



**NORTH NORFOLK
DISTRICT COUNCIL**

**LOCAL PLANNING
ENFORCEMENT PLAN**

March 2022

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) (last updated 20 July 2021) 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;
- Unauthorised advertisements
- 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 and 10 years for any other change of use.

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

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 everyone to understand how we operate, and it will help interested parties to understand when we can or cannot take action.

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 proportionate 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. This means that any action taken must be in the wider public interest and the action must be proportionate to the level of the breach. We will consider this by thorough assessment of the relevant facts in each case. Our consideration will be no different to those when considering the merits of an application for planning permission before the development started. For instance, if a development would have received planning permission, it will not be enforced against simply because it was carried out before planning permission was granted. Formal enforcement powers will not be used against trivial or technical breaches of planning control which cause no harm. The Council will always seek to 'remedy' a breach before considering formal action, often breaches can be resolved through negotiation.

In coming to a decision in an individual case, the investigating officer will use the Planning Enforcement Teams "Harm Assessment Form" to determine which cases require further action.

The Harm Assessment Scheme is applied to incidents which are found to be a breach of planning control following a site inspection. The scheme grades the "Harm" of that breach against a series of scored criteria. The agreed level of harm (the 'score') is 7 and above. Where the cumulative score is 6 and under, it is not considered expedient to pursue the breach as the impact on public amenity and/or interest will be negligible. In those instances, the case will be closed, and advisory letters will be sent to both the offender and complainant. The property owner will also be advised of the how to rectify the situation, most usually through the submission of a planning application seeking retrospective consent, as the breach that has occurred could affect any future sale of the property. Once all parties have been notified the Council will close the file and take no further action. This course of action is only to be used for cases rated as medium or low priority in line with the Councils Planning Enforcement Plan.

However, a different course of action will be applied to those cases with a Harm score of 6 or less where agreed by the Enforcement Panel (or Director for Place & Climate Change / Assistant Director - Planning), that the breach would unlikely receive planning permission or the breach should otherwise be pursued. In these circumstances the case will not be closed, and the breach will be pursued to a conclusion.

Breaches of planning control that score 7 or higher will be pursued by officers until the matters are resolved either through negotiation or by taking formal action.

Harm Assessment will be applied to all cases involving development, Advertising Control and cases investigating untidy land or buildings in a state of disrepair (s.215).

High hedge cases have a different legislative requirement and therefore this Harm Assessment process will not apply to High Hedge complaints.

A copy of the Harm Assessment Form is produced at Appendix.1 to this document.

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.

If the person causing the breach is refusing to talk to the Council or to resolve in an acceptable manner and the breach is harmful and not reconcilable, 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 can seek to recover profits made either under the Town & Country Planning Act 1990 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 is 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 £2,500.

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 may 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 - a site visit will be made within 10 working days wherever possible

Low – a site visit will be made within 20 working days wherever possible



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 Planning Enforcement Team will deliver the service

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

- By completing the online complaint form at:** www.north-norfolk.gov.uk/contact - check
- By email at: combined.enforcement@north-norfolk.gov.uk
- By letter addressed to:**
Planning Enforcement,
North Norfolk District Council,
Council Offices,
Holt Road,
Cromer,
Norfolk NR27

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.
- Precise details of the nature of the activity such as opening hours, number and times of deliveries, or what time work commenced (as appropriate).
- Details of the alleged contravener (if known) and whether you have approached them.
- Details of the effect that the alleged breach is having upon you in terms of harm – noise, traffic, odours, overshadowing for example.

In many instances the assistance of the general public can be crucial to the success of enforcement action as Council officers are unable to 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 councillor, 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.



When a complaint is received:

- We will promptly register every case and acknowledge receipt either by letter or by email within three working days.
- We will then carry out some initial checks in accordance with the priority given to the case, but in any event within ten working days. We will undertake a site visit in line with the priority of the case
- Thereafter complainants will be updated by telephone, email, visit, or formally in correspondence when we have decided a course of action after our site visit
- When cases take a long time i.e. 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 six 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.

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 lawful.

If you are running a business which is threatened by enforcement action, you may be directed to our Economic Development section to see whether, depending on the circumstances, alternative premises can be found to minimise the possible impact on the business, this does not mean that the enforcement action will be delayed or stopped. If you are issued with an Enforcement Notice you will be given the precise details of the breach, the reasons for the action, the steps required to overcome the problem and the time period for compliance. You will also be advised of your right to appeal any notice issued. Officer's aim is to resolve breaches of planning control and they will work with you to achieve this in a positive and pragmatic way. Most breaches are resolved through negotiation and discussion, and we encourage you to cooperate positively. It is in the interests of all parties if an identified breach can be addressed and then resolved at an early stage.

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 (LGO). The LGO 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 as may be requested by the Council's Development Committee.

Appendix 1- Harm Assessment Form

North Norfolk District Council - Planning Enforcement

Harm Assessment- Expediency Test

Procedure for closure of reported breach of planning control incidents

***Any cases that meet the threshold set out below may not automatically be served a formal notice as negotiation will first be attempted to resolve the breach. ***

Purpose

This document sets out the Council's 'Harm Assessment' procedure in relation to the consideration and handling of alleged breaches of planning controls. It is to be used to assess the "planning harm" that the alleged breach is perceived to cause and provides a process for the "closure" of minor breaches of planning control, where no significant harm is identified.

Background

Historically, when alleged breaches of planning control have been reported, the case was not closed on internal systems until the breach of planning control was rectified. This resulted in the Enforcement Team continuing to use resources to pursue minor breaches of planning control that were not causing harm to public amenity.

The Scheme

The Harm Assessment Scheme is applied to incidents which are found to be a breach of planning control following a site inspection. The scheme grades the "harm" of that breach against a series of scored criteria. **The agreed level of harm (the 'score') is 7 and above.** Where the cumulative score is 6 and under, it is not considered expedient to pursue the breach as the impact on public amenity and/or interest will be negligible. In those instances, the case will be closed, and advisory letters will be sent to both the offender and complainant. The property owner will also be advised of the how to rectify the situation, most usually through the submission of a planning application seeking retrospective consent, as the breach that has occurred could affect any future sale of the property. Once all parties have been notified the Council will close the file and take no further action. This course of action is only to be used for cases rated as medium or low priority in line with the Councils Planning Enforcement Plan.

However, a different course of action will be applied to those cases with a Harm score of 6 or less where agreed by the Enforcement Panel (or Director for Place & Climate Change / Assistant Director Planning), that the breach would unlikely receive planning permission or the breach should otherwise be pursued. In these circumstances the case will not be closed, and the breach will be pursued to a conclusion.

Breaches of planning control that score 7 or higher will be pursued by officers until the matters are resolved either through negotiation or by taking formal action.

Harm Assessment will be applied to all cases involving development, Advertising Control and investigation into untidy land and buildings in a state of disrepair (s.215).

High hedge cases have a different legislative requirement and therefore this Harm Assessment process will not apply to High Hedge complaints.

Fifteen planning "harm" factors are set out in the Harm Assessment Form dealing with factors such as, the nature of the breach, safety issues, policy matters and degree of harm to name just a few.

Operational Aspects

The Harm Assessment Form is to be completed by the investigating officer within 28 days of the initial complaint being received / observed. This allows additional time if the officer has to refer the case to the NNDC Enforcement Panel or where the officer is awaiting external feedback e.g. from a consultee. The initial site visit and first update to the complainant must be undertaken within 10 days of the complaint being received, and any additional time required to reach a final decision on the case should be relayed to the complainant at the earliest opportunity.

If the enforcement case relates to a change of use of land or a building, the investigating officer shall visit the site a minimum of three times within the 28-day period to properly observe any alleged breach. At the end of the 28-day period the investigating officer shall update all parties involved.

Conclusion

The introduction of this form will assist the investigating officer in making swift decisions whilst re-enforced with a detailed and impartial decision-making process. The form ensures that the decision making within the team is open and transparent while at the same time being straight forward to understand. Individual cases can be compared against other similar enforcement cases ensuring that decisions are consistent across the team with each case assessed equally and proportionately.

It is recommended this document is updated every three years alongside the Planning Enforcement Plan.

Harm Assessment Form

To be completed by the investigating officer:

- If planning permission is refused for the development, there is no requirement to complete this form, as the Planning Case Officer will have addressed the harm within the Officer Report.
- Cases which score more than 7 will be pursued by the Officer to find a resolution to the breach.
- Cases which score 6 or less will be closed, as there is insufficient identified harm meaning it will not be expedient to pursue the matter further.
- Where there is no breach of planning controls found, the file will be closed accordingly.

Points allocation			Score
1	Is the breach.	Worsening/ongoing (1) Stable (0)	
2	Highway's safety issue:	Yes (2) No (0)	
3	Other safety issue	Yes (2) No (0)	
4	Causing a statutory nuisance or serious environmental nuisance	Yes (1) No (0)	
5	Complainant	Immediate Neighbour (2) Other/Parish Council/local member (1) Anonymous (0)	
6	Age of Breach	Within 6 months of immunity (2) Less than 3 months old (1) More than 3 months old (0)	
7	Major planning policy breach	Yes (1) No (0)	
8	Is there harm?	Widespread (2) Local (1) None (0)	
9	Irreversible harm?	Yes (2) No (0)	
10	Flood risk?	Zone 3 (2) Zone 1-2 (1) NFR (0)	
11	Breach of Planning Condition or an Article 4 Direction:	Yes (1) No (0)	
12	Conservation Area (or adjacent to)	Yes (1) No (0)	
13	Listed building or affecting the character or setting of a listed building	Yes (2) No (0)	
14	Particularly sensitive site e.g. SSSI, AONB, Scheduled Monument, Archaeological importance	Yes (1) No (0)	
15	Undesirable harmful precedent	Yes (1) No (0)	

Supplementary Notes:

* This is only involving cases where the District Council have the powers take enforcement action, for instance there is a breach of condition. However, if there is a general public highway safety issue then the matter will be directed to Norfolk County Council to investigate.

** The meaning of "local" in this instance would include the surrounding area up to 0.5 miles from the site of the alleged breach.