

# LOCAL ENFORCEMENT PLAN



**Published April 2013**

**Bath & North East  
Somerset Council**



## Introduction

The National Planning Policy Framework (NPPF), (Paragraph 207) recommends Local Planning Authorities publish a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This Local Enforcement Plan sets out how alleged cases of unauthorised development will be investigated and outlines the Council's discretionary powers in relation to planning enforcement. This plan sets out the priorities for responses to complaints and the relevant timescales. The Local Enforcement Plan sets out the standards individuals and organisations can expect from Bath & North East Somerset Council in carrying out its planning enforcement functions.



## **The objectives of the enforcement process are to:**

- Investigate, resolve and monitor unauthorised planning development and works to listed buildings.
- Investigate, resolve and monitor unauthorised works to protected trees and hedgerows.
- Monitor compliance with planning permissions, conditions and planning agreements.
- Respond to complaints in an efficient and timely way.

## **Priority**

Allegations about breaches of planning control will be investigated thoroughly and accurately in accordance with the following order of priority:-

### **High Priority**

- 1) Unauthorised demolition, partial demolition or a significant alteration of a building, which it is essential to retain (e.g. a listed building or building within a Conservation Area or World Heritage Site) or any other development that causes irreversible demonstrable harm.
- 2) Unauthorised works to trees covered by a Tree Preservation Order (TPO) or in a Conservation Area.

### **Medium Priority**

- 3) Any unauthorised development/activity which, causes clear, immediate, and continuous harm or danger to the locality including the amenities of adjoining residents.
- 4) Breach of a condition, which results in serious harm to amenity in the neighbourhood.
- 5) Unauthorised development in an Area of Outstanding Natural Beauty, Green Belt, Site of Special Scientific Interest (or other national designation of nature conservation), or Conservation Area or where an Article 4 Direction has been issued or in the area of Townscape Heritage Initiative/Heritage Economic Regeneration area, or a registered and locally important historic park and garden.
- 6) Any unauthorised development where the time limit for enforcement action will expire within the next 6 months.
- 7) Unauthorised development, which is the source of significant public complaint.
- 8) Unauthorised advertisements.

### **Low Priority**

- 9) Unauthorised development, which would be likely to receive planning permission if a planning application were to be submitted.

## **Principles**

The integrity of the Local Planning Authority (LPA) and Development Management function depends on the Council's ability to take appropriate enforcement action. Without this function the Council would be unable to monitor unauthorised or non-complying development within the District.

This enforcement policy incorporates and is consistent with the Enforcement Concordat produced by the Government's Better Regulation Task Force and embraces the principles of:-

- Consistency - Each individual matter will be considered on its merits; there 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:
  - i. keep complainants, owners/developers, Ward Councillors, Parish Councils and Town Councils informed about any formal action, including case closures, with all investigations;
  - ii. Make it clear as to why the Council has decided to take or not to take formal enforcement action or why the case has been closed.
  - iii. Enforcement cases resulting in formal action will be made available on the Council's public access system, similar to planning applications. [NB. These will only be in respect of statutory reports, Notices and appeal documentation.]
  - iv. Review performance regularly and publish results.

The use of formal enforcement action will be as a last resort and shall not be used without first seeking a solution through negotiations. Whilst the Council will endeavour to overcome any harm caused by unauthorised development by negotiation wherever possible, the enforcement system rapidly loses credibility if unacceptable developments are perpetuated by prolonged or protracted enforcement discussions. Therefore a time limit for concluding negotiations will be considered in every case. This will have regard to statutory time scales (for an application and/or appeal). It should be noted that by its very nature Planning Enforcement is a lengthy process during which there may be periods in which no formal action is taken.



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) and Part 8 (High Hedges) of the Anti-social Behaviour Act 2003.

In deciding whether to take enforcement action the Council will have regard to the development plan and to any other material considerations including National policies and procedures.



## Expediency

In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of control would unacceptably affect public amenity, whether it would give rise to a serious risk to public safety or the existing use of land and buildings merit protection in the public interest. Any action taken will be commensurate with the breach of control to which it relates.

In considering whether to take enforcement action the Council will not give weight to the fact that development may have commenced. It is not a criminal offence to carry out development without planning permission (unless it involves a listed building). It is merely unauthorised and no criminal offence has been committed. It is therefore important that unauthorised developments are treated on their individual merits in the same way as proposed developments. The test to be applied will be “would planning permission have been granted for this development had it been the subject of a planning application”?

Where it is assessed that it is likely that planning permission would be granted for the development, the person responsible will normally be invited to submit a retrospective planning application. It will generally be inappropriate to take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity in the locality of the site.

The person against whom an enforcement notice is served has rights of appeal which must be respected although this may result in some delay in securing a resolution.

In considering whether to take enforcement action, the Council will not give weight to non-planning considerations. It is not the purpose of the planning system to protect the private interests of one person against the activities of another. Action must be based on sound planning grounds. Local opposition or support for unauthorised development will not be given weight unless it is founded on valid planning reasons.

**The Council will take formal enforcement action only where it considers it expedient to do so.**



## Customer Expectations

Customers can expect:

- A prompt, efficient and effective response.
- Following investigation the complainant and other interested parties will be notified of any following action and the reasons for that decision. This will include notification where no action can, or is to be taken.
- 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 Council 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 and public safety.
- Where no formal action is considered appropriate, the reasons will be given to the subject and the complainant.
- The Council's Scheme of Delegation will be applicable in all cases.

## Responding to Complaints

The Council receives approximately 700 complaints regarding alleged breaches of planning control every year. Although, many of these do not result in formal enforcement action, many require lengthy investigation over several months, and therefore the Council must give priority to those cases where the greatest harm is caused.

- Depending on the seriousness of the alleged breach, resources and response times will be allocated accordingly:
- Complaints will be acknowledged within **5 working days** of receipt.
- Complainants, Ward Councillors, Parish Councils and Town Councils will be kept informed of progress of their complaint on a regular basis (at least every 4 – 6 weeks).
- Officers will endeavour to undertake an initial investigation within **2 working days** of all 'High' priority complaints.
- Officers will endeavour to undertake an initial investigation within **10 working days** of all other complaints.



## Submitting a Complaint

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

If you would like the Council to investigate an alleged breach of planning control please download and complete the Enforcement Complaint Form which can be found on the Council's website by using the following link

<http://www.bathnes.gov.uk/services/planning-and-building-control/planning-enforcement>. Once completed the form should be emailed to [planning\\_enforcement@bathnes.gov.uk](mailto:planning_enforcement@bathnes.gov.uk). Please attach any other relevant information with your complaint form.

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 using the Enforcement Complaint Form. Every effort will be made to keep Complainant's details confidential subject to the provisions of the Freedom of Information Act and other associated legislation. 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.

Anonymous complaints will **not be** investigated, although complainants are encouraged to refer the matter to either their elected Ward Councillor or their Parish Council or Town Council to advance their complaint, should they wish to remain anonymous.

## Other advice

Planning Services have produced advice notes and information on enforcement matters in relation to trees, hedgerows and high hedges

