



North Tyneside Council

NORTH TYNESIDE PLANNING ENFORCEMENT GUIDANCE

2017

Introduction

Planning Enforcement provides an essential role in delivering an effective and efficient planning service. This document sets out what powers we have.

The planning enforcement service operates within the legislative framework of the Town and Country Planning Act 1990 (as amended) and all relevant associated legislation. Enforcement action is guided by the advice and procedures set out in the National Planning Practice Guidance website.

What planning enforcement matters the Council investigates

The Council is responsible for investigating alleged breaches of planning control in order to establish whether planning permission is required. A breach of planning control is development carried out without the requisite consent from the Council as Local Planning Authority (LPA).

Investigations also include unauthorised works to listed buildings, demolition in a conservation area, the unauthorised display of advertisements, and unauthorised works to protected trees, all of which constitute a criminal offence.

Planning permission is only required for work resulting in development or a material change of use defined as:

- *Operational Development* – the carrying out of building, engineering, mining or other operations in, on, over or under land eg. New buildings, extensions or works affecting the external appearance or profile of buildings and land.
- *Material Change of Use* – the making of any material change in the use of buildings and other land is development eg. a retail shop to a hot food take away results in a material change of use to the planning unit.

We can investigate:

- Operational Development such as householder extensions, new buildings, engineering operations etc.
- Material Changes of Use such as shop to a café, industrial unit to retail, residential dwelling to a business that alters the overall character etc
- Development that may not be in accordance with a planning approval
- Breaches of conditions linked to a planning approval such as operations or deliveries outside of approved hours or exceeding manner of operations or use controlled via conditions.
- Works or alterations that affect the character of a Listed Building.
- Demolition of structures within a Conservation Area
- Display of advertisements
- Works to trees protected by a Tree Preservation Order or within a Conservation Area

- Poor condition of private buildings and land that adversely affect the amenity of the neighbourhood.

What we cannot investigate

The Council receives many requests regarding issues that do not involve a breach of planning control. It is important to identify those issues that are relevant to planning and those that do not come within the remit of planning enforcement e.g.

- Internal refurbishment and alterations of buildings that are not Listed
- Party wall or land ownership disputes
- Minor works that do not amount to development
- Health and Safety matters
- Run down homes and overgrown gardens that do not harm the general neighbourhood
- Anonymous complaints

There are other circumstances when the enforcement team cannot pursue enforcement action. Certain breaches may not be expedient to pursue such as minor or technical breaches that cause no demonstrable harm to public amenity or general location.

Some developments may not require planning consent because they may be 'permitted development' under the Town and Country Planning (General Permitted Development) Order. For example, certain householder extensions may be carried out without the need for planning permission. In such cases it is always recommended that clarification be sought prior to works via the Local Planning Authority by means of a Certificate of Proposed Lawful Development. The planning portal website (www.planningportal.gov.uk) can give further information on what is likely to need consent, however if you are in doubt please contact us.

Information required from complainants

Before an alleged breach can be logged as a planning enforcement case, it is important that a basic level of information is provided. The complainant must provide:

- A name
- Full contact details including address
- The address of the property or land to which the allegation relates.

This must be provided because the Council may have to contact the complainant for more detailed information during the investigation of the case.

Where no contact details are supplied, the alleged breach will not normally be logged as a case.

You can submit your query by telephoning the Council on 0191 6432150, by email at planning.enforcement@northtyneside.gov.uk or writing to or visiting us in person between the hours of 08.30 to 13.00 Mondays and Fridays or 13.00 to 17.00 Wednesdays at:

North Tyneside Council
Planning Department
Quadrant East
The Cobalt Business Park
North Tyneside
NE270BY

Are my details confidential?

Under the provisions of the Data Protection Act 1998 the name and address of the person making the complaint will not be disclosed.

If you have been asked to collect evidence to support your complaint, the Authority may wish to use this to demonstrate that there has been a breach of planning control if, for example, an appeal is lodged against an enforcement notice. Such evidence carries more weight if presented by the person who collected it and you may be asked to contribute to an appeal. However, you are not obliged to do so.

Formal notices that are served on those in breach of planning regulations, along with a list of those people served with that notice are public documents.

The Authority is subject to the Freedom of Information Act under which it is obliged to disclose information where requested, unless an exemption applies. Details of complaints may be disclosed under FOIA unless, for instance, the information comprises personal information

What happens to my complaint when it has been logged?

When we log your complaint it will be given a reference number and you will be sent an acknowledgement letter. We aim to do this within 3 working days. The letter will tell you who is dealing with your case and their contact details.

Priority system

The priority of a case will be assigned on a case-by-case basis. The following is a guide:

Priority 1 works that cause a potential threat to public safety.

- Unauthorised work to a listed building and scheduled monuments
- Unauthorised work to protected trees

- Unauthorised demolition in a conservation area

For these cases we will endeavour to visit the site within 1 working day from receipt of the complaint.

Priority 2 development or activity that causes clear and immediate harm to the locality and may include:

- Building works that are currently on-going
- Unauthorised material change of use
- Erection of unauthorised advertisements that have a detrimental impact on highway safety
- Breaches of condition affecting residential amenity

For these cases we will endeavour to visit the site within 5 working days.

Priority 3 enquiries for which there is less impact in terms of harm being caused and could include:

- Poor condition of land that has a detrimental affect on its neighbourhood.
- Unauthorised display of an advertisement
- Minor developments such as sheds, fences and satellite dishes

We will endeavour to visit the site within 10 working days.

Investigating the complaint

The case officer will visit the site to establish more details about the alleged breach. Initial site visits are normally carried out without prior notification and access cannot always be gained on the first visit. Consequently it may take longer than the initial target period to conduct an effective inspection of a property. It is not generally necessary or considered good practice to visit the complainant's address.

An assessment will be made as to whether planning consent is required for the works. It may be that the matter does not constitute development or benefits from permitted development rights. In addition, if the development has been substantially complete for a certain length of time we may be unable to pursue formal enforcement action.

It may be necessary to visit the site several times in order for a judgement to be made on whether consent is required. For example, a case involving an alleged change of use of a residential property to a business may involve monitoring over a period of time in order to establish whether it results in a breach of planning control.

The owner of the premises may be invited to submit an application for a Certificate of Lawful Existing Use or Development. The applicant must provide evidence to demonstrate that on the balance of probability the use or development is lawful.

When no breach has been identified the case will be closed and the complainant informed of the outcome.

When a breach has been identified the Council may invite an application in an attempt to regularise the situation. However formal proceedings will not be initiated unless it is considered expedient to do so. Enforcement action should always be commensurate with the breach of planning control to which it relates (for example it is usually inappropriate to undertake formal action against a trivial or technical breach which causes no demonstrable harm to local amenity).

It would be unreasonable for the Council to issue an enforcement notice solely to remedy the absence of a valid planning permission. Where the Council does issue a notice for this reason, it would be at risk of an award against them for the appellant's costs, in the event of an appeal against the notice. Consequently, where it appears that there is a reasonable prospect that planning permission would be granted for the development the Council will seek a planning application retrospectively.

Formal Enforcement Action

If a breach has been identified and it is expedient to take action an offender is still entitled to provide an application for consideration. If no application is submitted the Council will take further action. This could ultimately result in formal enforcement action occurring. In the case of serious breaches, the Council may take action immediately.

In assessing the need for formal enforcement action, the Council must take the following into account:

- Whether the breach of planning control unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest.
- The provisions of the development plan and to all other material planning considerations raised by a particular breach.
- Enforcement action should always be commensurate with the breach of planning control to which it relates. Government advice indicates that it is inappropriate to take formal enforcement action against a trivial or technical breach of control that causes no harm to amenity in the locality of the site.

It is important to note that nothing in this document should be taken as condoning a wilful breach of planning control however formal action must be commensurate with the breach to which it relates.

Enforcement Notices can be appealed against and if an appeal is lodged, the notice will be held in abeyance pending the outcome of the appeal. The

appeals process is often a lengthy one and will often take several months to resolve.

Where there is a breach of the requirements of an Enforcement Notice, Breach of Condition Notice, or a Stop Notice, the party concerned is guilty of an offence and the Council can initiate prosecution proceedings. It may also be necessary to prosecute against other offences such as unauthorised display of advertisements, tree works, conservation area and listed building offences.

If you have any queries please contact a member of the Planning Enforcement Team on 0191 6432150.