

# Planning Services Enforcement Policy

June 2011

This Policy aims to provide an efficient planning enforcement service in support of the Council's statutory planning service in a clear, consistent, proportionate and open manner. It sets out the standards individuals and organisations can expect from Bath & North East Somerset Council in carrying out its planning enforcement functions.

### PRINCIPLES

It is important to appreciate that enforcement of planning regulations is not a statutory function. While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required permission, The Local Planning Authority cannot serve an enforcement notice solely to regularise development that would otherwise be acceptable on its planning merits.

Only the Local Planning Authority (Bath and North East Somerset Council) is empowered to take planning enforcement action in cases where it is 'expedient' to do so, having regard to the provisions of the Development Plan and to any other material considerations.

In most cases, it is not illegal to undertake work without express planning permission. However, Bath and North East Somerset Council take such cases very seriously in order to ensure that the public benefit from the natural and built environment and the quality of their planning decisions. The integrity of the Local Planning Authority (LPA) and Development Management function depends on the Council's ability to take appropriate enforcement action.

Not all buildings or uses need planning permission. Some do not fall within the Planning Act, some are permitted development by Government Regulations and others will be immune from enforcement action.

NB. These decisions will be a matter for officers of the Planning Authority (B&NES) and not subject to public consultation.

### OBJECTIVES

The objectives of the enforcement process are to:

- Investigate and resolve unauthorised planning development and works to listed buildings
- Investigate and resolve unauthorised works to protected trees and hedgerows;
- Investigate and resolve non compliance with planning permissions, conditions and Planning Agreements.

- Respond to complaints in an efficient and timely way.

This enforcement policy incorporates the principles of:-

- **Consistency** - Each individual matter will be considered on its merits; will be a consistent approach to enforcement action in similar circumstances. It does not mean uniformity.
- **Proportionality** - As far as the law allows, the Planning Service will take account of the circumstances of the case and the degree of harm or potential harm in planning terms when considering appropriate action
- **Openness** - The Planning Service will:
  - Keep complainants, owners/developers and Ward Councillors informed about any formal action, including case closures with any investigation;
  - Make it clear as to why the Local Planning Authority has decided to take or not to take formal enforcement action or why the case has been closed

## PRACTICE

The Council's planning enforcement team will therefore **only** investigate those matters that **constitute a breach of planning control** within the terms of the Town Country Planning Act, 1990 (as amended), The Planning (Listed Buildings and Conservation Areas) Act 1990 and the High Hedges Regulations.

This will consist of

- Unauthorised buildings, uses, works to listed buildings, advertisements;
- non compliance with permissions, conditions and Planning Agreements; and
- unauthorised works to protected trees and hedgerows.

The emphasis will be firmly on negotiating compliance or, wherever possible, regularising breaches of planning control before considering taking formal enforcement action. The Council will only take formal enforcement action where it considers it is **expedient to do so**. i.e. in cases where

1. the breach cannot be resolved e.g. submission of a planning application
2. planning permission is unlikely to be granted

Complaints will **NOT** be investigated for the following:-

- Neighbour disputes e.g. overhanging gutters/rain water goods, boundary fences (except within the curtilage of listed buildings)
- Civil disputes e.g. boundary disputes, landownership, access rights, Covenants or other legal procedures.
- Short term temporary structures.

- Short term temporary uses.
- Signs or other structures within the public highway
- Breaches of control that are more effectively covered by other legislation e.g under the Property lease, Environmental Pollution Control,
- Anonymous complaints
- Where complaints relate to matters of private interest.

There are checks and balances built into the Planning enforcement process to allow for negotiations, regularisation and statutory time scales (for an application and or appeal). This is often beyond the control of the Local Planning Authority and can result in a lengthy process during which no formal action can be taken.

## SERVICE STANDARDS

In exercising its enforcement function, all complaints about alleged breaches of planning control must be received **in writing**.

The Planning Enforcement Service will ensure that:

<b>General Action</b>	<b>No. of working days</b>
All complaints received by e mail will be acknowledged by return	1 day
All sites will be visited on an unannounced basis during the week following receipt of the complaint	10 days
The complainants will be informed in writing if there is no case to investigate and the LPA's reasons for closing the case.  Cases to be investigated further will be allocated to a case officer and the complainant advised accordingly.	15 days
Cases will be subject to regular reviews.  Complainants and subjects will be updated <b>only</b> where there is any formal action e.g. issue statutory reports, Notices, applications and/or appeal or case closed.	

Planning Services will monitor the number of investigations carried out, record any action taken, whether formal or informal and publish statutory actions on the public web site.

## **General Principles for Good Enforcement Procedures**

The Planning Enforcement Service will ensure that each alleged breach will be investigated and assessed against the criteria set out above.

In general terms, customers can expect

- Advice from an officer to be put clearly, simply and in writing.
- Where no action can, or is to be taken, the complainant and the subject will be notified in writing of the reasons for that decision.
- Unless immediate action is required, officers will endeavour to negotiate compliance or resolution and to provide the opportunity to discuss the circumstances of the case before formal action is taken.
- Where immediate action is considered necessary, an explanation of the reasons will be given at the time and confirmed in writing together with a time scale for implementation.
- Where formal action is taken by the Local Planning Authority issuing a statutory enforcement notice, all parties served with a copy of the notice will be informed of the appeal procedure and advised in writing of the consequences of non-compliance with such a notice.
- The Planning Service will consider prosecuting individuals or organisations who do not comply with any formal notice served on them, and will consider taking direct action, where necessary, having regard to degree of harm, public safety and public interest.
- Where no formal action is considered appropriate, the reasons will be given to the subject and the complainant.
- Enforcement investigation cases will be closed in accordance with the planning enforcement criteria set out below.
  - No breach was found
  - Breach has been removed/use ceased/compliance
  - Submission of planning application/listed building application
  - Submission of appeal
  - Not expedient to take enforcement action i.e.
    - Permission is likely to be granted
    - Breach is not causing significant harm (de minimus)

Cases can be reopened depending on the outcome of the above

The Council's Scheme of Delegation will be applicable in all cases.

## **SUBMITTING A COMPLAINT**

A complaint about an alleged breach of planning regulations can be submitted by anyone, including private individuals, public bodies, elected members and council officers.

All complaints must be received in writing or through the on line proforma giving -

- the address of the property where the alleged breach has taken place
- the nature of the alleged breach
- the name and address of the complainant
- a contact telephone number
- any evidence available including a plan if possible

Please submit your complaint to [Planning\\_enforcement@bathnes.gov.uk](mailto:Planning_enforcement@bathnes.gov.uk) or in writing to Planning Services at Po Box 5006., Bath BA1 1JG.

In order to ensure there is no misunderstanding in the detail or the validity of the complaint, all telephone complaints must be followed up in writing with the information identified above. Complainants details will be taken in confidence, subject to the Freedom of Information Act, but are necessary to establish the validity of the complaint and to enable complainants to be kept informed. Complainants should however be aware that in some cases it may be a relatively simple deduction for a subject to identify the source of the complaint.

**NOTE - Anonymous complaints will not be investigated.**

#### **OTHER ADVICE**

Planning Services have produced advice notes and information on enforcement matters in relation to:

- Trees
- Hedgerows
- High Hedges

The Planning Service will seek to provide further advice notes to provide guidance to the public and other interested parties.

#### **Complaints about the Service**

Please note the comments in the section headed Principles above.

If, however, you are unhappy about the level of service you have received from Planning Services or how the process and procedures used in carrying out its enforcement functions you may discuss the matter with the Senior Enforcement Officer or take it further through the Council's Corporate Complaints Procedure. Details of this can be found at <http://wwwi/councilanddemocracy/corporatecomplaints/Pages/complaintsprocedure2.aspx#The1>

**Please note** - Only the Local Planning Authority can decide what, if any, action is required in planning enforcement cases. However, if you do not agree with the LPA's decision to either take or not to take formal action, Officers will provide **only one** response in writing to explain the decision. No further correspondence will be undertaken after that, unless there is a material change in circumstances.

**BATH & NORTH EAST SOMERSET COUNCIL**

**PLANNING ENFORCEMENT COMPLAINT**

Please fill in the information requested below and include any plans or photographs you feel may be useful. **[ N.B. Anonymous complaints will not be investigated ]**

Date	Address of alleged breach
Plan of site [please use separate piece of paper if required]	
How long has breach been occurring	Description of alleged breach
Any known planning history	
Name of owner	Address of owner
Their tel. number	Their E mail address
<b>Information below will remain confidential</b>	
Your name	Your address
Your Tel. number	Your E mail address