



Planning Enforcement Policy

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 Council's Corporate Enforcement Policy. 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 revised National Planning Policy Framework (NPPF) was introduced in February 2019. Paragraph 58 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 it is 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 titled “Ensuring effective enforcement” 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, 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 development until the necessary planning permissions have been obtained.

The council will not condone wilful breaches of planning control and will exercise 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:

- provide an accessible service that maintains public confidence in the planning system;
- provide a service that is both reactive and proactive in its commitment to remedy undesirable effects of unauthorised development;
- provide a service response that is prioritised according to the harm or the potential harm caused by the breach;
- provide a development monitoring service that is prioritised according to the scale and complexity of the development permitted; and
- seek resolution of planning breaches through informal and formal action including 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: 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. 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 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 the display of unauthorised advertisements. Other breaches of planning control may consist of the following:

Works to Listed Buildings without the relevant consent;
Breaches of conditions attached to planning permissions;
Unauthorised works to trees subject of a tree preservation order (TPO) or in a conservation area;
Unauthorised demolition within conservation areas;
Not building in accordance with the approved plans following the grant of planning permissions;
Untidy land where it affects the amenity of the area;
Unauthorised engineering operations, such as raising of ground levels or earth bunds;
Failure to comply with a Section 106 agreement

Matters that are not breaches of planning control

Internal works to a non-listed building;
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 as long as they are incidental to the enjoyment of the property;
Running a business from home where the residential use remains the primary use and there is no 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;
Advertisements that are either excepted from deemed and express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
Dangerous structures or other health and safety issues;
High hedge disputes

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 the customers will be advised accordingly.

Enforcement action is discretionary

It is important to note that just because there may be a breach of planning control, this in itself is not sufficient reason to take enforcement action. The council must firstly decide, having given regard to guidance contained in the National Planning Policy Framework (NPPF) and all other material planning considerations whether or not it is '**expedient**' to take formal action. Expediency is a test of whether the unauthorised activities are causing harm to the environment or amenity of the area. Therefore, enforcement action is **discretionary** and each case must be assessed on its own merits.

Guidance from Central Government is that enforcement action should be a last resort and that councils are expected to give those responsible for a breach of planning control the opportunity to put matters right or to seek to regularise the breach before resorting to serving a formal notice. Any such service of a formal notice must be proportionate and commensurate with 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 councils published priority table (see below)
Investigated, including visiting the site where necessary in line with the published timescales, where possible, contained in the policy document; and

Pursued until such a time that the matter is satisfactorily resolved by either reparation or the breach is regularised or found to be lawful or the decision is taken that it is not expedient to pursue any further.

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 location or address for the particular site;
A detailed description of the activities taking place that are cause for concern;
Names, addresses and phone numbers of those persons responsible for the alleged breach or the land owners;
The date and times of when the alleged breach took place;
Any other information or evidence that may be able to assist;
The complainants name, telephone number and address or e-mail address;

Complaints about alleged breaches of planning control will be accepted by either:
e-mail;
via the Council's website;
letter;
telephone or
Personal caller to the Rushcliffe Community Contact centre 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.

Anonymous complaints will not normally be investigated. Complainants who do not wish to give their personal details will be advised to contact either their Ward Councillor or their parish council who may then raise their concerns on their behalf.

Vexatious, malicious or repeated complaints that do not have any substantive planning reasons for the complaint will not normally be investigated.

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 may be subject to change following a site inspection or when further information comes to light.

Priority Categories

Highest Priority

Unauthorised demolition or partial demolition of a building which it is essential to retain.

Where building(s) are under construction and

- no planning permission exists (might be permitted development).
- planning permission has been granted but development may not be in accordance with the plans

Any unauthorised development which causes immediate and irremediable harm in the locality e.g. in an SSSI or Conservation Area or likely to result in significant harm to amenity.

Felling or works to protected trees.

Other Priorities

Breaches of conditions.

Unauthorised development where the time limit for enforcement action will expire within the next 6 months.

Unauthorised uses of land.

Illegal display of advertisements.

Untidy land.

Unauthorised development where there is no significant conflict with planning policies or objectives or harm to amenity.

Unauthorised development where a favourable recommendation would be made if an application to authorise the development were made

The development is likely to be of a temporary nature.

Timescales for investigations

The Highest priority cases will have appropriate action within 1 working day. Other priority cases will have action taken within 5 working days.

What are the possible outcomes of an investigation?

No breach established – Following a site inspection 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 (i.e. planning permission might be granted) may not be considered expedient to pursue as it may be considered to be ‘de minimis’ or not in the public interest to warrant pursuing.

The development is lawful and 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:

- 4 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.

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.

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. The more common forms of enforcement action are listed below:

- The service of a Planning Contravention Notice (PCN) – Section 171(c) enables the service of a notice requiring persons to provide information in relation to land or activities on land where a breach of planning control is suspected
- The service of a Request for Information (RFI) – Section 16(1) enables a notice to be served requesting details to be provided of any owners, occupiers or any other persons with an interest in the land
- The service of an Enforcement Notice – Section 172 enables the service of a notice which requires specific steps to be undertaken within a specified time frame to remedy the breach of planning control
- The service of a Breach of Condition Notice (BCN) – Section 187(a) enables the service of a notice to secure compliance with conditions imposed on a planning permission
- The service of a Stop Notice or a Temporary Stop Notice - Section 183 and Section 171(e) enables the service of a notice requiring the cessation of unauthorised activities. A Stop Notice may only be served in conjunction with an Enforcement Notice referred to above
- The service of a Section 215 Notice – this enables the service of a notice requiring the proper maintenance of land and buildings.
- Section 171BB enables an application to be made to the courts for a Planning Enforcement Order – where deliberate concealment of a breach has occurred, 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.
- Seek an Injunction - where it is considered expedient for any actual or apprehended breach of planning control to be restrained, an application can be made to the High Court or County Court for an injunction to restrain a breach of planning control.

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.

Further information is available in The National Planning Practice Guidance (NPPG) <https://www.gov.uk/government/collections/planning-practice-guidance>

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 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 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.

Proactive Compliance

In addition to the service's role in reacting to complaints regarding alleged unauthorised developments or breaches of condition, the council provides a proactive approach to ensure compliance with planning permissions and other consents. This only normally applies to developments of 50 dwellings or more. It should be noted that it is the responsibility of individual developers to comply with the conditions imposed on any planning permission or consent or with any terms identified in legal agreements, such as Section 106 agreements. However, failure to comply can affect not only the quality of the environment in the district or the amenity of neighbouring properties but also undermine the reasons and justification for granting planning permission or other consents in the first instance.

Proactive action will encourage and enable compliance with conditions to safeguard that development remains acceptable in planning policy terms whilst maintaining an attractive, high quality environment. Carrying out proactive compliance in this way should result in a reduction in the number of retrospective enforcement complaints received.

Power of entry onto land

Section 196(a) 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.

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

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 complaint.

You can contact us:
by telephone on 0115 981 9911

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