

Planning enforcement policies and procedures

Background

Government advice is that councils should make a clear statement on their planning enforcement policies. This should provide a firm decision-making framework for effective enforcement procedures to be put in place; (Circular 10/97 - July 1997 – withdrawn 3/3/2014). In our Service Aims document, we have set out the level of service you can expect from us for dealing with complaints about breaches of planning control.

This document expands the charter and sets out our overall planning enforcement policy and procedures. It also complements our corporate enforcement policy that we adopted in 2013.

The enforcement issues

This enforcement policy covers the following issues:

- The main planning enforcement policies that apply
- The type and number of planning enforcement problems
- Monitoring procedures
- Resources devoted to enforcing planning control

Our approach to planning enforcement

The integrity of the development control process depends on our readiness to take enforcement action when necessary. We accept that the quick introduction of enforcement action is vital to prevent a breach of planning control from becoming well established and more difficult to stop.

We recognise the importance of establishing effective controls over unlawful development. According to the advice contained in Planning Policy Guidance Note No. 18: Enforcing Planning Control (PPG18) and Circular 10/97, a planning enforcement policy is essential to promote and maintain effective and efficient working practices in the enforcement of planning control. We will not condone wilful breaches of planning law, but we will exercise our discretion about taking enforcement action. (PPG18, para 5). PPG 18 was withdrawn on 27th March 2012 and replaced with the National Planning Policy Framework 2012, but the Council still adopts the general principals and advice contained within the former document.

General policies on enforcing planning control

POLICY PE1

- We recognise the importance of establishing effective controls over unauthorised development. This is to help preserve and enhance both the built and natural environment, and to protect public amenities
- We will commit reasonable resources to ensure that planning enforcement control can be put into effect and maintained
- As the local planning authority, we will exercise all reasonable powers (granted under the provisions of the Town and Country Planning Act 1990,

including all other subordinate and amended legislation), to control unlawful development. We will take account of the policies set out in the East Lindsey Local Plan, the National Plan Policies, all other material considerations when deciding whether or not to start enforcement action.

Initiating enforcement action

We will assess if the breach of planning control unacceptably affects public amenities or causes harm to land or buildings before we consider taking enforcement action. We will try to persuade an owner or occupier of land to put right voluntarily any harmful effects of unlawful development. But we will not allow discussions to hamper or delay any formal enforcement action needed to make the development more acceptable on planning grounds, or to make it stop.

POLICY PE2

We will take immediate planning enforcement action against any unlawful development which unacceptably affects public amenities or causes harm to land or buildings.

Minor or technical breaches of planning control

Enforcement action must always be in proportion with the breach of planning control to which it relates. We will not normally take formal enforcement action against trivial or technical breaches of planning control that cause no harm to amenity.

POLICY PE3

Formal enforcement action will not normally be taken where a trivial or technical breach of planning control has occurred that causes no material harm.

Slight or minor variations to works carried out under 'Permitted Development' rights

Some development, such as house extensions or the addition of a porch, may be carried out under certain 'permitted development rights' without the need for any Express Planning Permission from the Council. If a development exceeds the legal limits of these rights (for example, by being slightly bigger or higher than allowed), we will not necessarily take enforcement action just to counteract a slight variation of what would be permitted, or what would be considered as being acceptable by the Council. Each breach of planning control will be assessed on its planning merits, taking into account all relevant material planning considerations.

POLICY PE4

Formal enforcement proceedings will not normally be taken if development has been carried out and only a slight variation in excess of the specified limitations has occurred, with no harm being caused to amenity.

Granting unconditional planning permission for unauthorised development

Where development has been, or is in the process of being, carried out without planning permission, we will assess it to establish if it is likely that we could grant unconditional planning permission. If we are likely to grant planning permission, we may invite the submission of a retrospective planning application. We may serve a planning contravention notice if necessary, if we

have asked for a retrospective planning application, but not it has not been submitted within a reasonable time.

The notice may request that a planning application be submitted and may advise that without planning permission for the development, there may be problems with any subsequent sale of the land. Where there is no specific planning objection to the development, we will not normally consider further enforcement action appropriate.

POLICY PE5

Where development has been carried out without planning permission and unconditional planning permission could be granted, but no planning application has been submitted, a Planning Contravention Notice may be served if necessary. The intention will be to set out the implications of having carried out the development without planning permission. Where there is no planning objection to the development, no further formal enforcement action will be taken.

Imposition of conditions to make development more acceptable

Where development has been carried out without planning permission and the development could only be made acceptable by imposing conditions, we may ask for a retrospective application for planning permission to be submitted. If, after a reasonable period, we have not received an application, we may issue an Enforcement Notice. The notice will grant planning permission only if the conditions specified in the notice are met fully, to address any harm caused by the development.

POLICY PE6

Where development has been carried out without planning permission and it is considered permission could be granted subject to conditions, an Enforcement Notice may be served. This in effect would grant planning permission subject to conditions or the implementation of works to make the development acceptable.

Non-compliance with planning conditions

Where we have granted planning permission and imposed conditions but those conditions have not been complied with, we will consider if it is appropriate to issue an Enforcement Notice or a Breach of Condition Notice. There is no right of appeal to the Secretary of State against a Breach of Condition Notice and, unlike an Enforcement Notice, its effect cannot be suspended by an appeal. It is a criminal offence not to comply with an Enforcement Notice or Breach of Condition Notice.

There is a right of appeal to the Secretary of State against the serving of an Enforcement Notice. The advantage of serving an Enforcement Notice is that the Secretary of State can correct it if it contains some defect. Also, where an Enforcement Notice has not been complied with, we can go on to the land and carry out any works required by the notice ourselves.

POLICY PE7

Where conditional planning permission has been granted for development but conditions have not been complied with, a Breach of Condition Notice or Enforcement Notice may be served, depending upon the circumstances of each case.

Policy on unauthorised building or other operational development

Planning permission will normally be needed for building or other physical works ('operational development'), unless we have granted planning permission under the terms of The Town and Country Planning (General Permitted Development) Order 2015.

POLICY PE8

Where building or other operational development has been carried out without planning permission, formal enforcement proceedings will be considered in accordance with the general enforcement policies PE1 to PE7.

Policy on unauthorised changes of use (Changes of use in general)

Certain changes of use are allowed to take place without the need for planning permission. However, where planning permission is needed and we have not granted it, a breach of planning control may have taken place.

POLICY PE9

Where a material change of use has occurred which requires planning permission, enforcement action will be considered in accordance with the general enforcement policies PE1 to PE7.

Policy PE10

Where a property is in use as a house in multiple occupation without planning permission, enforcement action will be considered in accordance with the general enforcement policies PE1 to PE7.

Policy on unauthorised works by businesses

Unauthorised development is unacceptable on site but relocation is feasible

It is not our responsibility to find alternative sites for unauthorised business uses; however, if we know of a suitable site, we may suggest it and impose a time limit for relocation.

POLICY PE11

Where development has been carried out without planning permission and is unacceptable on the site, an alternative site may be suggested if an acceptable one is available, with a timetable to allow for relocation. If the timetable is ignored, an Enforcement Notice may be issued, giving a reasonable time to allow relocation to take place.

Unauthorised development is unacceptable and relocation is not feasible

Where unacceptable development has been carried out without planning permission and there is no realistic prospect of it being relocated to a more suitable site, we will not allow the operation or activity to continue in its present form. We may allow the unauthorised use to continue or to be reduced to an acceptable level if there are exceptional circumstances. If an agreement cannot be reached, we may issue an Enforcement Notice, allowing a realistic time for the unlawful development to stop, or its scale to be reduced.

POLICY PE12

Where unacceptable development has been carried out without planning permission and there is no prospect of relocation to an acceptable alternative site, we may suggest how long we are prepared to allow the unauthorised development to continue. Where the activity continues after this period, an Enforcement Notice may be issued which will allow a realistic time for the activity to stop, or its scale to be reduced to an acceptable level.

Unauthorised development is unacceptable and immediate remedial action is required

Where unlawful development has been carried out without planning permission and we consider that serious harm is occurring, we may take vigorous enforcement action (including, if appropriate, the service of a Stop Notice or enforcement injunction).

POLICY PE13

Where unauthorised development causes serious harm to a public interest, immediate enforcement action (including the service of a Stop Notice or an Injunction), will be taken if considered necessary.

Acceptable unauthorised development by small businesses

Where a small business has carried out development without planning permission but in good faith, believing no planning permission was needed, we will assess if the business can be allowed to continue operating on the site at its current level of activity, or perhaps less intensively. If the small business is reluctant to co-operate with us, we may serve a Planning Contravention Notice to highlight our determination not to allow the development to continue by default.

POLICY PE14

Where development has been carried out by a small business without planning permission, consideration will be given to allowing the business to continue operating acceptably from the site or operate less intensively.

Unacceptable unauthorised development by small businesses

If, following informal discussions (including the possibility of relocation), we cannot reach a satisfactory compromise and consider formal enforcement action essential, we will make our intention to act clear. If we have an Enforcement Notice and the business has made serious attempts to comply with its requirements, we may then allow more time for the small business to relocate or stop operating from the site.

POLICY PE15

If unauthorised activity by a small business cannot be allowed to continue, an Enforcement Notice may be issued giving a realistic time to stop the activity and allow for relocation if necessary. Where it is clear to us that serious attempts are being made to comply with the requirements of the Enforcement Notice, consideration may be given to extending the time limit.

Unauthorised works to listed buildings

Work to a listed building normally needs Listed Building Consent and it could also require Planning Permission. Where work has been carried out without consent, a criminal offence may have been committed. We will consider whether to start criminal proceedings and/or serve a formal notice to make sure that appropriate remedial works are carried out, according to the extent and nature of the works.

POLICY PE16

Where works without consent have been carried out to a listed building and those materially affect its character and appearance either internally or externally, consideration will be given to issuing a formal notice and/or starting criminal proceedings.

Unauthorised development in conservation areas

We have a statutory duty to make sure that any development in conservation area preserves or enhances the character and appearance of the area. Where development takes place without planning permission and we believe that it seriously affects the character and appearance of a conservation area, remedial steps will be needed – either by negotiation or by formal enforcement action.

POLICY PE17

Where development has been carried out in a conservation area without planning permission or conservation area consent, and the development does not preserve or enhance the character and appearance of the area, enforcement action will be considered in accordance with the general enforcement policies PE1 to PE7.

Display of illegal advertisements

The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 allows some types of advertisements and signs to be displayed without the need for Advertisement Consent to be granted by the Council. In many instances, however, consent is needed to display advertisements. If an advertisement is displayed without the appropriate consent, it is a criminal offence. Where the advertisement causes serious harm to amenity or public safety, we will ask for it to be removed within a specified time. If the advertisement continues to be displayed after this period, we will consider formal prosecution proceedings and any action available to secure its removal

POLICY PE18

Where an advertisement has been displayed without express consent and causes serious harm to amenity or public safety we will ask for it to be removed. Where the advertisement continues to be displayed, prosecution proceedings and/or direct action proceedings will be commenced.

Fly posting on buildings, street furniture and other structures usually has a visually detrimental effect. Fly posting is a criminal offence, although it is recognised that controls to prohibit fly-posting are difficult to enforce, especially when fly posting is carried out as a clandestine activity, often late at night. We can take action either by making sure the poster is removed or by bringing prosecution proceedings against anyone responsible for its display. This can include prosecuting the owners of any venues for an event. Fly posting on street furniture or buildings that are on highway land, will not be dealt with by the District Council and will be referred to Lincolnshire County Council acting as the Highways Authority.

Policy PE19

Where resources permit, all posters illegally displayed will be removed. Where fly-posting has been carried out on sensitive sites and causes serious harm to the character or amenity of the area, prosecution proceedings and/or direct action proceedings will be taken.

Advertisements displayed on listed buildings may affect the character and appearance of the building and therefore may require listed building consent. If an advertisement is displayed on a listed building without Listed Building Consent, we will consider whether to take proceedings for its removal. This would be through serving a formal notice, taking direct action under current legislation, or via prosecution proceedings.

POLICY PE20

Where an advertisement has been displayed on a listed building without consent, and that advertisement adversely affects the character and appearance of the building or compromises its setting, we will ask for it to be removed. Where the advertisement continues to be displayed, action will be taken to secure its removal. Where we have refused a retrospective application for consent for an advertisement, we will give the applicant time to remove it. If the advertisement continues to be displayed after this time, we will start proceedings

POLICY PE21

Where a retrospective application for consent has been refused, the applicant will be asked to remove the advertisement within a specified time. If the advertisement continues to be displayed; proceedings will be commenced unless an appeal has been lodged against the decision to refuse consent. Action would then be held pending the outcome of the appeal.

Derelict or unsightly land or buildings

The condition of certain buildings or land can cause harm to the visual amenity of an area. Where the condition of land or buildings is causing significant harm to public amenity, we may serve a notice ('Untidy Site Notice') under S215 of the Town and Country Planning 1990. The notice will specify measures to improve the appearance of the land or buildings. If those measures are not

taken within a set time limit, an offence has been committed. We can then start prosecution proceedings and/or enter the land and carry out the works.

POLICY PE22

Where a building or land is in a condition which seriously detracts from, or affects the visual character of an area, we will ask for measures to be taken to improve the appearance of the land. If no improvement works are carried out within a reasonable time, we may serve a notice under S215 of the Town and Country Planning Act 1990. If the notice is not complied with, prosecution proceedings and/or direct action proceedings may be initiated. Direct action proceedings will involve contractors appointed by the Council entering the land and carrying out the works in default.

Lawful uses or activities

If we are considering enforcement action for an unauthorised use or activity but it is claimed that the use is lawful, we may invite an application for a lawful development certificate to confirm conclusively that it is lawful. If the applicant fails to submit sufficient evidence to the Council or by way of an application to allow us to grant a certificate, we will consider enforcement action if we are satisfied that the time in which to take action has not expired.

POLICY PE23

Where unauthorised development has taken place but it is claimed that the use or activity is lawful; we will invite the submission of evidence and that an application for a lawful development certificate is submitted. Where a certificate application has been refused, enforcement action will be considered in accordance with the general enforcement policies PE1 to PE7.

Development carried out is not in accordance with approved plans

Where development is carried out with planning permission, but does not strictly match the approved plans, we will assess if the changes are sufficient to constitute new development, requiring a separate planning permission. If the changes are relatively minor and are not sufficiently material to alter the development as a whole, we may sometimes consider them to be 'de-minimus' (so small that they are of no consequence) and we will not take any action.

While we do not condone such works being carried out, we do recognise that in many instances minor variations do not cause any material harm. Therefore, in accordance with Policy PE3, we may not necessarily take planning enforcement action against minor variations from approved plans. Any assessment of the situation will, however, take account of the site and its surroundings; the scale of the development and the consequences of those changes after the development has been completed.

POLICY PE24

Where development is being carried out which is considered to be significantly different from the approved plans and the changes cause serious harm to public amenity, immediate enforcement action may be taken, including the issue of a Stop Notice or Enforcement Injunction to stop the unlawful development.

Where changes have been made but there is no material harm being caused or where the works are 'de minimus', no further action will be taken. Where

acceptable changes have been made but are not considered by the Council as being minor or de minimus, an application for a non-material amendment will be requested to regularise the changes made.

Refusal of retrospective applications

Nothing within our policies condones a wilful breach of planning control. We will not encourage the submission of a retrospective application where the development is unacceptable and causes serious harm to amenity and where we are likely to take enforcement action. The submission of a retrospective application will not stop us from taking enforcement action.

POLICY PE25

Where unlawful development has been carried out which causes serious harm to amenity, the submission of a retrospective application will not be encouraged and will not stop enforcement action being taken. When we have refused a retrospective application and we have not already taken enforcement action, we will advise the applicant of the options available and we may issue an enforcement notice.

POLICY PE26

Where retrospective planning permission has been refused, the applicant will be advised that the Council will still be taking appropriate action against the breach of planning control. If an appeal is lodged against the refusal before a formal notice is issued, all enforcement action will be held pending the outcome, unless there are exceptional circumstances.

Monitoring development, conditions and S106 agreements

Effective controls are necessary to make sure development is carried out strictly according to approved plans. The main problems that may be encountered are:

- Incorrect siting
- Changes in design or size of buildings
- Inadequate protection to existing trees and hedgerows
- Inappropriate use of materials
- Inadequate hard and soft landscaping/boundary treatment.

Certain areas of concern may have conditions imposed on the planning permission. However, there is no point imposing conditions on a planning permission if there is no effective monitoring of the development. Planning legislation does not require a developer to notify us of the start of development work so effective monitoring needs close liaison with our Building Control team, which receives information on building regulation applications and start and completion dates. If an independent development inspector has been appointed, for example the NHBC, our Building Control team is also told, receiving an Initial Notification of Development notice.

We have put in place procedures to make sure that effective control is maintained over development and the implementation and discharge of planning conditions. Sometimes a planning permission is also the subject of a legal agreement under Section 106 of the Town and County Planning Act. This agreement may require certain works, conditions or the payment of money

before, during or on completion of the development. Procedures are in place to make sure that there is effective monitoring of Section106 Agreements.

POLICY PE27

Effective monitoring procedures will be maintained to make sure that development is carried out in accordance with approved plans. We will also make sure that effective controls are maintained during and on completion of development works, including the implementation and satisfactory discharge of planning conditions and other planning agreements.

Resources

We will make sure that we have reasonable resources available to carry out planning enforcement effectively.

Policy PE28 – We will make sure that reasonable resources are always committed to the effective implementation and maintenance of planning enforcement control.