

APPENDIX

ENFORCEMENT PLAN – October 2020

Introduction

This Enforcement Plan aims to provide guidance on how the Council will deliver an efficient enforcement service in support of the Councils statutory planning service. The integrity of the planning service depends on the Councils readiness to take enforcement action when appropriate. Effective enforcement is important in tackling breaches of planning control which would otherwise have an unacceptable impact on the amenity of the area. It also ensures that the integrity of the decision-making process is maintained and helps ensure that public acceptance of the decision-making process is maintained.

It is important to note that just because there may be a breach of planning control this in itself, is not sufficient reason to take enforcement action. The Council must firstly decide, having given regard to the policies contained within the Staffordshire Moorlands Local Plan 2020, guidance contained within the National Planning Policy Framework (NPPF) and all other material planning considerations whether or not it is expedient to take formal action. Expediency is a test of whether the unauthorised activities are causing harm to the environment or amenity of the area. Therefore enforcement is discretionary and each case must be assessed on its own merits. Guidance from Central Government is that enforcement action should be a last resort and Councils are expected to give those responsible for a breach of planning control the opportunity to put matters right or seek to regularise the breach before resorting to formal action. If formal action is pursued it must be proportionate and fair.

Where a breach of planning control has occurred and officers do not consider that it is expedient to pursue enforcement action, officers will be required to justify the decision, with a written report, which shall be considered and agreed jointly by the Head of Development Services and the Chairman of the Planning Applications Committee. A template expediency report is provided at Appendix 1, although the issues which the report will need to cover will vary depending on the particular circumstances of the case.

Most breaches of planning control are not criminal offences unless they involve demolition of, or unauthorised works to listed buildings, demolition of some unlisted buildings in conservation area or the erection of adverts. A criminal offence only arises in the majority of cases when an enforcement notice has been issued, has taken effect and its requirements have not been complied with. If the Council decides to take enforcement action the process can be lengthy and protracted. The alleged

transgressor has a right of appeal to the Planning Inspectorate and costs can be awarded against the Council if our actions are considered to be unreasonable or legally incorrect.

Legislative Background

Enforcement decisions and actions are taken in accordance with Government guidelines and the Corporate Enforcement Protocol. The main relevant background legislation is the Town and Country Planning Act 1990, which is supported by the National Planning Policy Framework (March 2012) and the National Planning Practice Guidance (2014)

The National Planning Policy Framework was introduced in March 2012 and sets out the Governments priorities for the Planning system. It identifies that sustainable development lies at the heart of planning system. This means ensuring that economic growth, social progress and environmental enhancement are delivered.

In considering any enforcement action Paragraph 207 of the framework states that:

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.

Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations. The Staffordshire Moorlands Local Plan 2016 sets out the Councils priorities for delivering sustainable development reflecting the aspirations of local communities and ensuring that planning decisions contribute towards the economic, social and environmental well being (needs) of the District. Planning enforcement has an important role in ensuring that planning decisions are upheld and unauthorised development is controlled appropriately to reflect the priorities of the adopted Local Plan.

Effective Planning Enforcement will also help to achieve the aims of the Staffordshire Moorlands Corporate Plan and in particular the following key aims:

- To help create a safer and healthier environment for our residents to live and work
- To support economic development and regeneration
- To protect and improve the environment

What can the Enforcement Service deal with?

The integrity of the planning service depends on the Councils readiness to take enforcement action when appropriate. The Council is committed to providing an effective planning enforcement service. Planning laws and development plan policies are designed to control the use of land and buildings in the public interest, they are not meant to protect the private interests of one person against the activities of another.

The planning enforcement service is concerned with resolving serious breaches of planning control. It does not deal with neighbour disputes or a change to the environment that an individual or group of residents may not like. There must be significant harm to public amenity, safety or the environment generally. Consequently the Council may not always pursue formal enforcement action where the breach is considered to be acceptable in terms of its harm.

A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990 as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

It often consists of the following:

- The unauthorised erection of a building or an extension
- Unauthorised works to a Listed Building
- Unauthorised demolition within a conservation area
- Breaches of conditions imposed by a planning permission
- Works carried out that do not accord with plans approved by a planning permission
- Untidy land or buildings where it affects the amenity of an area
- Unauthorised engineering works, such as raising or lowering ground levels
- Failure to comply with a Section 106 agreement
- Deliberate concealment of building works or changes of use

However it does not include the following:

- Internal works to a non listed building
- Covenants imposed on property deeds
- Noise/anti social behaviour from activities which do not require planning permission
- Obstructions to a highway/public right of ways
- Parking of commercial vehicles on the highway

- Parking of caravans on residential driveways or within the boundary of a domestic house, provided that it is being used incidental to the enjoyment of the house
- Running a business from home where the main use of the house remains in residential use and does not harm the residential amenities of neighbouring properties
- Dangerous structures, health and safety issues
- High hedge disputes
- Landownership/boundary disputes
- Any works deemed to be permitted under the Town and County Planning (General Permitted Development) Order 1995 (and subsequent amendments)
- Advertisements with deemed consent under the Town and County Planning (Control of Advertisements) (England) Regulations 2007
- Civil issues such as damage to a neighbouring property during construction work
- Clearance of overgrown land of trees and shrubs (unless the subject of a Tree Preservation Order)

Therefore the enforcement service will only investigate those areas which relate to the planning matters. There are often other services with their own legislation which can investigate non planning related complaints such as the Councils Environmental Health Service, Building Control Service, Staffordshire County Council Highway Department, Health and safety Executive and the Police. Contact details for these services can be found at the end of this Plan

What can you expect from the Enforcement Service?

Reports of alleged breaches of planning control are taken seriously by the Council. Harm created by unauthorised development can harm public amenity and the environment. It is important to note that just because there has been a breach of planning control this in itself is not always a sufficient reason to take enforcement action. The Council will firstly decide if the unauthorised works comply with the relevant policies contained in the adopted Local Plan and whether it is expedient to take formal action. Expediency is a test to see if the harm as a result of the unauthorised activities are causing harm to the environment or the amenities of neighbouring properties, taking into account the requirements of Local Plan Policies and any other material considerations.

Therefore we will:

- Respond to alleged breaches of planning control reported to the Council by telephone, email, telephone or by person and investigate complaints

- Keep personal details of complainants confidential where we are able to do so acting in accordance with our responsibilities under the statutory access to information regimes
- Where we need to investigate further we will register your complaint within 3 working days and provide you with a reference number and named officer who will deal with your complaint and the priority category assigned
- Keep you informed of the progress of your complaint and whether action or not will be taken
- Investigations into alleged breaches of planning control can be complex and time consuming, sometimes requiring a site visit and research into the planning history associated within a site. However we aim to resolve most cases within 13 weeks of receipt.
- Where there has been a technical breach of planning control but the harm is not considered to be significant to warrant formal action notify you of the reasoning
- Negotiate with those responsible for a breach of planning control, giving them the opportunity to resolve the matter, prior to taking formal action, unless the breach is so serious it would harm amenity and public safety (e.g. failure to comply with contamination conditions) or discussions have become protracted with limited chance of success

If you are concerned about reporting a breach of planning control to the Council, you can always approach your local Councillor or Parish Council and ask them to report the breach for you.

How will the Council prioritise your complaint?

In order to make the best use of the resources available it is vital that those breaches which are the most serious are prioritised. Complaints will be given a priority score based on the Councils Priority Categories below and investigated in accordance with the published timescales. The Council will decide which priority category the complaint will be assigned to, However this may change during the course of the investigation following a site visit and/or when further information comes to light.

Priority Categories:

| Priorities | Examples (but not exhaustive) |
|--|---|
| One – Serious or permanent threat to public health, safety and the | Development which gives rise to a serious risk to public safety (e.g. non compliance with contaminated land/pollution conditions) |

| | |
|--|--|
| environment | <p>Unauthorised demolition of a listed building, buildings in a conservation</p> <p>Unauthorised development in a SSSI and other nationally recognised nature conservation sites</p> <p>Development sites containing tree preservation orders</p> |
| Two – Less immediate, but harmful with potential to escalate and cause harm to the living conditions of adjoining residents or the environment | Building works that have commenced, including where works have commencement with non compliance with planning conditions imposed to protect public safety/amenity (e.g. safe storage of building materials, site operative vehicles, pedestrian routes, working times) |
| Three – Other breaches likely to remain stable | Development completed including non compliance with other planning conditions e.g. hard and soft landscaping conditions |
| Four – Other minor breaches | E.g. Satellite dishes, adverts, new fences and walls, extensions to properties |

Timescales for Investigation

Following the receipt of a complaint, it will be acknowledged within 3 working days and assigned to a case officer to investigate. The time taken to investigate each breach will vary depending upon the site and the nature of the breach itself. However the Enforcement Service will work towards the targets set out below:

Priority One – A site visit will be undertaken, wherever possible on the same day or the following working day.

Priority Two – A site visit will be undertaken within 5 working days.

Priority Three – A site visit will be undertaken within 20 working days

Priority Four – A site visit will only take place if deemed necessary following a desk top appraisal of the issues.

Where a site visit has taken place, we will keep the complainant up to date with progress.

How do I report a breach of planning control?

Between April 2015 – April 2016 the Enforcement Service received over 400 complaints. In order to deliver an effective and responsive service, and in a timely manner, it is important that that you provide the Council with as much information as

possible. Below is the type of information which will assist the Council in dealing with your complaint:

1. An accurate description of the location/address of the site.
2. An accurate description of the activities taking place.
3. Names, addresses and phone numbers of those persons responsible for the alleged breach.
4. Photographs of the alleged breach
5. In the case of an alleged unauthorised use the frequency of the activity and the hours of operation.
6. Any other information or evidence which would help the Council in its investigations.

Anonymous complaints will not be investigated unless it is matter relating to public safety or potential and irreversible public harm, which will be a matter for the Council to determine. Vexatious or malicious complaints that do not have any substantive planning reasons will not be investigated.

Details of how you can contact the Council can be found at the end of this Plan.

What are the possible resolutions?

Following an investigation, there are a number of potential outcomes which will determine how the Council will proceed. These are summarised below:

No breach established – If after a site visit there is found to be no breach of planning control e.g. development falls within the permitted development tolerances in the Town and County Planning (General Permitted Development) Order 1995, the breach has ceased or it is something which falls outside the control of the planning system, no further action will be taken.

A breach has occurred but it is not expedient to take action – Just because a breach occurs it does not automatically mean that formal action will be taken. As noted above enforcement powers are discretionary and minor technical breaches may not be considered expedient to pursue if there is no harm to amenity due to the time and expense for all parties. When determining whether it is expedient to take enforcement action, the Council will use the report Appendix 1 as a basis for its decision. This report will be agreed between the Operations Manager – Development

Services and the Chair of the Planning Applications Committee if no action is to be pursued.

Negotiations take place to resolve the breach – Government guidance outlines that the first priority should be to try and resolve any breaches through negotiation. Only where negotiations fail or become protracted with the Council consider formal action.

Invite a retrospective application – In some cases the most appropriate way to rectify a breach is to invite a retrospective planning application. This approach will only be taken when planning officers consider that there is a reasonable likelihood that planning permission will be granted in accordance with the policies contained in adopted Local Plan. Other minor technical breaches of planning control may not be pursued in the event that a retrospective application has been requested and not submitted and where it is not considered expedient to take formal action.

The Development is lawful and immune from enforcement action – This happens when an unauthorised use or building works have taken place over a long period of time without it being brought to the attention of the Council. The following sets out the time period when unauthorised development becomes lawful:

| Activity | Immune After |
|--|--|
| Operational development (e.g. building works, fences) | Substantially completed for more than 4 years. |
| Change of use of a building to a single dwellinghouse | Continuous occupation for 4 years or more. |
| Change of use of land/building | Continuous occupation for 10 years or more |
| Breach of a planning condition imposed on a planning consent | Continual non compliance for 10 years or more |

Formal Action - The Council has a range of powers under the Town and County Planning Act 1990 that it can use to remedy breaches of planning control. These are as follows:

| Type of Enforcement Action | Purpose |
|-----------------------------------|---|
| Planning Contravention Notice | Requires a person to divulge information in respect of land and activities. This is often undertaken to determine if there is a breach of control and to inform the appropriate course of action. |
| Breach of condition notice | To secure compliance with condition imposed on a planning consent |
| Enforcement Notice | Sets out specific steps required to remedy the breach of planning control |
| Stop Notice/Temporary Stop Notice | Require the unauthorised activities to cease |
| Section 215 Notice | To secure the proper maintenance of land and buildings |
| Injunctions | To prevent unauthorised development and only used in very limited circumstances |
| Prosecution | Failure to comply with a notice is a criminal offence. To secure compliance with any formal enforcement notice and/or to bring the offence before the court for its consideration and if convicted, sentence including ancillary Orders |

What happens when someone complains about you?

If a complaint is received that affects you then the Council will attempt to contact you, where your details are known to the Council or the site in question will be visited by an enforcement officer. Section 196a of the Town and Country Planning Act gives officers the authority to enter any land. The purpose of the visit is to establish the facts of the case and whether there is any basis to the allegations made and may be carried out without prior warning.

You will be given the opportunity to explain your side of the case, but we will not release personal information about the person that made the complaint. You could submit a request for information using the statutory information access routes, including the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. In the event of such a request being received we will contact the

individual that made the complaint and ask if they would be willing to allow us to disclose their name. Sometimes complainants will agree to us releasing their information if it helps to resolve a matter. If they refuse we have the power to withhold the name of the individual that reported the matter by using exemptions and exceptions including those relating to personal information. Each case will be decided on its own merits and in so doing we would have regard to matters including, the reasonable expectations of complainants, any damage or distress which could be caused to the complainant by disclosure and whether the broader public interest is best served by disclosure of the information.

If there is a breach of planning control you will be advised of the details of the breach and what steps you need to take to either rectify the breach or regularise the situation. You will be given a reasonable period of time (subject to the nature of the breach) to resolve the breach. If compliance is not secured through amicable negotiations or the submission of a retrospective planning application formal action may be instigated.

Proactive Compliance

When planning permission is granted it is often subject to planning conditions and in some cases a legal agreement (often referred to as a Section 106 agreement). Proactive compliance seeks to monitor the implementation of identified development to ensure that the requirements of any planning conditions or agreement are carried out in a complete and timely manner.

In some cases the requirements set out in planning conditions or a legal agreement need to be complied before any works get underway at a site. Failure to do this could mean that the development is exposed to enforcement action.

It is however important to recognise that it is the responsibility of an individual/developer to ensure that they comply with planning conditions and legal agreements, especially those which require the submission of information to the Council before works commence. Failure to do so can affect the quality of the environment and prejudice the reasons why planning permission has been granted.

Effective proactive action will encourage and where needed, enforce compliance to ensure that new development remains acceptable in planning policy terms and maintain an attractive and high quality environment.

What are our priorities for Proactive Compliance?

A risk based approach means ensuring that the available resources are provided in a targeted and focused way. Priority will be given to the following developments:

- All developments over 10 dwellings or residential developments having a site area of over 0.5 hectares
- All commercial developments over 1000 sq. metres floor area
- Development carried out on a site having an area of 1 hectare or more
- All planning decisions the subject of a legal agreement
- Significant works to a Listed Building

In addition and on some occasion's problematic sites which have significant levels changes or contamination will be prioritised.

What the Enforcement Service will do:

The role of proactive compliance will be:

- To educate and inform developers of their responsibilities in relation to the compliance with planning conditions and legal agreements.
- Monitor compliance with planning conditions and agreements.
- Where necessary and expedient to do so, actively stop sites that are proceeding without compliance with planning conditions and legal agreements by the use of Temporary Stop Notices (TSN), Stop Notices and Enforcement Notices
- Co-ordinate with planning officers to ensure compliance with planning consents.

Benefits of Proactive Compliance

The benefits of proactive compliance can be felt by the Council, community and the development industry. By being proactive the Council can be aware at an early stage of sites which are about to commence works. This not only assists the Council and developers in addressing matters which can arise unexpectedly, it also ensures that the Council can respond to the local community when concerns are raised. For the local community this means having confidence in the Council that the conditions within a planning consent will be complied with ensuring a high quality development. For the development industry, the benefits of working with the Council in a proactive manner is to ensure that compliance with planning conditions and legal agreements speeds up conveyancing and solicitors requests.

What can I do if I think something's wrong?

First of all consider if the potential breach is something you could resolve yourself by speaking with your neighbour or the person you feel is causing the breach. It is far better to resolve things amicably if you can than formally involving the Council. However if you feel unable to do this and significant harm is being caused you can

contact us by completing the online web form on the Council's web site, by phone, letter or email at the details below:

Web Site: www.staffsmoorlands.gov.uk

Email: planenforcement@staffsmoorlands.gov.uk

By telephone: 0345 605 3010

By Post:

Moorlands House

Stockwell Street

Leek

ST13 6HQ

Alternatively, if you are worried about giving your name and address you can contact your local Councillor or Parish/Town Council who can make the complaint on your behalf to the Enforcement Service for you.

Other important contact details:

For the Council's Building Control and Environmental Health Departments please visit www.staffsmoorlands.gov.uk

Health and Safety Executive: www.hse.gov.uk

Staffordshire County Council Highway Department:

<https://www.staffordshire.gov.uk/Highways/Contact.aspx> or 0300 111 8000.

Staffordshire Police: www.staffordshire.police.uk or 101

Case No:

Address:

Alleged Breach:

Case Officer:

Green Belt Considerations

Listed Building/Conservation Area/Historic Park/Schedule Ancient Monument considerations

Flooding/Contamination Considerations

Ecological Considerations (e.g SSSI'S/SAC/SPA/TPO/Locally designated wildlife Site)

Impact on Residential Amenity

Highway/Parking Matters

Recommendation: That it is not expedient to pursue enforcement action for the above reasons.

Operations Manager – Development Services.....

Chair person – Planning Applications Committee.....

Date: