

North Hertfordshire District Council

Planning Control & Conservation



Planning Enforcement Policy & Practice Statement



THE COUNCIL'S POLICY

1.0 INTRODUCTION

- 1.1 The Town and Country Planning Acts give discretion to the local planning authority (LPA) in the exercise of its powers for the control of unauthorised development. This document sets out the context for the operation of the planning control enforcement service in North Hertfordshire and the approach that the District Council will take in promoting compliance with planning requirements and dealing with breaches of planning control.
- 1.2 The District Council is committed to effective enforcement of planning control and when considering what action to take, regard will be paid in each instance to the prevailing circumstances and the particular impact of the unauthorised development in question. The Council views breaches of planning control seriously and has a specialist enforcement team within the Planning Control and Conservation service to investigate and take action against unauthorised development, where appropriate.
- 1.3 In July 1997 the then Department of the Environment, Transport and the Regions published a good practice guide on enforcing planning control for local planning authorities (Enforcing Planning Control – Good Practice Guide for Local Planning Authorities – ISBN 011 – 753405 6). The Guide suggested that LPA's should establish a formal planning enforcement policy which provides a clear statement of the decision making framework in dealing with alleged breaches of planning control, explaining the Council's enforcement procedures and practice. In the light of the above guidance, this policy statement has been prepared to outline the approach which will usually be adopted by the Council in resolving how to deal with unauthorised development and sets out the procedures that will be followed.

2.0 NORTH HERTFORDSHIRE DISTRICT COUNCIL – ENFORCEMENT OBJECTIVES

- Maintain the integrity of the policies contained in the Development Plan.
- To remedy the undesirable effects of unauthorised development on the environment and amenity of the district as well as maintaining public safety.
- To bring unauthorised development under control to maintain the credibility and achieve the purpose of the planning system.
- To provide a service that will pursue pro-active initiatives in order to safeguard the environment, built heritage, and the amenities of the area.

3.0 HOW ENFORCEMENT OBJECTIVES WILL BE ACHIEVED:

- 3.1 The service will be operated to be proactive, effective and responsive in the prevention and control of unauthorised development, including pursuing remedial action where appropriate.
- 3.2 Effective monitoring procedures will be implemented to ensure development is carried out in accordance with planning approvals.
- 3.3 Service delivery will be fair, responsive, helpful and consistent in its approach.

4.0 WHAT IS PLANNING ENFORCEMENT AND WHO DOES IT?

- 4.1 Planning enforcement investigates possible breaches of planning control and aims to resolve breaches using the most appropriate means or action. In North Hertfordshire the Council is responsible for enforcing control in all planning matters other than minerals and waste disposal (these are the responsibility of the County Council).
- 4.2 As well as investigating possible breaches of planning control, the planning enforcement service is proactive in:
 - Ensuring compliance when formal enforcement action has been taken.
 - Monitoring planning conditions and planning obligations to ensure they are being carried out as required.

5.0 POLICY POSITION

- 5.1 Government Policy – The Council is mindful that enforcement action is a discretionary power to be taken only when it is expedient to do so, and any action should be commensurate with the seriousness of the breach of control. It should be remembered that it is only an offence to carry out development without planning permission in a few instances. The Town and Country Planning legislation specifically provides that planning permission may be granted to regularise development already carried out.
- 5.2 Government Policy Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise acceptable on its planning merits.
- 5.3 Other Planning Policy Guidance - The service deals with about 350 complaints and enquiries a year. Some breaches are more serious than others, and some require immediate action, for example, to prevent the destruction of historic fabric, an important tree, or below ground archaeology.

5.4 Apart from the seriousness of the breach the following matters are also taken into consideration:

- The policies of the relevant Hertfordshire County Structure Plan and the North Hertfordshire District Local Plan, which together form the development plan for the district.
- Relevant statements of planning policy contained in Planning Policy Guidance Notes.
- Guidance contained in relevant Government Circulars. Good Practice Guides.
- The provisions of the Human Rights legislation.
- The principles of the Enforcement Concordat, drawn up by a partnership between central and local government and business.

5.5 Parliament has given LPA's the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area. The private citizen cannot initiate planning enforcement action. The Council is aware that the Commissioner for Local Administration (the Local Government Ombudsman) has held, in a number of cases, that there is maladministration if an authority fails to take effective and timely enforcement action where this was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice.

6.0 WHAT IS A BREACH OF PLANNING CONTROL?

6.1 A breach of planning control is defined in the Town and Country Planning legislation as "the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted".

6.2 Breaches of planning control occur in many ways, for example where:

- Building work, engineering operations, and material changes of use are carried out without planning permission having been granted.
- Development has planning permission but is not carried out in accordance with the approved plans.
- Failure to comply with conditions or the terms of a legal agreement (Section 106 obligations) attached to a permission or consent.
- Demolition takes place in conservation areas, without conservation consent, when it is required.
- Works carried out to a "listed" building which affect the historic character or setting, without listed building consent being granted.
- Removal of, or works carried out, to protected trees and hedgerows without consent being granted or proper notification given.
- Advertisements, which require consent under the Advertisement Regulations, which are displayed without express consent.

- Failure to comply with the requirements of a planning legal notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, etc.

6.3 It should be noted that it is not an offence to carry out development without planning permission. However, where this takes place it cannot be assumed that planning permission will always be granted for the development retrospectively. An offence only occurs if the development involves unauthorised advertisements, works to protected trees or listed buildings, or if a formal notice is not complied with.

7.0 WHAT WILL THE COUNCIL'S INITIAL INVESTIGATION INVOLVE?

7.1 Most investigations into breaches of planning control result from complaints from the public or Councillors. The Council can be contacted by letter, telephone, e-mail or in person. The address and telephone numbers of the Planning Control Enforcement Service are set out at the end of this document, together with office opening hours. It is advisable to make an appointment if the complaint is to be made to the enforcement officer in person. Written complaints are preferred as this avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation.

7.2 We will need the following information:

- Precise location of the site or property to which complaint relates.
- The exact nature of concern, i.e. the potential breach of planning control.
- An indication of the harm caused.

7.3 In addition it would be helpful to provide information on the identity of the person/organisation responsible and the date and time the breach began.

8.0 CONFIDENTIALITY

8.1 All investigations are carried out on a strictly confidential basis within the Council, unless otherwise agreed in writing with the complainant. On serious breaches of planning control, which warrant prosecution, or which result in an appeal, the complainant may be invited to give a witness statement. However, such occasions are rare, and involvement in those cases is on a voluntary basis.

9.0 ANONYMOUS COMPLAINTS

9.1 Unless the complainant has a reason for not giving their details, and explains this to the enforcement officer, anonymous complaints will not normally be investigated as a high priority.

10.0 PROCEDURE FOR DEALING WITH COMPLAINTS.

- 10.1 The Council will deal with all complaints in accordance with the Planning Control and Conservation Charter. The relevant extract relating to the Enforcement Service is reproduced in Appendix 1

11.0 RECORDING COMPLAINTS.

- 11.1 All complaints of potential breaches are entered on the enforcement computer database upon receipt, and a unique reference number is created so that progress on each complaint received can be monitored. The name, address and telephone number of the complainant and the details of the complaint are logged. Complaints will normally be acknowledged within 2 working days, giving the name and telephone number of the officer dealing with the case. Complainants are kept informed throughout the investigation process and are welcome to contact the officer at any time for a progress report.
- 11.2 The initial investigation usually involves checking the Planning Registers to establish any development history, and whether any conditions have been attached to any approval granted. Sometimes it is necessary to check other records kept by the Council, such as Building Regulations, Council Tax, or Environmental Health, or outside agencies such as the DVLC at Swansea, to get a complete picture.
- 11.3 A site inspection is normally necessary to help establish the facts. Enforcement officers identify themselves when on site, and explain the reason for their visit. The owner/occupier or people working on the site will be interviewed to obtain factual information, and photographs and measurements may be taken if required. A detailed note is made on the investigation file, which is used to record all visits and discussions at meetings or over the telephone.

12.0 RIGHT OF ENTRY

- 12.1 Enforcement officers have the immediate right of entry under the Town and Country Planning legislation, to all non-residential land and buildings. Twenty four hours notice must be given for access to a residential property. If access is denied a warrant can be applied for from the Magistrates Court.

13.0 OBTAINING ADDITIONAL INFORMATION.

- 13.1 In some circumstances, where it has not been possible to establish the facts through normal investigation, or where co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice can be served. This requires the recipient to provide information requested, relating to any breach of planning control alleged by the Council, within 21 days. (See Appendix 2)

- 13.2 The complainant may occasionally be asked to assist with the investigation, for example, by keeping a diary or log of the events under investigation. This is helpful where problems occur in the evenings or at weekends, outside normal working hours. Such help is voluntary, but may be crucial in assessing whether a breach has occurred, and whether further action is expedient.
- 13.3 If there is no breach, for example, if the development falls within the limits of the Town and Country Planning (General Permitted Development) Order, or the development has become lawful due to the passage of time (see Appendix 2), then a full explanation will be given to the complainant and the file will be closed.
- 13.4 The impact of some developments and activities are more harmful than others. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. The Council however, needs to ensure that full and proper consideration is given to the matter, and this can often take several weeks, occasionally months, prior to resolving whether a breach of control has occurred and determining what further action is merited.
- 13.5 When there is enough information to establish whether a breach of planning control has taken place, the enforcement officer will normally discuss the matter with the relevant planning officer and/or conservation officer to agree an appropriate course of action. The enforcement officer will contact the complainant to inform them of the outcome of the investigation, and what action the Council proposes to take and why.

14.0 SETTING PRIORITIES.

- 14.1 Enforcement cases need to be progressed as quickly as possible, but because not every case can be given a high priority it is essential to establish a set of priorities which will enable the enforcement team to maximise their output. Alleged breaches of planning control will be investigated according to the following priorities:-
- Any unauthorised development which causes immediate and irremediable harm in the locality;
 - Unauthorised demolition or partial demolition of a building which it is essential to retain;
 - Breach of condition, which results in serious harm to amenity in the neighbourhood.
 - Unauthorised development in a AONB or Conservation Area
 - Any unauthorised development where the time limit for enforcement action will expire within the next six months.

15.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED?

- 15.1 The vast majority of breaches of planning control are resolved informally and by negotiation with the owner/occupier. Formal action, in accordance with national advice, only takes place where it is expedient and where other means to resolve the problem have failed. The Council will take effective enforcement action when it is essential to protect the amenity of the area, public or highway safety, and to maintain the integrity of the development control process within the District. The impact of some developments are more harmful than others and therefore action taken will be in the public interest and commensurate with the breach of planning control.
- 15.2 Generally, the enforcement officer in consultation with the relevant planning officer will decide whether formal notices are justified in accordance with agreed priorities. Some notices such as Planning Contravention Notices (PCN) can be issued by specific officers who have the authority to do so, delegated to them under the Council's scheme of officer delegation. Such action would be warranted where further investigation to obtain the facts of a case is required. In other cases where the breach is more serious and an enforcement notice or breach of condition notice is considered necessary, the issue is reported to the Council's appropriate Area Committee for formal authorisation to serve an Enforcement Notice or take other action. In an emergency, authorisation for urgent action can be given by specific officers in accordance with the scheme of delegation to officers. Where appropriate advice from the Council's Legal Services will be sought.
- 15.3 When it is clear that there is a breach of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. These may be:
- If the breach is minor with no significant effects – no further action.
 - If the development is such that it is in line with the relevant Development Plan policies – the Council will usually invite a “retrospective” application for planning permission or advertisement consent.
 - If the breach is immune from enforcement action due to the passage of time – an application for a Lawful Development Certificate will be invited.
 - If permission is unlikely to be granted – the Council will ask for the use to cease, or unauthorised development to be removed, voluntarily. A suitable period of time will be allowed, depending on what needs to be done. For example, tenants must be allowed time to find somewhere else to live or employees to be relocated.
 - As a last resort formal notices can be issued, such as a Breach of Condition Notice, or an Enforcement Notice, if it is expedient to do so having regard to the development plan and other material considerations. This is a

discretionary decision, which is made on a case by case basis. The Council must be able to justify taking formal action, and be sure that the steps specified in the notice and the period for compliance with each step is reasonable.

- In extreme cases the Council can serve a notice to require any relevant activity to cease (a Stop Notice) and there is a provision to obtain an injunction to restrain a breach of planning control.

16.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE

16.1 An offence occurs where an owner/occupier fails to comply with the requirement of an Enforcement Notice (EN) and in such cases the Council will take firm action. Such action may involve:

- Prosecution of the parties concerned in the local courts.
- The issue of an injunction through the High Court.
- Direct, or default action.

16.2 The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the Courts. If someone is found guilty of failing to comply with the terms of an EN a substantial fine may be imposed. If the Notice is still not complied with, a further prosecution may be brought and this is likely to continue until the Notice has been complied with.

16.3 In the case of a persistent offence against an unauthorised activity an injunction may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.

16.4 In exceptional circumstances the Council will consider taking direct action or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise, for example when the breach of planning control has not been remedied despite the imposition of successive fines by the Courts. In such cases the Council will seek to recover its costs, possibly in the form of a charge on the land, which is recovered at the time of sale of the land or property.

16.5 When the Council believes that an enforcement notice has been complied with the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity.

17.0 ENFORCEMENT APPEALS.

- 17.1 The Town and Country Planning legislation provides a right of appeal to the Planning Inspectorate against an enforcement notice. A booklet entitled “Enforcement Notice Appeals – a guide to procedure ” will be enclosed with all enforcement notices issued.
- 17.2 An appeal must be made before the notice takes effect, normally not less than 28 days after the date of issue of the notice.
- 17.3 An appeal may be made by an owner, occupier or any other person with an interest in the land, even though a copy of the Notice has not been issued on that person.

18.0 OTHER PLANNING ENFORCEMENT POWERS.

- 18.1 Some breaches of planning control are the subject of separate legislative codes. These include:
- Listed buildings.
 - Advertisements.
 - Trees.
- 18.2 Where the legislative requirements are the same, this policy will form the basis for any action taken by the Council on these matters.

19.0 LISTED BUILDINGS.

- 19.1 The Council attaches particular importance to ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Listed Buildings and Conservation Areas legislation. It is an outright offence under the legislation to carry out unauthorised works to a listed building which could affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a substantial fine, and/or a term of imprisonment. There is no time limit upon the Council to pursue Listed Building Enforcement Action.
- 19.2 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal to The Planning Inspectorate but failure to comply with the Notice is an offence, which is liable to a substantial fine on summary conviction.

20.0 ADVERTISEMENTS.

20.1 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations and advertisements are divided into three main groups:

- Those advertisements which are expressly excluded from local planning authority control.
- Those which have 'deemed consent' so that the planning authority's consent is not required provided the advertisement meets certain criteria.
- Those for which the local planning authority's express consent is always needed.

20.2 The rules are complicated and seek to control amongst other things the height, size and illumination of advertisements.

20.3 Anyone who displays an advertisement, without the consent required, is acting illegally. It is open to the LPA to take a prosecution in the Magistrates Court for an offence under the Town and Country Planning (Control of Advertisement) Regulations. Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead they may invite the person responsible for the display to apply for the consent needed, and if refused there will be a right of appeal to The Planning Inspectorate. The continued display of an advertisement, after consent has been refused and any appeal dismissed may well result in prosecution. On conviction a fine may be imposed by the Court with an additional daily fine on conviction of a continuing offence.

21.0 TREES.

21.1 Under the Town and Country Planning legislation the local planning authority has the right to make provision for the preservation of trees in their area by making Tree Preservation Orders. Any unauthorised works to such protected trees is an offence, which is liable, on summary conviction, to a substantial fine under the legislation. Trees in Conservation Areas are also afforded a degree of protection under the planning legislation. Unauthorised work to and/or removal of such trees constitutes an offence. However the Council will exercise discretion in deciding whether or not it is appropriate to pursue prosecution.

Planning Control Enforcement

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**The offices are open to the public between
0900 to 1630, Monday to Fridays (except public holidays).**

Appendix 1

Extract from ‘The Planning Control and Conservation Service Charter’

Enforcement

The Council is responsible, through the Town and County Planning Acts, for taking appropriate action, where it is considered expedient to do so, to remedy breaches of planning control.

The Planning Enforcement Officer is responsible for investigating all possible breaches, including the monitoring of compliance with planning conditions, and making an assessment of them. Two parties are normally involved, those who have reported an alleged breach and those responsible for it.

The Council’s Planning Enforcement Policy and Practice Statement provides transparency to the decision making and sets out how breaches will normally be dealt with. Where appropriate, we will endeavour to resolve the matter through negotiation and by seeking the co-operation of those responsible. However, where a voluntary resolution of the breach is not possible within a reasonable timescale, officers will recommend that formal enforcement action be pursued which could include the issue of enforcement notices and seeking injunctions from the Courts.

The service we will provide for those informing us of possible breaches of planning control.

We will:

- Keep the source of all notifications of alleged breaches of planning control, as far as possible, confidential.
- Endeavour to acknowledge written notifications within 2 working days when you will be provided with a contact name and direct line telephone number.
- Endeavour to tell you, in writing, how the Council intends to pursue the matter within 15 working days of the receipt of the notification. If a report is to be put to one of the Council’s Area Committees, we will inform you of the time, date and location of the meeting as well as providing you with details of how individuals can address the Committee in person.
- Notify you within 5 working days of the Committee’s decision as to whether or not authorisation has been given to pursue formal enforcement action.
- Notify you when an enforcement notice is issued, providing details of its requirements and period for compliance with them.
- Notify you in the event of an appeal being lodged and how you can submit comments for consideration in the appeal process.
- Advise you, where prosecution proceedings have been pursued, the result of such action.

The service we will provide for those responsible for breaches of planning control

We will:

- Not make any assumptions when making an initial investigation into an alleged breach that a breach has occurred or that you are responsible for it until we have information to indicate otherwise.
- Not enter property unless it is necessary to establish whether a breach has occurred.
- Tell you, in writing, what the breach of planning control is, what is required to be done to remedy it, the timescale for action expected by you and the consequences for not doing what is requested. You will have the opportunity, if you so wish, to discuss the matter with an enforcement officer and/or a planning officer, or in the case of a Listed Building, a conservation officer.
- Invite you to submit a planning or other application to regularise a breach where it is considered likely that a permission or consent could be granted. It may be that restrictive conditions would be imposed on any permission granted.
- Give you written notification of the intention to seek authorisation from the appropriate Council Committee, other than in cases of urgency, for enforcement action or legal proceedings and explain the procedure for making representations you may wish taken into account before a decision is reached, including speaking at the meeting.
- Advise you within 5 working days of the Council's decision in respect of enforcement action or legal proceedings. In the event that it is necessary to issue an enforcement or similar notice, you will be advised of the options open to you including your right to appeal to the Planning Inspectorate, where appropriate.

Appendix 2

GLOSSARY OF TERMS

The following is a brief explanation of some of the more technical terms used throughout this policy statement.

1. Breach of Condition Notice (BCN)

Power to serve a BCN is contained in Town and Country Planning legislation. A notice can be issued where a condition attached to a planning permission has not been complied with. There is no specific right of appeal against a BCN.

2. Breach of Planning Control

This is the term used where development has taken place, which requires planning permission to be obtained from the local planning authority, and no such permission has been obtained.

3. Certificate of lawful use or Development (CLUED)

Under the Town and Country Planning legislation a CLUED may be applied for **if** any person wishes to obtain confirmation that a breach of planning control may be termed 'lawful' (and hence immune from enforcement action) because of the time which has elapsed since the breach first took place. Generally speaking for a use to become lawful the following time scales have to be exceeded: -

- Erection of buildings and other works – 4 years.
- Changes of use to a single dwelling – 4 years.
- Changes of use of buildings or land – 10 years.
- Non-compliance with planning conditions – 10 years.

(There are some exceptions and these should be discussed with the LPA).

4. Default Powers (Direct Action)

Under the Town and Country Planning legislation LPAs have the right to enter land or property to carry out the removal of unauthorised works where the appellant has failed to comply with an enforcement notice, and recover the costs of carrying out such works from the landowner. The costs can be made a charge against the land, to be recovered at the time of future sale, if they cannot be recovered at the time the works are carried out.

5. Development Orders

The Town and Country Planning legislation confirms that various categories of development (permitted development) do not require planning permission to be obtained from the local planning authority in certain circumstances. The various categories include reference to domestic extensions and outbuildings, fences and walls, means of access and temporary building/works.

The legislation also includes a Use Classes Order which groups common uses together in a number of categories and confirms that a change of use occurring within the same Use

Class would not normally require planning permission (e.g. grocers shop to chemist shop).

6. Enforcement Notice

Power to issue an enforcement notice is granted under the Town and Country Planning legislation. The Notice must clearly state amongst other things: -

- The alleged breach of planning control
- What is required to remedy the breach of planning control
- The time available to comply with the requirements
- The land to which it relates

and has to be served on anyone having an interest in the land.

There is a right of appeal to The Planning Inspectorate. An enforcement notice takes effect when the time available for lodging an appeal (at least 28 days) has expired. In the event of an appeal being lodged, the enforcement notice is suspended pending the outcome.

7. Injunctions

Where a local planning authority consider it necessary or expedient for any breach of planning control to be restrained by injunction they may apply to the county court or the High court for an injunction, whether or not they have exercised or are proposing to exercise any of their powers of enforcement. The court may grant an injunction as it thinks appropriate to restrain the breach. An injunction may be issued against a person whose identity is unknown, but who can be identified by some other means.

8. Planning Contravention Notice (PCN)

Power to issue a PCN is contained within the Town and Country Planning legislation and such notices can be served where the LPA wishes to ascertain if there has been a breach of planning control. Certain information may be required to clarify whether this is the case (e.g. in the case of an unauthorised use of land, precisely when the use commenced). A PCN does not require the alleged breach of planning control to be rectified. Failure to satisfactorily respond to a PCN within the requisite time scales renders the recipient guilty of an offence.

9. Stop Notice

Power to issue a Stop Notice is granted by the Town and Country Planning legislation. A Stop Notice can be issued to support an Enforcement Notice and has the general effect of requiring a breach of planning control to cease almost immediately. Compensation is payable in some cases if the enforcement notice to which the Stop Notice relates is quashed on appeal.