



East
Northamptonshire
Council

Planning enforcement



This booklet explains what happens when the council receives an allegation about a breach of planning control

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Introduction

This booklet explains what happens when the Council receives an allegation about a breach of planning control.

The booklet covers unauthorised building work, changes of use of land or buildings, works to listed buildings, advertisements and works to trees.

Procedures

Allegations about possible breaches of planning control are received from a number of sources; the public, Parish and Town Councils, Councillors and from officers. They can be received in any form; letter or fax, telephone or during meetings or by officer observations. All allegations are allocated a case number and recorded. It is the Council's policy not to progress anonymous allegations, so you are urged to include your name and contact details. All complaints received are treated in confidence.

We have two planning enforcement officers who investigate all complaints about possible planning breaches throughout the district. This will usually start with a visit to the site to confirm what is happening there and an assessment of whether a breach of planning control is involved.

The nature of allegations is very diverse, so the procedure that will follow on may vary.

- Investigations relating to building work will focus on the findings of a site inspection together with evidence from local people about when the works were carried out.
- Cases where a change of use is alleged are usually more complex. The Council will need to collect evidence that the use complained of is occurring and that it is causing harm in a planning context. For example, noise disturbance or traffic generation. In these cases, complainants may be asked to keep a diary record of activities and they may be asked to attend a public hearing to give evidence.

If uncooperative parties hinder the Council in its investigations, the Council may serve a Planning Contravention Notice. This will require answers to specific questions to be provided within a set time period. Action can be taken in the Courts if a proper reply to the Notice is not received.

The identity of complainants is confidential. However in some cases it will be obvious who the complainant is, as there may be only one property that could have raised the issues involved. The only stage at which a complainant's identity will become known is when an enforcement notice becomes the subject of a public hearing and the complainant is required to give evidence. Where a planning application is submitted relating to a development which has already been started without planning permission, the application will be considered against development plan policy and any other material planning considerations. The fact that development has been carried out in advance of planning permission is not a relevant factor in the decision making process.

If an enforcement investigation concludes that there is a breach of planning control, the Council will decide whether it is expedient to issue an enforcement notice. The Council will need to be satisfied that the breach is resulting in harm, which is significant in planning terms. Examples would be the impact of a building or use of land upon either the amenity of a neighbouring property or the appearance of a site, or its impact on the surrounding area.

Experience

The Council receives about 200 to 250 allegations a year relating to breaches of planning control. Of these a proportion are not actual breaches. The large majority of the remaining cases are satisfactorily resolved without the need to take formal action. Enforcement Notices are only served as a final resort if and when other means of securing compliance have been unsuccessful.

Time scales

The nature of enforcement investigations tends to be a slow process; there is a need to be certain that unauthorised activities are occurring and that these are causing detriment. This sometimes involves a

number of inspections over a period of time together with a series of negotiations before the problem is solved. We are aware that those people affected by unauthorised development seek a speedy resolution and like to be kept informed of the progress of our investigations. We aim to provide a written acknowledgement of all complaints received in writing within 3 working days.

We will then carry out an initial investigation including a site visit and write to the complainant within 20 working days to give an update on the progress of the case. In cases where an Enforcement Notice is served, we aim to inform the complainant of this within 5 working days.

When a breach of control occurs

Breaches of planning control occur in a number of different circumstances, some examples are given below:

1. Unauthorised building work

- Building or engineering works, which are undertaken without the required planning permission.
- Building work being undertaken following planning permission, which is not carried out in accordance with the approved plans or any conditions imposed by the Council as part of the permission.

Carrying out works without planning permission is not a criminal offence, but there are various options open to the Council to try to remedy the breach - see below.

2. Changes of use of land or buildings

A significant change of use to a building (or part of a building) or land

normally requires planning permission. If planning permission has not been obtained when the change of use takes place, there is a breach of planning control. This again, is not an offence and the owner cannot be prosecuted but in appropriate circumstances, the Council can take action to remedy the breach.

3. Works to listed buildings

Works to a listed building will usually require Listed Building Consent. It is an offence to carry out work without the necessary consent and in these cases the owner may be prosecuted.

Minor alterations, which do not affect the special interest or character of the building, or repairs, do not need consent. You are strongly advised to check with the Council's Conservation Officer (who deals with historic buildings) on 01832 742133 before you start.

4. Advertisements

The display of advertisements is controlled by Regulations. Consent is needed to display many types of advert. Failure to obtain the necessary consent is an offence, which may result in prosecution.

5. Trees

Trees can be protected in one of two ways; either by a Tree Preservation Order or because they are located in a Conservation Area.

In both cases, works to the tree(s) or removal without following the appropriate procedure can constitute an offence, which can result in prosecution. You are advised to contact the Conservation Officer (who deals with trees and landscaping) in the planning section, on 01832 742148 before any works to the tree are carried out, for advice as to whether consent will be required. A private arboriculturalist will be able to offer specialist advice.

Formal action

Enforcement notices

Once the Council has decided to serve an Enforcement Notice, we will issue requisitions asking for information to be provided relating to any parties who have a legal interest in the property. If the information is not provided within the specified period, prosecution may follow. The enforcement Notice will be served on all the parties who have a legal interest, even though they may not be directly involved in the activities themselves.

The Notice will specify the breach of planning control, the steps required to remedy the breach and the period of time allowed for compliance. The period will commence 28 days from the date of the notice.

Anyone who receives an enforcement notice may appeal within 28 days from the service of the notice. Appeals are made to the Planning Inspectorate in Bristol. Once the Planning Inspectorate accepts an appeal as valid, the actions required under the Enforcement Notice are put in abeyance until the outcome of the appeal is known.

If an appeal is not lodged or not accepted as being valid by the Planning Inspectorate, and the steps required by the Enforcement Notice to remedy the breach have not been taken within the specified period, the Council may be able to prosecute the parties involved.

Stop notice

In certain circumstances, where the Council believes the breach of control is so serious (because it is harmful to health or affects a wide area of the District), and the Council feels the development should be stopped immediately, the Council can serve an Enforcement Notice together with a Stop Notice. The Stop Notice will require the building

works or unauthorised use to stop immediately. Again an appeal can be submitted under the procedure previously described.

In some cases where an Inspector on appeal does not uphold a Stop Notice, the Council may be liable to pay compensation, therefore careful consideration needs to be given before this remedy is used.

Prosecution

The decision to prosecute is taken by the Members of the Planning and Licensing Committee following advice from officers and sometimes legal advice. The decision to prosecute has to be taken in the public interest and usually where alternative action has failed to remedy the situation.

Injunction

In some cases, serving an injunction is a more appropriate course of action than an Enforcement Notice. Failure to comply with an Injunction is a contempt of court for which there are serious penalties.

Direct action

Where a breach of planning control has not been resolved, and an Enforcement Notice has taken effect but has not been complied with, the Council can decide to carry out the works necessary to remedy the situation itself. The Council would serve notice of its intentions on the owners and occupiers of the land before a contractor carries out the work. The cost of the work would be reclaimed from the owner or a charge placed on the land. This would be a remedy of the last resort when all other attempts to resolve the breach have failed.

Getting in touch

Contact an enforcement officer on **01832 742145 / 742149**

Write to:

**The Enforcement Section
Community Services Directorate
East Northamptonshire Council
Cedar Drive
Thrapston
NN14 4LZ**



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