

APPENDIX 2

Summary of consultation responses to Enforcement Policy

The consultation exercise attracted a total of twenty-seven responses from a Ward Councillor, a number of Parish Councils, other organisations and from several residents. A number of the responses included comments about the planning process generally with twenty-two providing comments specifically in relation to the Enforcement Policy. The comments received relating specifically to the policy are summarised below, including officer responses and where changes are proposed to be made to the policy.

Comments from Borough Councillors

1. Introduce more publicly available information into the enforcement policy akin to that available for planning applications. (Cllr R Walker)

Officer comments:

During the period of investigation and up to when a breach has been regularised and/or formal action taken, it is not appropriate to publicise details of the ongoing investigation. The Council hold a Planning Enforcement Register which lists all formal notices served by the Council under Planning Enforcement Powers and this is free for inspection by any member of the public at any point (currently being updated to an online viewable format). Officers do however recognise that following the outcome of an investigation, there is an opportunity to highlight action carried out, either through positive negotiations or through use of formal powers. As such, Officers will commit to providing a six monthly update to Councillors with details of a the outcomes of concluded investigations through planning enforcement to showcase the work carried out.

Action 1 – Include a paragraph within the Policy to commit to this requirement.

Comments from Parish Councils

2. Colston Bassett Parish Council suggested improved wording to be included in the policy:
 - a. To meet the requirements of the NPPF, this Plan sets out how the Council will:
 - Carry out proactive enforcement;
 - Monitor the implementation of planning permissions;
 - Investigate alleged cases of unauthorised development; and
 - Take appropriate action where an acceptable solution to the breach cannot be secured.

Officer comments:

The Policy already sets out how the council will deliver a proactive enforcement service and explains which permissions will be subject to this service (larger scale development). It is considered that the Policy also explains in which circumstances and how the Council will take formal action and how it will investigate alleged cases of unauthorised development in general.

No action/changes to the policy considered necessary.

b. The purpose of planning enforcement is to investigate:

- Breaches of planning control
- Breaches of the conditions attached to planning permissions
- Allegations of unauthorised development which may cause harm to public amenity
- take formal action where a satisfactory outcome to the breach cannot be achieved by negotiation.

Officer comments:

The purpose of Planning Enforcement is already included within the Policy Document. Reference to the type of breach (breach of conditions and breaches causing harm to public amenity) are also referenced elsewhere in the document. The Policy also identifies elsewhere in the document that formal action will be **considered** where a satisfactory outcome cannot be achieved by negotiation.

No action/changes to the policy considered necessary.

c. “Retrospective planning applications will only be invited where it is considered that the changes may be acceptable and, any such opportunity to resolve breaches will not delay effective action where this is clearly needed.”

Officer comments:

The Policy is clear that “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”. Each breach is assessed on its merits and in instances where harm is significant and immediate, formal action will be taken and no invitation to submit planning applications will be made. The current version of the Policy is clear that this is the approach. However, if an application is submitted in response to investigations, the Borough Council has a duty to consider the submission.

No action/changes to the policy considered necessary.

- d. Unauthorised development in a Conservation Area is also included in Priority 1 Enforcement where it causes irreversible damage and harm to amenity in a Conservation Area.

Officer comments:

Priority 1 thresholds already include “Unauthorised works to, or demolition of a listed building or building within a Conservation Area”. This could be expanded to “include works of significant scale within a conservation area”. It is recognised that the Borough’s Conservation Areas are places of special historic or architectural interest and warrant additional protection that may not be justified in undesignated areas within the Borough.

Action 2 – Amend priority 1 to include works within a Conservation Area which may impact on character and appearance of the area

- e. In considering whether it is expedient to take enforcement action the Council shall have regard to any material planning objections/complaints concerning harm to the environment and amenity raised by local residents.

Officer comments:

This is outlined within the current draft of the Policy.

No action/changes to the policy considered necessary.

- f. Inform councillors of investigations of cases in their ward areas.

Officer comments:

A monthly report could be produced to inform Cllrs of Enforcement cases received for the previous month. However, it is not considered suitable for this type of operational issue/interaction between Officers and Councillors to be stipulated in a policy such as this.

No action/changes to the policy considered necessary.

- g. Actively monitor pre commencement conditions and other conditions relating to significant planning applications.

Officer comments:

The Council approve a significant number of planning applications per annum and the Planning Enforcement Department do not carry sufficient resources to monitor ‘all’ permissions. The Proactive Enforcement commitment made within the Policy seeks to strike a balance between the resources available and the types of development which are likely to cause greater environmental harm and harm to amenity.

No action/changes to the policy considered necessary.

- h. Continue to review and improve delivering of planning enforcement services
- i. Continue to work to ensure breaches of planning control are reduced
- j. Increase publicity and interaction with the public and business community to raise awareness of planning enforcement and compliance.
- k. That a Statutory Planning Enforcement Register is included in the Policy

Officer comments:

As part of the Proactive Enforcement requirements, Officers are engaging with developers much more frequently and earlier in the development process. It is expected that this early engagement will reduce the number of complaints received as developers will adhere more closely to the conditions and requirements of their planning permissions. As stated above, the Council already hold a publicly accessible Enforcement Register, which is a legal requirement, this will be updated as and when formal action is taken and notices are served, therefore, it would not be appropriate to include the register as part of the Policy. In terms of review, this Policy will reviewed as part of the Council's regular reviewing cycle to ensure it remains fit for purpose.

No action/changes to the policy considered necessary.

3. Radcliffe on Trent Parish Council supports the policy

Officer comments:

No comment

4. Bunny Parish Council generally supports policy and considers that it is clearly structured and written in a readily accessible style with helpful cross referencing to relevant legislation and regulation/policy documents. They also comment as follows:

- a. Page numbering would be useful
- b. Strong emphasis on discretionary and expediency, provides too much scope for RBC to do nothing despite evidence showing a breach
- c. Policy makes no mention of staffing/budgetary constraints. Is RBC geared up to provide effective enforcement?

Officer comments:

Page numbers will be added to the document once the final version is published. The Policy intentionally highlights the regulations and guidance around discretion and expediency. It is not the case that every breach will be enforced against, as the Policy explains. This is in line with government guidance and the regulations.

Matters of staffing and budgets are beyond the scope of this document. These are ultimately matters for consideration by the Head of Paid Service.

Action 3 – ensure page numbers are included within the document.

5. Ruddington Parish Council comments:

Monitoring takes place regarding the replacement of trees where they are removed, uprooted or destroyed in contravention of a TPO and Tree Replacement Orders are served.

Appropriate action is taken against wilful breaches of planning control and retrospective applications are not used to avoid taking enforcement action where significant harm has been caused.

Swift action is taken where there are unauthorised works within the Conservation Area

Officer comments:

Officers would ordinarily ensure that replacement planting takes place if required following works or removal of a tree the subject of a TPO. This would form part of the compliance section of an investigation and cases would not be closed until compliance had been ensured. In respect of retrospective planning applications, the developer is entitled to apply for planning permission at their will. This will, however, not prevent the Council using faster action powers to prevent significantly harmful breach from occurring or continuing, where deemed necessary. There will however be some circumstances where the Council will invite an application in order to regularise a breach of planning control, this would only normally apply where the development may be considered acceptable or potentially unacceptable impacts could be mitigated by the use of appropriate conditions. This is action used for breaches which are more acceptable in planning terms and not causing significant harm to amenity or the environment. See note above in relation to breaches within a conservation area.

No action/changes to the policy considered necessary.

6. Barton in Fabis Parish Council comments:

- a. All parties should expect clarity and objectivity so that everyone is treated fairly and equitably. The 18 page draft document is poorly structured, imprecise, ambiguous and incomplete. In some instances it is not consistent with Rushcliffe's Corporate Enforcement Policy
- b. Suggests wording "The enforcement of planning control focuses on proportionate resolution to ensure the interests of the wider community are protected and planning policies respected." And "Land owners are required to meet the requirements of planning legislation and refrain from carrying out development until the necessary planning permissions have been obtained"
- c. Include specific reference to consideration of whether a breach might create a precedent which might at a subsequent point cause a greater degree of harm than the development in question

- d. A clear matrix should be included in the policy of the extent of the breach (wide – narrow) v degree of harm (serious – minor) to identify the most serious breaches of planning control.
- e. With reference to prioritising complaints it would help all parties if the document could attempt to identify objective measures to differentiate between “large scale” and “substantial”.
- f. The document should establish that all breaches of planning control in the Green Belt are ‘high priority’
- g. The phrases “You will be given a reasonable period of time” and “The Council will seek to avoid long drawn out negotiations” are unacceptably vague and weak and lack ‘teeth’

Officer comments:

Officers believe the Policy as drafted accords with the Council’s umbrella Enforcement Policy. In terms of point (b) above, the Policy explains that “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.” This terminology is considered to be more appropriate for a document of the intended purpose which is to be used by both members of the public and developers in helping them guide their way through the complex planning process. On receipt of enquiries regarding an alleged breach of planning control, the case will be assessed to determine the priority rating for investigation. A large part of the Borough is covered by the Green Belt and it is not considered appropriate that all alleged breaches within the designation are investigated as a high priority, however, other factors will be taken into account including the degree of any harm and whether this might be irreparable.

No action/changes to the policy considered necessary.

7. East Leake Parish Council suggest that pages are numbered and a list of sections added with links at the beginning to make it easier to navigate the document (ie links to email addresses etc)

Officer comments:

Page numbers will be added to the final document (see Action 3 above). Officers will investigate the inclusion of an index and links to sections in the document for use in a web based version.

Action 4 – investigate inclusion of interactive index for a web-based version of the document (include page numbers in document – see Action 3 above)

8. Homle Pierrepont & Gamston Parish Council comment:
 - a. Applications for retrospective planning permission should be discouraged in most cases
 - b. Rates of fines should reflect the potential profit made by being in breach of the planning regulations. The policy makes a lot of use of the word “discretionary” but when it comes to fines, an expensive court case would

- be necessary to levy a sufficient amount to discourage deliberate breaches.
- c. Section 6 of the planning application form asks “Will any trees or hedges need to be removed or pruned in order to carry out your proposal?” but there seems to be no enforcement mentioned unless a TPO is in place. It has been observed that some applicants have ‘tidied’ their gardens before applying for planning permission thus being able to answer “no” to the question in Section 6.

Officer comment:

It is not possible to set a target to discourage retrospective applications for planning permission. This will depend on the specific nature and likely acceptability of each case. The level of fines is not set by the Borough Council but by the courts. The removal of trees which are not protected by Preservation Order or by their presence within a conservation order is not a breach of planning control. The Council have no ability to prevent this approach being taken by developers.

No action/changes to the policy considered necessary.

Comments from other organisations

9. Rushcliffe Nature Conservation Implementation Group (RNCSIG) comment:
 - a. Whilst they welcome the inclusion of TPO`s and SSSI`s in Category One, this is very limited in terms of wildlife protection and they feel that this must be extended to read "Unauthorised development close to or within a Site of Special Scientific Interest (SSSI), Local Wildlife Sites (LWS), Local Nature Reserves (LNR), protected species and habitats as per the RBC Local Plan Part 2 Policy 36."
 - b. "If any breaches of wildlife legislation are identified alongside breaches of planning control, then the authority has the right to discuss any issues with the police, statutory nature conservations organisations (i.e. Natural England, Environment Agency etc.) and assist them with any investigations they may pursue"
 - c. As developments proceed complaints about damage to wildlife habitats and species must be treated as a serious issue ie. Priority One and for the policy to have any real effect, regular on the ground monitoring is essential for all aspects of a development, both built and natural. We are not convinced that the cut off point for active monitoring should be at 50 houses.
 - d. Mention of the following pieces of wildlife legislation should be included as an Appendix. The Wildlife and Countryside Act 1981 (as amended), The Protection of Badgers Act 1992, Countryside and Rights of Way Act 2000, Natural Environment & Rural Communities Act 2006 and The Conservation of Habitats and Species Regulations 2010.

Officer comments:

The context and location of any breach will pay a large part of the consideration process when the Council allocate a priority to the incoming case. Impact upon wildlife will be one of those many material considerations however, it is not appropriate to list all considerations in a Policy document.

No action/changes to the policy considered necessary.

In respect of point b) this happens already as part of our day to day business but there is merit in including a paragraph to inform members of the public that we will pass on information to other bodies.

Action 5 – Include in Policy commitment to refer matters which do not relate to a breach of planning to the relevant agency/regulatory regime, for example works which may cause harm to a protected species or their habitat which may constitute a breach of the Habitat regulations.

10. The Green Party comments that the policy concentrates on the built environment, with only a small consideration of wildlife and wildlife habitat, and local green space. They also reiterate the comments made by RNCSIG.

Officer comments:

See above comments.

No action/changes to the policy considered necessary.

Comments from residents

11. The consultation exercise attracted submissions from 12 residents making comments specifically about the Policy. These are summarised below.
12. The following comments were received from a resident:
 - a. A strong mission statement is required so your planning enforcement team truly understand that their role is also to support and protect local residents, especially from the unscrupulous behaviour of these new build developers such as Avant Homes. Currently interactions with your team feel like an exercise in escaping responsibility with little interest in support residents in their concerns.
 - b. Improved website. The website makes it very difficult to find signed off planning applications and most importantly any conditions that apply to them. Availability of information to the public is a vital element of an effective system.
 - c. Where issues with developments are not technically breaches of planning control, such as blocking of highways, your officers should be charged with enabling the complainant to find the best place to direct their complaint. The current "its not my problem" approach is really poor service.

Officer comments:

The Policy sets out at the start, the purpose of Planning Enforcement and explains how Rushcliffe Borough Council will exercise these powers, in accordance with the regulations and guidance issued by central government. In terms of accessing approved planning documents, the Council maintain a widely accessible public access system whereby all documents associated with the planning files, including the decision notices, are available for inspection. Customer services is at the heart of Officers at Rushcliffe Borough Council and Officers will always endeavour to assist customers with their issues, even if these means signposting them to the correct department more suited in providing the assistance. The Policy does include information in relation to some other bodies that deal with issues outside of the planning discipline, however, it is not possible to cover every scenario in the policy.

No action/changes to the policy considered necessary.

13. Resident supports 'converting the discretionary code of practice for the enforcement of planning conditions to that of a policy. Now more than ever is it crucial for the elected councillors of the Rushcliffe Borough Council be given more enforcement responsibilities relating to the monitoring and oversight of building and development conditions across the Ruddington area. They are the elected representatives of our community and need the power to act and enforce conditions on our behalf.'

Officer comments:

The responsibility for investigating breaches of planning control and seeking resolutions to breaches, including taking formal action where this is considered expedient rests with officers.

No action/changes to the policy considered necessary.

14. 4 residents supports the policy, 1 suggesting large fines for breaches.

Officer comments:

The level of fines is not set by the Borough Council but by the courts.

No action/changes to the policy considered necessary.

15. The following comments were received from a resident:
 - a. Confidence in the system requires good communication and a clear understanding of response times, proposed actions and follow up monitoring. The Consultation paper does not set any standards to address this nor detail as to how it will keep the public updated on enforcement enquiries. As an example, the current online system does not generate an acknowledgement nor does it assign a case number, and it can be difficult to track what action has been taken. Complaints

- about service should also be assigned specific case numbers and acknowledged. This will allow the complaint to be monitored against timescales for the complaints process and give a reference point for escalation through the complaint's procedures.
- b. The Consultation paper indicates proactive management will be restricted to larger developments. It is recommended that this is extended to developments in Conservation Areas where breaches of planning conditions can cause irreversible harm to the area and environment. If adopting a reactive approach and relying on monitoring by the public, then a simple system for identifying possible breaches is required. A simple checklist of all the planning conditions and recommendations in sub reports would help monitoring by the public. The public should also be given notice when a request for discharge of conditions is submitted.
 - c. The Priority 1 service response includes unauthorised works on trees in a Conservation Area. This is too narrow and should be extended to address unauthorised works which endanger important features in the Conservation Area. For example, excavations or building works in close proximity to trees that pose a risk to their long term survival.
 - d. It is recognised that the Local Authority has limited resources. If resources limit proactive monitoring for important smaller sites, such as in Conservation Areas, then thought could be given to self certification, paid for by the developer, using outside consultants similar to building regulations. This could take place at regular or critical points in the construction process, e.g. pre-commencement where conditions have been set.
 - e. A register of historic enforcement notices or breaches would help identify repeat offenders. Alternatively, there could be a requirement to disclose prior enforcement notices/condition breaches when submitting a new application. This could be then taken into consideration for new applications from the same individuals. A record of enforcement notices issued by the council would also give visibility and confidence to the public that the council is being proactive in the area of enforcement.

Officer comments:

- a. When complaints are received and adequate contact information is given, the Council acknowledges the receipt of the complaint by issuing an acknowledgment letter to the complainant. This letter contains details about who the case officer is, the unique reference number for the case as well as detailing timeframes for updates from Officers. This is of course only possible where contact details are left by complainants, some complainants wish to remain anonymous. A process already exists for the issues raised, therefore no changes are proposed to the Policy.
- b. The threshold for proactive monitoring has been set to meet the current and expected levels of resources the Council can direct towards the planning enforcement function. To lower this threshold as suggested would not be possible with current resources, particularly given the number of applications approved by the Council each year. This policy

is designed to be achievable with the resources available at the time of its publication. With regard to the suggestion that residents should be given notice when conditions are discharged, it should be noted that in the majority of cases conditions relate to technical issues and consultations will be undertaken with the relevant consultee. There is no legal requirement to consult more widely on submissions to discharge conditions. No action/changes to the policy considered necessary.

- c. This has been recognised and Priority 1 updated accordingly to widen the scope to include more types of development within a Conservation Area.

Action 6 – widen the scope of priority 1 cases to include more breaches within a Conservation Area.

- d. This is an interesting concept but unfortunately falls outside of the powers of the Council at this current time. Whilst the legislation is in place to enable approved inspectors to discharge the Building Regulation function, this is not the case for the planning regime. No action/changes to the policy considered necessary.

- e. The Council maintain a Planning Enforcement Register which holds details of all enforcement notices (and associated notices) served. This is available for inspection and work is currently being undertaken to make this more readily available online, similar to planning applications. However, the credibility or previous enforcement history of an applicant or a site is not material in either the consideration of planning applications or breaches of planning control. Each planning application and enforcement investigation is considered on its own merits, in line with regulation and policy/guidance at the time of decisions being made and the planning system should not be used punitively to punish previous breaches/offences that may have been committed.

Action 7 – make reference to enforcement register in the Policy document.

- 16. The following comments were received from a resident:

- a. Is additional resourcing and funding required to properly enforce this policy? If not, has it been clearly set out how it is expected current resources will be used to meet this new requirement?
- b. Large developers dislike large fines and they also dislike negative publicity about their shortcomings. Could you highlight breaches and enforcement action and publicise them in a section on the Rushcliffe website for news agencies to see and report on?

Officer comments:

Issues regarding resources and the commitments made within the Policy document are discussed elsewhere in this document. In terms of fines, these are set by the magistrates and not by the Council. The Council will continue to publicise successful outcomes from Planning Enforcement Investigations where considered appropriate. It is however outside the scope of this Policy to set requirements for this.

No action/changes to the policy considered necessary.

17. A resident supports the Policy but comments that the Policy should have built in compensation for development that causes any breaches.

Officer comments:

The harm arising from any alleged breach of planning control will be taken into account when determining the appropriate course of action to take. Where development is unacceptable and impacts arising could not be mitigated by conditions, action may be appropriate and in such circumstances the requirements of any formal action will need to be proportionate to the breach and the harm arising.

No action/changes to the policy considered necessary.

18. A member of the public comments that it ought to be part of any planning application site visit that the Borough Council's planning personnel proactively check for then report possible unauthorised development and/or planning breach(es).

Officer comment:

Possible breaches of planning are not always obvious to officers when visiting sites but if any issues are identified they will be reported to the Enforcement Officers for further investigation.

No action/changes to the policy considered necessary.

19. Rushcliffe resident supports policy but believes that all permissions should be subject to proactive monitoring.

Officer comment:

This matter is addressed in comments in response to issues raised by another resident above.

No action/changes to the policy considered necessary.

20. A resident commented as follows:
- a. Should give clear and precise instructions as to whom and to what address should be used when reporting breaches.
 - b. Planning conditions are designed to ensure that any allowed development is not a nuisance to neighbours. Concern is expressed that when reporting breaches no action is taken.
 - c. Clear and evidenced breaches of planning conditions will always be treated as a matter of the Highest Priority.

Officer comments:

The Policy includes a section on 'How to report an alleged breach of planning control' including the different methods by which complaints can be submitted, e.g. telephone, email etc. Additional information could be added to this section, including relevant telephone number, email address etc. Reports of non-compliance of planning conditions sits within the Priority 2 (Medium) in the current version of the Policy. This category has maximum response time from officers of up to 5 working days (although often it will be sooner than this). However, each complaint will be considered on facts of the case and in some instances, where the breach of condition would also possibly lead to irreversible affects (such as examples given in Priority 1) the breach of condition complaint will be elevated to a Priority 1 case. As the Policy states, Officers have the ability to escalate complaints if they see fit. Where a breach of condition has been established, officers will, in the first instance, seek to remedy the situation through discussions/negotiations with the person(s) carrying out the work. If this is not possible, and it is deemed expedient, formal action will be taken to resolve the matter.

Action 8 – include in policy document relevant email address, telephone number etc for use when reporting alleged breaches of planking control.

Actions arising following consultation exercise	
Action 1	Include a paragraph within the Policy to commit to publicising/making available the outcome of investigations where appropriate.
Action 2	Amend priority 1 to include works within a Conservation Area which may impact on character and appearance of the area
Action 3	Include page numbers within the document.
Action 4	Investigate inclusion of interactive index for a web-based version of the document
Action 5	Include in Policy commitment to refer matters which do not relate to a breach of planning to the relevant agency/regulatory regime, for example works which may cause harm to a protected species or their habitat which may constitute a breach of the Habitat regulations.
Action 6	Widen the scope of priority 1 cases to include more breaches within a Conservation Area (see action 2).
Action 7	Include reference to enforcement register in the Policy document.
Action 8	Include in policy document relevant email address, telephone number etc for use when reporting alleged breaches of planking control.