



THE ENFORCEMENT OF PLANNING CONTROL

Darlington Borough Council as Local Planning Authority has responsibility for the enforcement of the Town and Country Planning Act and associated legislation. This guidance note sets out the Code of Practice adopted by the Council in relation to the enforcement of planning control and those matters that will be taken into account in deciding whether or not to exercise those powers.

THE ENFORCEMENT OF PLANNING CONTROL

Most people have a concern for the environment and in particular the area in which they live or work. The public expects that local authorities should, whenever necessary, take firm action where development is carried out in contravention of the planning regulations.

The Borough Council is responsible for planning enforcement in Darlington. Decisions on whether to proceed with such action in individual cases is a discretionary matter for the Council. Action is taken only when it can be demonstrated to be necessary and only on planning related grounds. In considering any decision to take enforcement action, the Council will have regard to the provisions of the Human Rights Act 1998 where appropriate.

The cost of investigating a breach of planning control can be significant, particularly in cases where investigation has to be carried out over a significant period of time. The aim of the Council to investigate breaches of planning control fairly, in confidence and as speedily as possible.

Not all breaches of control have immediate or serious effects and may not need to be investigated urgently. In order to make the most efficient use of its resources the Council gives priority to cases which cause the greatest harm in terms of loss of amenity or, where for legal or other reasons, it is important to respond promptly to a breach of control.

In summary Central Government policy is:

- The decisive issue for a Council should be whether the breach of control unacceptably affects amenity or results in an unacceptable impact on people or the environment.
- Councils are discouraged from taking formal enforcement action against a trivial or technical breach of control which causes little or no harm to amenity in the locality of the site or because no planning application has been submitted and approved for the development.
- Failure to take enforcement action that is clearly necessary can be “maladministration”. In such cases Councils can be investigated by the Local Government Ombudsman.

In preparing and adopting the Enforcement Code of Practice the Council has had regard to:

- “Planning Policy Guidance Note (PPG) 18 - The Enforcing Planning Control” issued by the Secretary of State for the Environment, Transport and the Regions (published December 1991).

- Circular 10/97 “Enforcing Planning: Legislative Provisions and Procedural Requirements - July 1997.
- “Enforcing Planning Control Good Practice Guide for Local Planning Authorities” (July 1 1997).
- “Development Control - A Charter Guide” published by the National Planning Forum (February 1993).
- “Enforcement Concordat”, published by the Cabinet Office (March 1998).
- Planning Users Concordat (LGA July 2000)
- The Council’s Charter For Development Control.

THE COUNCIL’S CODE OF PRACTICE

The Council will investigate complaints alleging breaches of planning control in accordance with the following code of practice.

The complaint, when received from a member of the public in the form of a letter will be acknowledged within one working day and the complainant will receive a copy this guidance note. Any complaint received by phone or in person should be confirmed in writing subsequently but will be recorded initially. (The requirement to confirm details of a complaint in writing will only be waived exceptionally). It is the policy of this Council not to take any action in response to anonymous complaints, except in very exceptional circumstances.

In all cases the person or company responsible for the breach will be informed as to what is wrong and what action, subject to an agreed time limit, is necessary. They will also be advised of the consequences of failing to take the agreed action.

CONFIDENTIALITY

All complaints relating to breaches of planning control will be investigated and treated confidentially by Officers and Members of the Council. The party under investigation or other members of the public will not be allowed access to the complaint file under any circumstances. In some circumstances the party under investigation will have strong suspicions about the identity of the complainant(s) but the Council will not comment on these.

Where enforcement matters are the subject of reports to the Planning Applications Committee these will be considered after the press and public have been asked to leave the meeting.

The Council is under a legal obligation to maintain a register of those properties which are, or have been, the subject of enforcement action, and to identify these in response to local searches.

CATEGORIES OF COMPLAINT

CATEGORY 1 - EMERGENCY COMPLAINTS

Definition - A complaint that after initial investigation by officers and on the basis of the observed and collected evidence is causing, or will cause severe loss of amenity.

Action - An initial site inspection will take place within 24 hours of the receipt of the complaint and a letter sent to the complainant within 3 working days setting out the Council’s proposed course of action, if any, and the reasons for it. Examples of priority enforcement cases include:

- business uses in residential areas which result in severe loss of amenity by reason of noise and disturbance.

- all reported incidents of completed, ongoing or imminent works to trees or hedgerows subject to legal protection.
- all reports of unauthorised works to statutorily Listed buildings which have the potential to harm their special architectural interests or historic significance.
- all incidents of “fly-posting”.
- potential damage to Ancient Monuments or other archaeological remains
- any other development which gives rise to significant or unacceptable loss of amenity or serious danger to the public including the increased risk of crime.

CATEGORY 2 - PRIORITY COMPLAINTS

Definition - A complaint that, after initial inspection and on the basis of the observed evidence and information collected, is not causing severe loss of amenity but where it is necessary to determine quickly the appropriate course of action.

Action - A site inspection will take place and a letter sent to the complainant within 5 working days stating the proposed course of action, if any, and the reasons for it.

CATEGORY 3 - OTHER COMPLAINTS

Definition - All other complaints not in categories 1 & 2.

Action - A site inspection will take place and a letter sent to the complainant within 10 days stating the proposed course of action and the reasons for it.

If the Council decides to take enforcement, the Council will write to the complainant informing them of that decision within 10 working days of that decision being taken.

SUMMARY OF ENFORCEMENT POWERS

The Council has a range of powers available to it under the Town and Country Planning Act. It will not be appropriate to use these powers in all cases and each breach must be treated on its merits. Powers available to the Council include:

- **PCN (Planning Contravention Notice)** - A PCN requires a land owner or occupier to give information to the Council on the use of land where it appears that a breach may be taking place. This power enables the Council to establish quickly whether a breach is taking place. Failure to respond to the notice is an offence which can result in a prosecution and fine.
- **Enforcement Notice** - A notice which is served specifically to require a breach of control to be remedied e.g. the removal of an unauthorised extension to a building. Failure to comply with a valid enforcement notice is an offence which can result in a prosecution and fine.
- **Stop Notice** - this notice can be served at the same time as an Enforcement Notice to make the enforcement notice’s provisions immediately effective where there are special reasons for doing so.
- **BCN (Breach of Condition Notice)** - this notice requires the owner or occupier of the land to comply with conditions imposed on a previous grant of planning permission e.g. hours of opening at a hot food take-away. Failure to comply with the BCN is an offence which can result in a prosecution and fine
- **Injunctions** - these are powers granted by the Courts to restrain any actual or expected breach of control. Failure to comply with an injunction is a serious offence which can result in prosecution and significant fines.

In addition to the above the Council has a range of powers to deal with specific breaches of control, examples of these include:

- Listed Building Enforcement Notice
- Listed Building Repairs Notice
- Prosecution for unauthorised display of outdoor advertisements or discontinuance of existing displays
- Prosecution for unauthorised works or felling of trees subject to protection
- Section 215 Notices relating to untidy land.
- Hedgerow Replacement Notice.

COMPLEMENTARY POWERS

In order to exercise its enforcement powers effectively and efficiently the Council has a range of other powers available to it, including powers of entry onto land and buildings and the requirement for information to be provided. In some circumstances it is also an offence to obstruct or frustrate the Council in the exercise of its powers e.g. preventing officers lawfully entering onto land in pursuance of inquiries or failure to return or complete accurately notices requiring the provision of information. In certain specified cases it will be necessary to issue a “caution” prior to interview where information may be used for evidence in legal proceedings in court. The Council will however always explain circumstances where failure to take a suggested course of action may lead to enforcement action or prosecution.

The Council may request that diaries or similar records are kept over a period of time by complainants and submitted to the Council to complement its own evidence collection. The Council’s experience is that, where such evidence has been collected, enforcement action can be quicker and more effective.

WHAT DO YOU DO IF YOU ARE THE SUBJECT OF A COMPLAINT?

First and foremost, you should respond to any contact or request for a meeting with officers promptly. Second, respond as quickly as possible to any request for information by officers of the Council. Bear in mind that the purpose of the initial contact is to try and establish as quickly as possible whether there has in fact been a breach of control. In the event that a breach of control is confirmed the role of the officers is to advise the landowner or occupier, what options are available to them in order to avoid enforcement action. These options may vary widely, from a simple adjustment to the activity e.g. hours of operation, to requesting the submission of a planning application to regularise the breach of control and to allow the effective regulation of the use of the land. You may believe that the suspected breach of control is lawful under the planning act and should therefore be immune from enforcement action. In this case the most appropriate form of action may be the submission of an application for what is termed a Certificate of Lawfulness.

Where officers advise that in their view a breach of control is taking place, they will clearly explain any implications of carrying on with the unauthorised development. In the case of building work, carrying on in the absence of planning permission may result in abortive costs for you if permission is refused or conditions are attached which require work to be altered.

For these reasons, the earliest possible contact with Council officers is encouraged so that advice can be given regarding options and an informed decision arrived at as to how to proceed. Remember that it is the policy of the Council to investigate confirmed breaches of control but, in doing so, it will deal with the complaint in a fair and even handed way in accordance with published guidance.

YOUR RIGHT OF APPEAL

If the Local Planning Authority decides to take enforcement action its decision may be challenged by lodging an appeal with the Secretary of State for the Environment Transport and the Regions. The appeal process is not available for in all cases, e.g. PCN’s (Planning Contravention Notices) or BCN’s (Breach of Condition Notices). Appeals may be lodged

however against the Enforcement Notices, and similar notices. Guidance on the right of appeal appears on all formal notices served and appeal procedures may be begun by anyone who receives a copy of the notice. Further guidance on appeals may be found in publications produced by the Department of the Environment Transport and the Regions and the Planning Inspectorate, many are available from the Council on request. The Council will always encourage people who have received notices to seek the help and advice of a solicitor, planning consultant or suitably qualified person but Officers in the Council can, without prejudice, give guidance on the general procedures involved at an appeal and the different appeal formats and procedures. Advice is also available via a scheme called Planning Aid which is sponsored by the Royal Town Planning Institute.

At Darlington Borough Council we are committed to providing you with high quality services. We try hard to maintain those standards but sometimes things do go wrong. When this happens we want to hear from you and we will try our best to put things right - and make sure it does not happen again.

Other Publications Available from this Authority:

Making Your Enforcement Appeal (to Planning Inspectorate)
Planning - A Guide for Householders (Department of Environment)
Lawful Development Certificates - A Users Guide (Department of Environment)
Planning - Charter Standards - (Department of Environment and National Planning Forum)
Planning Permission - A Guide for Business (Department of Environment)

Other Sources of Information and Advice

Royal Town Planning Institute (RTPI), 41 Botolph Lane, London EC3R 8DL. Switchboard 020 7929 9494, Fax 020 7929 9490, Email: online@rtpi.org.uk, Website : www.planning.haynet.com
Royal Institution of Chartered Surveyors (RICS), 12 Great George Street, London SW1P 3AD. Tel 020 7222 7000, Fax 020 7222 9430, Website: www.ricsonline.org
The Law Society's Hall, 113 Chancery Lane, London WC2A 1PL. Tel 020 7242 1222, Fax 020 7831 0344, Email: info.services@lawsociety.org.uk
Planning Aid North, Joint Professional Centre for Planning and Landscape, 3rd Floor, Claremont Tower, University of Newcastle upon Tyne, Claremont Road, Newcastle Upon Tyne. Tel 0191-222 8772

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