement action

- An appeal is allowed - the investigation will be closed.
- The appeal is dismissed - there are two possible routes:
 1. Compliance - the investigation will be closed.
 2. Non-compliance - potential legal action leading to compliance - the investigation will be closed.

Power of entry onto land

Section 196 of the Town and Country Planning Act (as amended) and the Planning (Listed Buildings and Conservation Area) Act 1990 gives officers of the Council the power to enter land and/or premises at all reasonable hours in order to undertake his/her official duties. Wilful obstruction of a person exercising a right of entry is an offence.

The above does not allow the admission to any building used as a dwelling house to be demanded as a right by virtue of the aforementioned legislation, unless twenty four hours prior notice of the intended entry has been given to the occupier of the building. Where the dwelling house is a listed building a separate power of entry exists under Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990, this power does not require twenty-four hours prior notice to be given.

Reporting on successful resolutions

The Council understands that the enforcement process can often appear opaque from the public's perspective as the Council do not hold regular consultations on specific investigations. This is to ensure that the evidence collected during investigations is legitimate and admissible in court should an opportunity arise. However, in order to ensure that the public see real enforcement work being carried out either through positive negotiation, regularisation or through stronger enforcement powers, Officers will create a six monthly update of particular cases which show positive action being achieved within the community. This six monthly update will be circulated to Ward Councillors for their information and their records.

Planning Enforcement Register

The Council hold a Planning Enforcement Register which provides details of the Enforcement Notices issued by the Local Planning Authority. It includes details of;

- Enforcement Notices
- Breach of Condition Notices
- Stop Notices
- Temporary Stop Notices
- Planning Enforcement Orders
- S215 Notice
- Tree Replacement Notices
- High Hedge Remedial Notices
- Hedgerow Replacement Notices
- Listed Building Enforcement Notices
- Advertisement Removal Notices
- Advertisement Action Notices

Details of how to access the Register can be found on the [Planning Enforcement](#) page.

Proactive development monitoring

Paragraph 59 of the NPPF requires councils to, whilst setting out their Enforcement Plan, set out how they will monitor the implementation of planning permissions being developed out within their area.

The Council is currently delivering a large amount of development as part of our adopted Local Plan and these developments, usually of a large scale, are mostly located close to existing settlements and therefore have potential to impact on the amenities of existing residents during the construction phase. Furthermore, developers are often required to implement various environmental safeguards and enhancements as part of their development package which must be delivered in a timely fashion, as controlled by the planning permission. For many larger scale developments, financial obligations or infrastructure are also secured and the payment of these funds or the delivery of the infrastructure is often provided for by complying with the requirements of the Section 106 Agreement.

For these reasons the Council operate a proactive development monitoring service to ensure that developments are carried out strictly in accordance with the restrictions,

limitations and requirements of the planning permissions, including any conditions imposed on the consent as well as any obligations secured through a Section 106 Agreement. The Council will achieve this by:

- Actively monitoring the progress of developments, including commencement and occupation levels;
- Ensuring that, where appropriate, developers provide details and information secured by condition and through Section 106 Agreements in accordance with the required timescales of the planning permission;
- Ensuring that the development is carried out in accordance with the approved plans/details and that this is achieved within the agreed timescales; and
- Ensuring that all financial obligations are secured and collected as required by the planning permission.

The Council consider and make decisions on over 1,500 submissions for planning applications and provide over 400 requests for planning advice per annum and, therefore, it would not be possible to proactively monitor all developments within the Borough. Larger sites have the potential to cause the greatest level of disturbance to residents and to the wider environment if they are not developed out in accordance with their planning permissions. For this reason, the Council will normally proactively monitor residential development of 50 dwellings or more. Smaller housing developments would not normally be subject to proactive monitoring but will, along with other development types such as commercial/leisure development, be reviewed on a case by case basis only.

Certain elements of the development such as the adoption of roads and sewers as well as occupier contributions to fund management companies are not controlled through the planning permission and therefore sit outside of the remit of the Council.

Through the proactive monitoring of development sites the Council will, when a breach is identified, investigate the breach in accordance with monitoring and timescales explained earlier in this policy. As with reactive planning enforcement and in line with national planning policy guidance, not all breaches of planning control will result in formal enforcement action. Each breach will be investigated and considered on its own merits appropriately considering the level of harm arising from the breach. Carrying out proactive compliance in this way should result in a reduction in the number of retrospective enforcement complaints received.

Human Rights Act

When making decisions relating to enforcement activity officers will have regard to the Human Rights Act 1998.

How you can help us

If you are unsure as to whether planning permission is required, please contact Planning and Growth for advice **before** starting work.

If you already have planning permission, check to see if any conditions must be satisfied **before** starting work and ensure you build in accordance with the approved

plans. If you want to make any changes please contact Planning and Growth **before** carrying out work which deviates from or is not shown on your approved plans.

If you are making a complaint about unauthorised development near you, seek to raise the issue with the Council at the earliest opportunity.

Complaints about the service

If you are unhappy about the level of service you have received from the Planning Service or how the process has been managed, then you may firstly discuss your concerns with the Principal Planning Officer (Monitoring and Implementation) or take it further through the Council's Corporate Complaints Procedure by writing to the Service Manager (Communities) at the address below. Following the initial investigation of your complaint, you may ask for the matter to be escalated to the second stage of the Council's complaints procedure. If, after the matter has been through the Council's complaints procedure you remain unhappy, you may then write to the Local Government Ombudsman who may investigate your concerns. However, please note that the Local Government Ombudsman will only become involved if the matter has been considered under the Council's complaints procedure.

You can contact us:

by telephone on 0115 981 9911

by e-mail at planningandgrowth@rushcliffe.gov.uk

by post to:

Planning and Growth Manager

Rushcliffe Borough Council

Rushcliffe Arena

Rugby Road

West Bridgford

Nottingham

NG2 7YG

Appendix 1

Summary of enforcement powers

This Appendix contains a summary of the main formal enforcement powers available to the Council when investigating enforcement enquiries and dealing with breaches of planning control. In each individual case the Council must assess which action or combination of actions is best suited to dealing with the particular breach of planning control in order to achieve a satisfactory and cost-effective remedy. Most of these powers are contained within the Town and Country Planning Act 1990 ("The 1990 Act"). Furthermore, the Council has other powers at its disposal which may be the responsibility of other areas of the Council, for example, Environmental Health, and the most appropriate powers or combination of powers may be used to address a situation.

Requests for Information Notices

Planning Contravention Notice (PCN) (Section 171C of the 1990 Act)

This can often be the first formal step in resolving a breach of planning control. It is the main method for gathering further information regarding suspected breaches of planning control. The intention of a PCN is also to send a clear warning that further formal action is being considered once the facts of the case have been established.

Section 330 Notice (Section 330 of the 1990 Act)

This power is also used to obtain information, although usually in cases where the Council has sufficient details about the activities being carried out but requires further information concerning ownership. It involves serving a formal notice on occupiers and/or persons with other interests in the premises or land.

Note: For both of these notices it is an offence to fail to comply with the requirements of the notice within the period set for its return OR to make false or misleading statements in reply.

Formal Enforcement Notices

Enforcement Notice (EN) (Section 172 of the 1990 Act)

This is the most common form of notice used to deal with a breach of planning control. It is served when the Council is satisfied that there has been a breach of planning control and that it is expedient to take action. An EN will allege the breach or breaches of planning control that has or have taken place, the steps that must be taken to remedy that breach or breaches, and specify the time period for compliance with the requirements of the notice.

An EN does not take effect until at least 28 days after being served to allow the recipient(s) time to lodge an appeal with the Secretary of State. An appeal stops the notice taking effect until the appeal is determined. If an appeal is lodged all complainants and immediate neighbours will be advised of the appeal and how to make representations to the Planning Inspectorate.

Failure to comply with the requirements of an EN once it has taken effect is a criminal offence which, on conviction in the Magistrates' Court, can lead to a fine of up to £20,000 or an unlimited fine on conviction in the Crown Court.

Breach of Condition Notice (BCN) (Section 187A of the 1990 Act)

Can be used as an alternative to an EN but only in circumstances where there has been a failure to comply with certain conditions placed on a planning permission. (It does not apply to breaches of control relating to listed buildings, advertisements or protected trees). A BCN will specify details of the breach and the steps required to secure compliance. Unlike an EN, there is no right of appeal against a BCN and it takes effect immediately. However, a minimum period of 28 days has to be given for compliance.

Failure to comply with the requirements of a BCN is a criminal offence which, on conviction in the Magistrates' Court, can lead to a fine up to £2,500.

Stop Notice (SN) (Sections 183 & 184 of the 1990 Act)

Used alongside the serving of an EN, when the effects of continued unauthorised activity are seriously detrimental to amenity, public safety or causing irreversible harm to the environment an immediate action to stop the activity is justified. This notice can be used to ensure that the activity does not continue during the time before the EN takes effect or when an appeal is lodged against the EN.

SN's are normally only used in very exceptional circumstances as there can be significant compensation liabilities against the Council if the EN is subsequently quashed.

Failure to comply with the requirements of an SN is a criminal offence which, on conviction in the Magistrates' Court, can lead to a fine up to £20,000 or an unlimited fine on conviction in the Crown Court.

Temporary Stop Notice (TSN) (Section 171E-H of the 1990 Act and Section 44B of the Planning Listed Buildings and Conservation Areas Act)

As with SN's, TSN's are normally only used in exceptional circumstances. Unlike an SN, however, a TSN can be served without first having to serve an EN. However, TSN's can only seek cessation of activity for a period of 56 days and so will only be applied where the serious breach needs to be stopped immediately whilst the Council considers whether an EN needs to be issued.

New powers conferred under the Levelling up and Regeneration Act 2023 allow for Temporary Stop Notices to also be served in respect of works which affect listed buildings and are being undertaken without the benefit of listed building consent, or in breach of conditions.

Failure to comply with the requirements of a TSN is also a criminal offence which, on conviction in the Magistrates' Court, can lead to a fine up to £20,000 or an unlimited fine on conviction in the Crown Court.

Planning Enforcement Order (Sections 171BA to 171 BC of the 1990 Act)

Used where the normal time periods for immunity, a period after which enforcement action cannot be taken, has passed. Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. A Planning Enforcement Order enables an authority to take action in relation to an apparent breach of planning control, notwithstanding that the time limits may have expired.

Untidy Land Notice (ULN) (Section 215 of the 1990 Act)

The Council has the power to issue a ULN on the owner or occupier of land if it appears that the amenity of the area is adversely affected by the condition it is being kept in. A ULN may deal with buildings as well as land and would specify the steps required to remedy the existing condition and within what time scale. The recipient of ULN can appeal against it to the Magistrates' Court.

Failure to comply with a ULN is an offence which, on conviction in the Magistrates' Court, can lead to a fine up to £1,000 on conviction. The Council may also use its direct action powers (see below) to enter the land and carry out the requirements of a ULN that has not been complied with.

Tree Replacement Notice (TRN) (Section 207 of the 1990 Act)

If a tree that is protected by a Tree Preservation Order is removed, uprooted or destroyed in contravention of the Order there is a duty on the landowner to plant a replacement tree of appropriate size and species in the same place. Where the landowner does not comply with this duty, the council has the power to serve a TRN requiring them to plant a replacement tree or trees. The TRN will specify the species and size of tree or trees to be planted and also the time period for compliance. A TRN does not take effect until at least 28 days after being served to allow the recipient(s) time to lodge an appeal to the Secretary of State. An appeal stops the notice taking effect until the appeal is determined.

Works in Default Powers (ie: Direct Action)

The Council may enter land and carry out the required works to secure compliance when an EN, ULN, LBEN (see below) or TRN has taken effect but has not been complied with. There is no requirement to give notice to either the owner or occupier of the land and anyone who wilfully obstructs the exercise of these powers is guilty of a criminal offence. The costs of the works in default can be recovered from the landowner or a legal charge placed on the land.

Other Enforcement Powers

Prosecution

Unauthorised works to a Listed Building.

Under Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 it is a criminal offence to demolish a listed building or to carry out works/alterations which affect its character without the Council's prior written consent. Where such works have taken place without permission the Council may prosecute anyone who is found to have executed the work or to have caused the work to be executed.

It is also an offence to demolish unlisted buildings/structures in a Conservation Area (subject to some exceptions) without planning permission.

The penalty on conviction in the Magistrates Court for this offence could be imprisonment for up to six months or a fine of up to £20,000 or both. The penalty on conviction in the Crown Court for this offence could be imprisonment for up to two years or an unlimited fine or both.

Unauthorised works to protected trees.

Under section 210 of the 1990 Act, it is a criminal offence to cut down, uproot, wilfully destroy or wilfully damage a tree protected by a Tree Preservation Order or in a Conservation Area. Consent from the Council also has to be obtained for any remedial works to a protected tree such as lopping or pruning. Where such works have taken place without consent the Council may prosecute anyone who is found to have carried out the work or anyone who has caused or permitted the work to be carried out.

The penalty on conviction in the Magistrates Court for this offence could be a fine of up to £20,000. The penalty on conviction in the Crown Court for this offence could be an unlimited fine.

Display of Unauthorised Advertisements.

Under section 224 of the 1990 Act it is a criminal offence for any person to display an advertisement in contravention of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.

The penalty on conviction in the Magistrates Court for this offence could be a fine of up to £1000.

Injunctions (section 187B of the 1990 Act)

In exceptional cases where there is a necessary and serious need to restrain an actual or apprehended breach of planning control, the Council can apply to the County Court or High Court for injunctive relief. An injunction can be sought whether or not any other enforcement action(s) has been taken.

Injunctive action can be very costly and is normally only considered as a last resort where other enforcement action is unlikely to resolve a breach. If successful the Council will obtain an Order from the Court restraining the breach of planning control against the landowner and even against persons unknown.

If a person fails to comply with an injunction they can be committed to prison for contempt of court.

Listed Building Enforcement Notice (LBEN)

Under the Planning (Listed Buildings and Conservation Areas) Act 1990, the Council has the power to issue a Listed Building Enforcement Notice where unauthorised works have been or are being carried out to the listed building without Listed Building Consent. As with a standard Enforcement Notice, a Listed Building Enforcement Notice will specify the nature of the unauthorised works, the steps that must be taken to restore the building to its former state or, where this is not possible, any further remedial works that are considered necessary. The notice will also specify the time period for compliance with the requirements of the notice and may specify a different time period for each different step that is required to be undertaken. A Listed Building Enforcement Notice does not take effect until at least 28 days after being served to allow the recipient(s) time to lodge an appeal to the Secretary of State. An appeal stops the notice taking effect until the appeal is determined. If an appeal is lodged all complainants and immediate neighbours will be advised of the appeal and how to make representations to the Planning Inspectorate

Failure to comply with a Listed Building Enforcement Notice that has taken effect is a criminal offence which, on conviction in the Magistrates' Court, can lead to a fine of up to £20,000 or an unlimited fine on conviction in the Crown Court.