Introduction

This document sets out North Norfolk District Council’s policy for the enforcement of planning control within the district. Its purpose is to identify local priorities for enforcement action, so that the Council’s enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of the residents of the district.

The document has been prepared in accordance with the advice contained in the National Planning Policy Framework (NPPF) (March 2012) issued by the Department for Communities and Local Government which states: ‘Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 to do so’.

“Effective enforcement is important as a means of maintaining public confidence in the planning system.”
1. What is a breach of planning control?

A breach of planning control is defined in the Town and Country Planning Act 1990 as “the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted”. Whether something requires planning permission is not straightforward and while there are some fairly obvious breaches, such as building a new house without planning permission, many others are more difficult to define or less well known.

For example:

- Building work, engineering operations and material changes of use that are carried out without first obtaining planning permission;
- Development that has planning permission but is not carried out in accordance with the approved plans;
- Failure to comply with conditions or the terms of a legal agreement attached to a permission or consent;
- The unauthorised demolition of a building within a conservation area without planning permission;
- Works carried out to a listed building (both internal as well as external), which affect its historic character or setting, without listed building consent being granted;
- The unauthorised felling or carrying out of works to a tree which is protected by a Tree Preservation Order or which is within a Conservation Area;
- Fly posting;
- Failure to properly maintain land so that it affects the amenity of the area;
- Failure to comply with the requirements of enforcement notices, breach of conditions notices and stop notices.

It should be noted that a breach of planning control becomes immune from enforcement action if no formal action has been taken within the time limits set out in the Town and Country Planning Act 1990 (as amended).

Essentially these are:

Four years from the substantial completion of a building or other operational development and for the change of use of any building to a dwelling house;
2. What is not a breach of planning control?

Many issues can require consent to be given by a landowner or a third party but do not require planning permission. In such cases, the council cannot get involved in issues that are between two private parties, as those are considered to be civil matters. Other matters may be of genuine concerns and may be covered by other legislation but are not issues that the council as Local Planning Authority can get involved with. Some of these are:

- Internal works to a non-listed building;
- Matters controlled by other legislation such as Building Regulations / public nuisance / Highways / or the Environment Agency;
- Competition from another business;
- On street parking of commercial vehicles in residential areas;
- Obstruction of a highway or public right of way (the Police or Highways Authority may be able to get involved);
- Parking a caravan within the residential boundary of a property provided that its use is ancillary to the dwelling;
- Clearing land of overgrowth, bushes and trees (provided they are not subject to Tree Preservation Order, within a Conservation Area or owned by the council);
- Operating a business from home where the residential use remains the primary use;
- Boundary disputes – disputes about ownership are a private matter and cannot be controlled under planning legislation;
- Deeds and covenants which are a private matter between the signatories to the documents;
- Loss of value to a neighbouring property;
- Insertion of windows in houses or bungalows – once a building has been occupied windows can normally be inserted into existing walls provided that there is not a planning condition to prevent the insertion of additional windows;
- Where development is ‘permitted development’ under the Town and Country Planning (General Permitted Development) Order 2015.

Please note that the law may differ in conservation areas and you may need to seek advice.

Similarly, planning enforcement action can only be pursued where works have taken place without the benefit of, or are inconsistent with, planning permission. Therefore, domestic extensions, regardless of their impact on neighbours, are immune from planning enforcement action if they fall within permitted development rights; and those commenced during the standard life of a permission and built as approved also are beyond further control, even though a neighbour, perhaps new to the area, was not consulted.

Consequently no action is possible in respect of anticipated breaches, regardless of how reliable the rumour – action can only be taken once unauthorised development has commenced.
3. Principles of good enforcement

Allegations about suspected breaches of planning control will be investigated thoroughly and accurately in accordance with the principles of Good Enforcement set out within the Local Government Concordat, and the principles contained within the Regulators Code.

The five principles of good regulation are:

- Transparency
- Accountability/Openness
- Proportionality
- Consistency; and
- Targeted only at cases for which action is needed.

By publishing this Local Enforcement Plan, we aim to make our work more accessible to members of the public as it is very important for them to see how we operate and it will help interested parties to understand when we can or cannot take action.

Further information in relation to the above, can be found in the Council’s Corporate Enforcement Policy.

4. General approach to planning compliance

The integrity of the development control process depends on the Council’s readiness to take proportionate enforcement action when it is required to do so.

Parliament has given local planning authorities the primary responsibility for taking whatever enforcement action is necessary within their area and the council will always exercise its planning enforcement powers rigorously when it is considered expedient to do so.

Where planning enforcement action is taken, we will take steps to publicise this to act as a deterrent to other offenders.
In considering enforcement action, the Council will have regard to:

- Whether the breach of planning control unacceptably harms public amenity, or the existing use of the land and buildings merits protection in the public interest.

- Whether enforcement action is commensurate with the breach of planning control to which it relates. Enforcement action will not normally be taken to remedy trivial or technical breaches of planning control which are considered to cause no harm to amenity.

- Whether initial attempts to persuade an owner or occupier of a site to voluntarily remedy the harmful effects of unauthorised development or an unauthorised use have failed, enforcement action may then be required to make the development acceptable on planning grounds, or to require it to cease.

- Statutory time limits for taking enforcement action.

- Relevant planning policies and other material considerations, including where appropriate, the individual circumstances of the person, business, or other organisation in breach of planning control.

Where significant harm to amenity can clearly be demonstrated, then the council will usually contact the person causing the breach to talk about the problem they have created. This will often result in a planning application being submitted or where something is considered to be unacceptable, there will be a discussion about removing it. If a planning application is made but an enforcement notice (see opposite) has already been served then the Council can use this as a reason for declining the application.

If the person causing the breach is refusing to talk to the council or to resolve in an acceptable manner, the Council will take enforcement action.

Any breach of the requirements of a formal Notice (see list of formal Notices below) issued by the Council will constitute a criminal offence. Should this happen, the Council has the ability to seek to recover profits made either under the Town & Country Planning Act 1990 and/or under the Proceeds of Crime Act 2002 and will consider taking such an application to the courts for deliberate breaches.

Where informal resolution cannot be achieved, there are a variety of formal tools available to the Council.

The council has given delegated authority to its officers to exercise the legislative powers available to it for breaches of planning control.
These tools are as follows:

**Planning Contravention Notice** – this requires persons to provide information in respect of the development and/or activities taking place on the land. These notices are often served as a first step to gain information from the person carrying out the development and/or activity before determining whether other notices should be served.

**Enforcement Notice** – this is the principal tool to remedy a breach of planning control. It will specify what the alleged breach is, the steps that must be taken to remedy it, and a time period in which to carry out those steps.

**Listed Building Enforcement Notice** – this is the equivalent Notice available under the listed building legislation.

**Breach of Condition Notice** – this is used to require full or part compliance with the conditions on the grant of a planning permission.

**Stop Notice/Temporary Stop Notice** – this Notice requires activities to stop immediately on the land and is most commonly used to deal with breaches of planning control that are seriously affecting the amenity of nearby residents or to prevent serious or irreversible harm to the environment.

**Untidy Land (s.215) Notice** – where the condition of buildings or land causes serious harm to the visual amenity of an area, the Council can serve a Notice on the owner and occupier, under Section 215 of the Town and Country Planning Act 1990, to remedy the condition of the land and buildings.

**Court Injunction** – Although they are rarely used, legal powers are available for the council to apply to the High Court or the County Court for an injunction to stop an actual or alleged breach of planning control.

**Prosecution** – the council can pursue prosecution proceedings against any person who carries out unauthorised works to trees that are protected by a Tree Preservation Order or are within a Conservation Area, unauthorised works to Listed Buildings, and certain unauthorised works of demolition works within Conservation Areas. Additionally, offenders may be prosecuted for non-compliance with a temporary stop notice, stop notice, enforcement notice and breach of condition notice. If found guilty that person will be liable, on conviction in the Magistrates Court, to a maximum fine of £20,000. More serious cases may be heard in the Crown Court, where the level of fine is unlimited.

**Direct Action (with costs recovery)** – failure to comply with the requirements of a Notice may result in the council using powers available to it to enter land and carry out such works that are required by an Enforcement Notice. All costs incurred in carrying out such works can be recovered from the landowner. Where costs are not recovered, they can be registered as a charge on the land.

**Advertisements** – the legislation (Town and Country Planning (Control of Advertisements) Regulations 2007) which deals with advertisements is separate from that dealing with general planning matters. The display of an advertisement without formal consent is an offence, and the council does have the power to prosecute the person displaying it, if it considered that it harms the amenity of the area or public safety. There is no need for an enforcement notice, or similar, to be served. If a person is found guilty of an offence, he or she could be liable to a fine up to a maximum of £1,000.

**Article 4 Direction** – The General Permitted Development Order 2015 permits the temporary use of land and buildings for specified purposes of limited duration. If the use causes harm to the local environment and continues beyond the time limit set out in the General Permitted Development Order, then an Article 4 Direction may be issued to restrict development.
5. Priorities

Investigating alleged breaches of planning control is often complex and time consuming. In order to make the most effective use of staff resources, it is usually necessary to give priority to those issues where the greatest harm is being caused, as it would be inappropriate to investigate and pursue all allegations with equal priority and intensity. Therefore each case is prioritised according to the seriousness of the alleged breach. This priority is decided by officers, and subsequently reviewed after an initial site visit. The scale of priorities with a list of examples, is shown below:

### High
- A serious threat to health and/or safety, (e.g. traffic hazard, storage of hazardous substances)
- Permanent damage to the environment e.g. unauthorised and irreversible work affecting the character of a listed building or works to protected trees
- Building work which is unlikely to be given planning permission without substantial modification, (e.g. an excessively large house extension)
- If an unauthorised use is causing severe nuisance
- Where work is underway and immediate action by the Council would prevent irreparable damage being done.

### Medium
In other cases where immediate action is not required, enforcement action will be prioritised according to the resources available. In deciding on the appropriate course of action we will also have regard to whether a planning application should be invited to be made in respect of the unauthorised development, for example where;

- A breach is causing problems which may be resolved by limited modification (e.g. restrictions on hours of use, imposition of other conditions)
- A property whose condition is adversely affecting the amenity of the surrounding neighbourhood.

Any such planning application will be without prejudice to enforcement action.

### Low
Breaches of a minor nature raising minimal planning concerns.

Individual cases may be re-prioritised as the investigation progresses and as new evidence comes to light. If a case is referred to the Council’s Enforcement Board (where cases are being raised across a range of services) then the case will be reclassified as high priority.
Timeframe for Site Visits

Once potential breaches of planning control are reported, and if a site visit is deemed necessary, then visits will be conducted in accordance with the priority rating of the case as follows:

High - A site visit will be made as a matter of urgency within 2 working days wherever possible.

Medium/Low - A site visit will be made within 5 working days

On completion of the site visit, interested parties will be notified as to the outcome, these include:

- No breach found
- Need for further investigations
- A formal breach of planning control has occurred

How the Combined Enforcement Team will deliver the service

If you are concerned that a development or activity is taking place without planning permission or does not comply with a planning permission already granted, you can report this to us in the following ways:

- By email at combined.enforcement@north-norfolk.gov.uk
- By completing the online complaint form at www.north-norfolk.gov.uk/contact
- By printing and filling out the standard form from our website or
- By letter addressed to Combined Enforcement, North Norfolk District Council, Council Offices, Holt Road, Cromer, Norfolk NR27 9EN

Only in exceptional circumstances will complaints be accepted over the phone, for example urgent cases such as unauthorised works of demolition taking place to a listed building.

When reporting an alleged breach of planning control, it would be helpful if you could provide:

- The exact address of the site complained about as well as the location of the activity/building works within the site (a sketch plan is often useful);
- Precise details of the nature of the activity including the number of vehicular movements/vehicle registration numbers, opening hours, number and times of deliveries, or what timework commenced (as appropriate);
- Details of the alleged contravener (if known);
- Details of the effect that the alleged breach is having upon you in terms of noise, traffic, smells, overshadowing etc
In many instances the assistance of the general public can be crucial to the success of enforcement action. For instance, council officers cannot continually monitor sites. Accordingly, the council relies upon the general public, residents associations and amenity societies to both report and monitor alleged breaches of planning control.

Complainants’ details are treated confidentially and the council will always seek to protect the identity of those making complaints, however in rare circumstances the council may be required to divulge details (usually through legal action). We will advise anyone of this before it happens. If you are concerned about your details being used then try contacting a local residents group, your parish council or your district councilor, as they may be prepared to make the complaint on your behalf.

Please note: Whilst we appreciate that for many reasons you may prefer not to give us your details and remain anonymous, clearly we will be unable to contact you to inform you of the progress of the investigation or to seek additional information from you, unless you give us your full details.

The council reserves the right not to investigate anonymous complaints, especially if they are considered to be vexatious or when a complaint is received:

- We will promptly register every case and acknowledge receipt either by letter or by email within three working days. You will be given the name of the Enforcement Officer dealing with your complaint so you know who to contact, together with a reference number.

- We will then carry out some initial checks (usually including a site visit) in accordance with the priority given to the case, but in any event within ten working days.

- Complainants will be updated by telephone, email, visit, or formally in correspondence within a further fifteen working days of our initial site visit and given the opportunity to comment on our initial findings.

- When cases take a long time ie on-going monitoring is required, we will ensure complainants are updated at each significant stage of the process. For instance, complainants will be consulted if a retrospective planning application is submitted and will be notified if an enforcement notice is issued and the relevant dates for compliance.

- Complainants will be advised when cases are closed, and the reason. We will endeavour to resolve enquiries within three months of their receipt, however should further action be required, such as the issue of Enforcement Notices, clearly this timescale will not be possible. It is important to remember that often the success of a case relies on the complainant working with the council to provide details of the breach, to give evidence where possible, and potentially to act as a witness. The council will discuss this with you if it is required and any refusal to be more involved than you are comfortable with will not stop the investigation of a case (unless evidence cannot be gathered as a result).

Sometimes enquiries arise that appear to be motivated by neighbour or business disputes. Whilst we will always act on enquiries, whatever the background, we will not register or pursue issues that have nothing to do with planning.
6. **What happens if someone complains about you?**

If you are contacted about an alleged breach of planning control, you are entitled to know what the allegation is (but not who made it) and to have the opportunity to explain your side of the case. We are aware that sometimes people make complaints due to neighbour disputes, as such we will always seek to work with you to understand the true facts of the case.

Initially a council officer will visit the site. Due to time constraints, this is usually without any prior warning to the owner or any tenants / employees at the site. Officers are authorised to visit a site to investigate and will show identification when they arrive.

Council officers also have powers to obtain a warrant of entry where access is refused or refusal is anticipated. Wilful obstruction of a person exercising a right of entry is an offence so you should always seek to work with the council officer.

However, we are required to give 24 hours notice to insist on entry to a residential property but if you are happy to allow us access then we will usually take up that offer.

In the event of a breach being established, your co-operation will be sought to correct the breach either by removing or modifying the unauthorised development or by ceasing the unauthorised use or activity prohibited by a planning condition. A reasonable period of time, which will depend on the nature of the breach, will be allowed for you to do this.

In some circumstances you may be invited to submit a retrospective planning application or other appropriate application if it is considered that consent may be granted or an application for a Certificate of Lawfulness of Use or Development may be invited in the event that you can show that the breach is immune from enforcement action and therefore lawful.

7. **What happens if you are not happy with our service?**

The council aims to provide an efficient and effective service for everyone it deals with and to maintain good relations with those who use our services. Planning enforcement is a complicated area of law and care must be taken to arrive at a correct and appropriate course of action related to alleged breaches of planning control. If you are aggrieved with the service offered to you, there is a complaints procedure, where complaints can be investigated. Details of this procedure are available on the council’s website.

If you remain dissatisfied, the matter can be investigated by the Local Government Ombudsman. They will make an independent investigation of whether maladministration has occurred by the district council and if it has, recommend what remedy ought to take place.

8. **Review of this Document**

Performance in respect of the standards and performance levels outlined in this report will be reported to the Council’s Governance, Risk and Audit Committee on a quarterly basis.

The priorities identified in this report will be reviewed on a 3 yearly basis or sooner if requested by the Council’s Development Committee.