

WEST NORTHAMPTONSHIRE COUNCIL

Local Enforcement Plan

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1 Introduction

- 1.1 The West Northamptonshire Council Local Enforcement Plan provides an outline of the planning enforcement process and the service that you can expect to receive.
- 1.2 This plan has been written in accordance with the Government guidance contained in the National Planning Policy Framework (NPPF), which states:
“Effective enforcement is important to maintain 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. They 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 appropriate.”
- 1.3 The Plan will provide information on the following:
 - Enforcement priorities
 - Defining a breach of planning control
 - Investigating an alleged breach
 - Determining appropriate action
 - Discretionary enforcement powers
 - Monitoring our own performance
 - Reporting a suspected breach
 - Customer complaints procedure
- 1.4 We aim to provide timely and effective procedures for investigating suspected breaches of planning control, as we believe this is essential in maintaining public confidence in the town and country planning system.

2 Enforcement priorities

- 2.1 The aim of our local enforcement plan is to **deal with suspected breaches of planning control in an effective, proportionate, consistent and helpful manner.**
- 2.2 Our key objectives are to:
 - provide an accessible service that maintains public confidence in the planning system
 - provide a response that is prioritised according to the harm (or potential harm) caused by the breach
 - achieve a balance between protecting amenity and other interests and allowing acceptable development to remain (or continue) in the absence of permission
 - monitor performance in delivering the service

3 Defining a breach of planning control

What do we mean by a breach of planning control?

- 3.1 Section 171A of Part VII of the Town and Country Planning Act 1990 defines a breach of planning control 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”

What do we mean by ‘development’?

3.2 Development is defined by section 55 of the Act as:

“the carrying out of building, engineering, mining or other operations in, on, over, or under land, or the making of any material change to the use of any buildings or other land”

Planning Enforcement in West Northamptonshire

3.3 The most common breaches of planning control in West Northamptonshire are:

- development without (or not in compliance with) planning permission
- failure to comply with a condition attached to planning permission
- unauthorised change of use of family homes to Houses in Multiple Occupation
- unauthorised change of use of land and buildings

3.4 The Planning Enforcement Team in West Northamptonshire are also responsible for control of the following matters, which also fall within the term “planning control”:

- works carried out to listed buildings
- the demolition of buildings in conservation areas
- works to protected trees (the subject of Tree Preservation Orders) and trees in conservation areas
- display of outdoor advertisements which require consent under the Town and Country Planning (Control of Advertisements) Regulations 2007
- the removal of hedges in the open countryside

3.5 There are time limits within which we can take planning enforcement action against breaches of planning control:

- For building, engineering, mining or other operations in/on/over/under land without planning permission, the development becomes immune from enforcement action **four years** after the works are substantially completed.
- For the change of use of a building (or part of a building) to use as a single dwelling house, the development becomes immune from enforcement action **four years** after the date the change of use first occurred.
- For all other changes of use and breaches of conditions, the development becomes immune from enforcement **10 years** after the date the breach of planning control first commenced.

3.6 Planning enforcement cannot control all aspects of the building process and there are several common issues we are unable to deal with. These include:

- boundary/ownership disputes
- Party Wall Act issues
- covenant issues

These are private issues which a solicitor or the Citizens Advice Bureau may be able to help you with.

4 Investigating an alleged breach

4.1 When a suspected breach of planning control comes to our attention, each case is assigned a priority level according to its potential to cause harm. The priority level dictates the timeframe for:

- a site visit/initial investigation to be carried out
- investigating the case to the extent that we can make a decision on the likely course of action moving forwards

Priority Level	Alleged Breach	Site Visit (Working Days)	Investigating the Case
1	<p>Breaches that cause harm over a wide area, impact on a number of people, or cause irreversible harm to historic buildings, areas or trees.</p> <p>For example:</p> <ul style="list-style-type: none"> • a breach that causes (or has the potential to cause) an immediate danger to public health and/or public safety • a breach that causes immediate, serious and potentially irreversible harm to the environment • unauthorised alteration or demolition to a listed building or a building in a conservation area • unauthorised works to protected trees or trees in a conservation area, or removal of a rural hedgerow 	2	2 weeks
2	<p>Breaches that have a wide impact on the surrounding area and residents but do not require immediate action.</p> <p>For example:</p> <ul style="list-style-type: none"> • a breach that causes harm through loss of amenity to residents within the locality of the breach • unauthorised work which has already been completed to a listed building or a building in a conservation area • a building that is erected either a) without planning permission or b) that fails to comply with the terms of a planning permission • unauthorised advertisements displayed in a conservation area or in the open countryside • a development in breach of an Article 4 direction (<i>see paragraph 6.18</i>) 	5	1 month
3	<p>All other breaches.</p> <p>For example:</p> <ul style="list-style-type: none"> • extensions, outbuildings, fences, etc. erected without planning permission • unauthorised advertisements displayed with limited adverse visual impact • any other breach not falling within priority levels 1 and 2 (e.g. untidy land, change of use on a small scale) 	10	3 months

4.2 When a person provides information to us relating to a breach of planning control, they will receive an acknowledgement within three working days. The acknowledgement will include a short description of the suspected breach based on the information provided. We will advise the enquirer of the officer who will carry out the investigation and the priority level that it has been assigned.

4.3 Our first step in an investigation is to research the planning history (if any) relating to the land or building.

- 4.4 An Enforcement Officer will then visit the site, normally unannounced, to establish the facts and to decide whether there has been a breach of planning control. This usually includes a discussion with the person(s) involved in the suspected breach and may also include a discussion with the enquirer.
- 4.5 The Enforcement Officer may serve a Planning Contravention Notice (*see paragraph 6.3*) on the owner, occupier or anyone else with an interest in the land if accurate information is required about the breach that they have been unable to obtain by other means. They may also decide to consult others (including legal, environmental health and housing staff) before decisions are made about the breach and the remedial action(s) that may be appropriate.
- 4.6 The Enforcement Officer may sometimes require the enquirer to provide additional information to assist with their investigation. Should this be the case, they will contact them outlining what information would be of use. A timeframe (usually a period of 28 days) will be given for your response.
- 4.7 The matter under investigation might involve the enforcement responsibilities of more than one function of the Council, in which case every effort will be made to ensure that joint visits are made. Our commitment is to work with others to identify the most appropriate and effective statutory power or powers.
- 4.8 We aim to resolve breaches as quickly as the law will allow and, when appropriate, we notify enquirers of the progress with our investigations.

5 Determining appropriate action

- 5.1 Once it has been established that a breach has taken place and harm is being caused, action may then be taken.
- 5.2 Government guidance states that local councils must act 'proportionately' in responding to suspected breaches of planning control. Our response will always reflect:
- the seriousness of the breach
 - the risks involved
 - the costs involved
 - the benefits involved
- 5.3 We will consider the provisions of the development plan, policy and guidance issued by central government and any other material considerations.
- 5.4 We will also consider the implications of the Human Rights Act 1998, specifically the impact of the proposed action (or inaction) on the human rights of all relevant parties. We will act in a way that is proportionate to the seriousness of the alleged breach and its impact on the person(s) affected.
- 5.5 In deciding the most appropriate course of action, we must consider the effects of the breach and what harm is caused to the amenity of the area. This includes forming a view as to whether planning permission would be granted (if applied for) and considering the evidence and any claims of immunity.

Assessing Harm

- 5.6 In assessing the effects of a breach and the harm caused, Enforcement Officers will first consider what harm is being caused, which may include whether the breach is causing harm by way of adverse impact on:
- the character and appearance of a conservation area or listed building
 - the character of the area or existing property
 - the residential amenity of neighbouring properties
 - potential impact on protected species or habitat
 - trees in a conservation area or protected by a Tree Preservation Order
- Also, whether the breach is:
- contrary to local planning policies
 - causing a statutory nuisance or a safety issue
- 5.7 Officers would then look at the scale and impact of that harm, which may include:
- whether the harm caused by the breach is widespread or local
 - whether the harm by the breach is irreversible
 - the significance and scale of the harm
 - the urgency to address the breach (i.e. whether the breach is within 6 months of statutory immunity)
 - whether the breach is stable or worsening
 - whether a planning application for the development would be viewed favourably
- 5.8 The main issue should be whether, if left unaddressed, the breach of planning control would unacceptably affect amenity or the existing use of land and buildings to the extent that it merits protection in the public interest.
- 5.9 It is important to note that not all breaches of planning control will result in formal action. We will only take formal action when we can demonstrate that the breach causes serious harm to amenity and it is expedient to do so.
- 5.10 Because our enforcement powers are discretionary, the emphasis will be on attempting to negotiate a resolution in the first instance.

No further action

- 5.11 Following our initial investigation, we may decide that there has been no breach of planning control. In such cases we cannot take any further action.
- 5.12 Even if there is a breach of planning control, we may decide not to pursue an enforcement investigation if it is not expedient to take action. This might be because the harm it causes is not significant, and in our opinion formal action would not be in the public interest.
- 5.13 In reaching a decision we must always balance the harm being caused against the likely success of any formal action and the availability of resources.

Retrospective applications

- 5.14 Rather than immediately resorting to formal powers, we will try to negotiate wherever possible. A retrospective planning application is often the most appropriate solution, as it allows us to consider the merits a development and its impact on interested parties. If the development can be made acceptable by imposing conditions, we will do that rather than refuse permission.

- 5.15 We aim to deal with retrospective applications within 8 weeks of receiving them. If an application is not received within 28 days of us asking for it, we will consider whether formal enforcement action would be expedient.

Formal action

- 5.16 If we refuse a retrospective application, we will usually attempt to remedy the breach through negotiation. However, where negotiations have been tried and failed or negotiation is not an option, we must consider whether formal action is appropriate.
- 5.17 We will only proceed to formal action when there is clear evidence of harm and serious conflict with planning policy or other controls which cannot be overcome by the imposition of conditions.

The right of appeal

- 5.18 An appeal can be made to the Secretary of State against the serving of an enforcement notice and a listed building enforcement notice. An appeal must be lodged before the date on which the notice is to take effect. The appeal has the effect of suspending the notice until the appeal is determined.
- 5.19 An appeal against a Section 215 notice can be made to the Magistrates Court but must be done before the notice takes effect.
- 5.20 There is no right to appeal a decision (by us) to take no further action.

6 Discretionary powers

- 6.1 Planning legislation provides a number of discretionary powers for enforcing compliance with planning controls. Although we will almost always try to negotiate or invite a planning application in the first instance, if a solution cannot be reached action may be taken.

The power to gather information

- 6.2 Our Enforcement Officers have the **power to access land** to obtain information they need (they must give at least 24 hours' notice to enter a house). If a resident refuses to let an Enforcement Officer in, a warrant of entry can be obtained.
- 6.3 A **Planning Contravention Notice (PCN)** can be issued if there is a suspected breach of planning control. It describes the breach and requires information about it to be provided, including the person(s) involved and their interest in the land. It will set out a time for compliance with the notice.
- 6.4 A **Section 330 Notice** (under section 330 of the Town and Country Planning Act 1990) can be served if we have obtained enough information about the breach but do not know who owns the land.

The power to enforce

- 6.5 A **Temporary Stop Notice** can be issued where we consider that a breach of planning control has occurred and deem it necessary to stop the breach immediately. This notice expires 28 days (or any shorter period set out) after it has been displayed on the land. During this period, we must decide whether to take enforcement action. There are some restrictions on a Temporary Stop Notice, such as that it cannot prohibit the use of a building as a dwelling house.

- 6.6 A **Breach of Condition Notice** can be issued to ensure full compliance with a condition imposed on a planning permission. The notice sets out the steps to be taken and provides a timeframe (of at least 28 days) for compliance.
- 6.7 A **Planning Enforcement Notice** can be served to remedy an actual (but not an anticipated) breach of planning control. It can require an unauthorised use of land to stop, or for unauthorised building or engineering works to be removed. It will set out the reasons for issue and will state a compliance period. The compliance period starts on the day that the notice takes effect and must be a period of at least 28 days.
- 6.8 A **Listed Building Enforcement Notice** may be issued where works affecting the character of a listed building are carried out in the absence of listed building consent. The notice can specify steps to be taken to restore the building to its former state, to alleviate the effect of the unauthorised work, or to bring the building to the state that it would have been in had any listed building consent been fully complied with.
- 6.9 A **Conservation Area Enforcement Notice** may be issued where unauthorised work or demolition to a building has taken place in a conservation area in the absence of appropriate consent. The notice can specify steps to be taken to restore the building to its former state, to alleviate the effect of the unauthorised work, or to bring the building to the state that it would have been in had any conservation area consent been fully complied with.
- 6.10 A **Stop Notice** requires any activity within the scope of a breach alleged in an Enforcement Notice to be immediately minimised, reduced or ceased. The notice must be served in conjunction with a full Enforcement Notice, but can be served before an Enforcement Notice has taken effect and regardless of whether an appeal has been lodged.
- 6.11 A **Section 215 Notice (Amenity Notice/Untidy Land)** can be served if we consider that the condition of land or buildings is causing harm to the amenity of an area. The notice will specify steps that must be taken to remedy the condition of the land. The notice will state a compliance period but cannot take effect until 28 days after its issue.
- 6.12 A **Community Protection Notice** (under anti-social behaviour legislation) allows us to take action against behaviour which has the potential to cause distress. This notice can prohibit people from undertaking certain operations or force land to remain in a certain condition.
- 6.13 **Prosecution** can be brought in cases where any of the following offences have been committed:
- the conditions of a formal notice have not been complied with to our satisfaction or within the specified timescales
 - works are carried out to a listed building in the absence of necessary listed building consent
 - demolition of a building in a conservation area takes place in the absence of conservation area consent
 - works are carried out to a tree which is the subject of a tree preservation order without the necessary consent
 - an advertisement is displayed in the absence of the express consent required
 - the removal of a countryside hedgerow without consent

We will only instigate proceedings if there is a realistic prospect of conviction and it is in the public interest to do so.

- 6.14 A person convicted could be subject to a fine and may receive a criminal record. If the breach is not remedied following conviction, we have recourse to further prosecutions which could result in more substantial fines and/or imprisonment.
- 6.15 Where prosecution does not remedy a breach or the harm caused by it, we have the power to take **Direct Action (Default Powers)**. This enable us to enter land and carry out works contained within a formal notice. We will then charge the landowner for these works.
- 6.16 An **Enforcement Injunction** can be sought where we consider it necessary or expedient for any actual or anticipated breach of planning control to be restrained. If the terms of an injunction are breached the relevant party or parties are in contempt of court and an application can be made by the Council for their committal to prison.
- 6.17 Where it appears that the offender has benefited from their criminal conduct, we will consider issuing proceedings for confiscation under the **Proceeds of Crime Act 2002**.

Other powers

- 6.18 An **Article 4 Direction** (under the Town and Country Planning Act (General Permitted Development) Order 2015) may be used to remove 'permitted development' rights, including:
- the right to erect fences and other means of enclosure
 - temporary uses of land (e.g. temporary buildings, moveable structures, plant or machinery required in connection with operations being carried out on the land)

7 Monitoring our own performance

- 7.1 To enable the performance of the enforcement team to be monitored (and to provide some consideration of the likely timescales for dealing with enquiries) we strive to achieve the following standards:

Task	Target
Formally acknowledge all enquiries.	Within three working days.
Visit a Priority Level 1 Case.	Within two working days.
Visit a Priority Level 2 Case.	Within five working days.
Visit a Priority Level 3 Case.	Within 10 working days.
Action* a Priority Level 1 Case.	Within two weeks.
Action* a Priority Level 2 Case.	Within one month.
Action* a Priority Level 3 Case	Within three months.
Respond to communications that are received from interested parties.	Within 10 working days.
Advise the enquirer of the outcome either in writing, email or via telephone at the conclusion of the investigation.	Within three working days.

**Action is defined as the officer having investigated the case to the extent that we can make a decision on the likely course of action going forwards.*

- 7.2 We are committed to acting in a fair and reasonable manner and these standards, taken in conjunction with the [priorities](#) listed previously in this document, are intended to ensure that we have an open and consistent approach to enforcement action.

8 Reporting a suspected breach

- 8.1 We rely greatly on the town and parish councils and the public to report suspected breaches of planning control.
- 8.2 If you think that a breach of planning control has taken place, you can inform us at: <https://www.westnorthants.gov.uk/planning-and-building-control/planning-enforcement>
- 8.3 Please note we do not accept anonymous enquiries, but all reports will be dealt with in accordance with the West Northamptonshire Council Development Management Privacy Notice: <https://www.westnorthants.gov.uk/service-privacy-notice/development-management-regulatory-service-privacy-notice>

9 Customer complaints procedure

- 9.1 If you feel that we have not dealt with your enquiry in a manner consistent with the standards contained within this plan, then you are able to make a formal complaint.
- 9.2 In order to register a formal complaint, please visit: <https://www.westnorthants.gov.uk/your-council/comments-compliments-and-complaints>

10 Further information and guidance

- 10.1 Further information and guidance on the planning enforcement process is available online, at: <https://www.gov.uk/guidance/ensuring-effective-enforcement>

Appendix 1: Minerals and Waste Monitoring

Section 19 of The Waste (England and Wales) Regulations 2011 makes it a duty that where a planning authority has planning functions in relation to establishments or undertakings carrying out disposal or recovery of waste, the planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made. Provision is also made in legislation to allow the Council as a Minerals & Waste Planning Authority to charge for monitoring visits to mining sites and landfill sites under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.

Therefore, the Council will seek to prioritise the monitoring and enforcement of sites that are monitored under The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 and under The Waste (England and Wales) Regulations 2011. Before each monitoring year the Council will assess the frequency that sites should be monitored, based upon the following criteria:

- i. the size of the site
- ii. the number and the complexity of conditions
- iii. the number of issues requiring monitoring
- iv. the stage of development at the site
- v. whether the operator has ISO 14001 or EMAS accreditation
- vi. the progressive nature of working/restoration
- vii. the number of breaches of planning control observed
- viii. the number of complaints received for a site, which have proven to be justified

In practice using these criteria active minerals and landfill sites would be likely to be subject of between 2 to 4 visits per year, and sites for the recovery, transfer and recycling of waste are likely to be the subject of 1 to 2 visits per year.