



**Report to: Cabinet**

**Subject: Planning Enforcement Policy**

**Date: 22<sup>nd</sup> January 2007**

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### Background

Whilst being a signatory of the national Planning Enforcement Concordat, Gedling Borough Council has not formally adopted a policy regarding the enforcement of planning control.

### Planning Enforcement Policy

The policy sets out how breaches of control will be prioritised, what approaches will be taken to remedying them and the timescales for doing so. It also sets out the various enforcement powers available to officers and the circumstances where these can be applied.

Four categories of cases are to be used;

Urgent cases, such as unauthorised works to listed buildings or trees, or which would be likely to cause significant harm or potential impact, would be investigated within three working days of receipt.

Significant cases, such as breaches of conditions precedent (which should have been discharged before work commenced) or would be likely to cause significant harm to amenity, would be investigated within ten working days of receipt.

Routine cases would be dealt in order of date of receipt and investigated within fifteen working days of receipt.

Where complaints are made anonymously, they would be investigated as resources allow.

Given that each case is different, it is not reasonable to set targets for the time taken to resolve cases. However the policy establishes that complainants will be informed of the progress of investigations on a regular basis.

The policy will be useful in setting out what service complainants and persons responsible for alleged breaches of control can expect, and in ensuring most effective use of the councils enforcement and compliance resources.

A leaflet explaining the policy to the public will be produced.

### **Recommendation**

That the policy be adopted.

# **Planning Enforcement Policy**

## **1. Introduction**

This document forms Gedling Borough Council's Planning Enforcement Policy. It provides the decision-making framework for dealing with all breaches in planning control.

The Government produced a Good Practice Guide for the Enforcement of Planning Control in 1997. This encourages Local Planning Authorities to adopt a Planning Enforcement Policy in order to make consistent and transparent decisions when deciding whether to take enforcement action.

In aiming to secure an environment which is 'Healthy, Green, Safe and Clean', Gedling Borough Council recognises that Planning Enforcement has a key role to play in aiming to prevent all breaches of planning control which cause harm to the environment and to living and working conditions.

There will, on occasion, be the need to take action against inappropriate development in order to protect the environment. Gedling Borough Council's enforcement function is intended to be carried out in a fair, equitable and consistent manner to promote a thriving local and national economy.

Gedling Borough Council is committed to the Government's concordat of Good Enforcement, which includes general enforcement principles of;

- Consistency
- Fairness
- Proportionality
- Transparency
- Objectivity

In addition, the polices contained within the Gedling Borough Replacement Local Plan are of particular relevance to Planning Enforcement. Examples of these include polices to ensure good quality design, to safeguard residents from noise and disturbance, and to prevent inappropriate development in the Green Belt. This policy has also been drawn up having regard to Town and Country Planning legislation and circulars, national policy statements, human rights and other investigatory powers legislation as detailed at the end of the policy. Details of these can be obtained from Gedling Borough Council or online from [www.communities.gov.uk](http://www.communities.gov.uk) or [www.rtpi.org.uk](http://www.rtpi.org.uk).

In considering what action should be taken with regard to the enforcement of planning controls, Gedling Borough Council will be guided by this regulatory framework and the guidance contained in it.

## **2. The Planning Enforcement Policy**

The objectives of the policy are:

1. To promote compliance with planning
2. Bring unauthorised activity under control
3. Remedy undesirable effects

The policy to achieve these is categorised in three sections;

Section A - Policy Principles

Section B - Priorities for Taking Enforcement Action

Section C – Timescales for Dealing with Complainants

### **Section A Policy Principles**

- Where possible, officers will always seek to negotiate an acceptable solution to the problem.
- Officers will at all times treat complainants, owners and occupiers with courtesy and will in turn expect to be treated in the same manner.
- Explanations for actions taken will be given to encourage understanding of the planning enforcement process
- Plain language will be used in all methods of communication, and where English is not the principal language of any party involved, efforts will be made to ensure that key information relating to the breach of control is translated and provided.
- All legitimate complaints made in writing, by telephone or electronically either by email or the Gedling Borough Council website will be investigated
- Complaints will be treated in confidence as far as possible. However, should a case proceed to appeal or prosecution stage, the Borough Council will be obliged to reveal the name of the complainant and the nature of the complaint. Otherwise, the identity of the complainant will not be revealed without their formal agreement.
- Where a complaint is referred to a member of the Council, then the member's involvement will be acknowledged.
- Retrospective planning applications for unauthorised development will only be encouraged where it is likely that such an application would be likely to be considered favourably. Action may be held in abeyance pending the outcome of a submitted application, subject to compliance with agreed timetables. Failure to submit an application within a required timescale may result in formal action being taken regardless of any subsequent application.
- If an application for planning permission is not submitted and the development is only acceptable subject to conditions, then the Council will consider issuing a conditions enforcement notice.
- The enforcement service will operate on a pro-active basis in order to prevent problems at the earliest opportunity
- All forms of illegal advertising will be investigated and where necessary, Gedling Borough Council will actively cooperate with other authorities enforcement services to achieve effective control of advertisements.

- Formal action will only be taken where all other avenues have been fully explored, but in certain circumstances, formal preventative action may be required to enable further consideration to be taken.

## **Section B Priorities For Taking Enforcement Action**

Enforcement officers deal with significant numbers of complaints each year regarding breaches of planning control. This number is increasing with public awareness of the impact of unauthorised activity upon the environment and the quality of peoples lives.

In order to make the best use of officer resources and tackle development that is causing the most harm at the earliest opportunity, complaints will be prioritised against the following criteria;

### A – Urgent

- Unauthorised works to Listed Buildings or within Conservation Areas
- Unauthorised works to trees which are subject to a Tree Preservation Order or are within a Conservation Area
- Cases causing, or likely to cause significant nuisance, harm to health or affecting public safety
- Cases where immediate action is needed to prevent significant harm to amenity

### B – Significant

- Breaches of condition requiring information to be submitted before development commences
- Other important cases not classified as urgent but which would cause significant harm to amenity

### C – Routine

- All other breaches of control to be dealt with in order of date of receipt

### D – Anonymous

- Complaints made anonymously and which do not fall within category A, or would not be likely to cause significant harm to amenity, nuisance harm to health or affect public safety.

### M – Monitoring and Compliance

- Cases relating to the routine monitoring or the construction of a development
- Cases involving the monitoring of conditions imposed as part of a approved planning permission

## **Section C Timescales For Dealing With Complaints**

Enforcement investigations will be carried out in accordance with the following timescales:

- Where the complainant's details are known, all complaints will be acknowledged within five working days of receipt.
- Priority A Urgent cases; officers will attempt to visit the site immediately but at the latest a site visit will be made within 3 working days of the receipt of the complaint and contact with the site owner will be attempted within 2 days of the site visit.
- Priority B Significant cases; a site visit will be made within 10 working days of receipt of the complaint and contact with the site owner will be attempted within 3 working days of the site visit.
- Priority C Routine cases; a site visit will be made within 15 working days of the complaint and contact with the site owner will be attempted within 5 working days of the site visit.
- Priority D Anonymous cases; investigated when resources allow.
- Priority M Monitoring and Compliance cases; a site visit will be made when an appropriate point of construction or part of the compliance case is reached.

All complaints will be investigated and resolved without undue delay. Complainants will be kept updated of progress, and will be notified in writing of the outcome of the complaint within five working days of the matter being resolved. Alternatively an update will be sent to the complainant within 28 days of the complaint being made should the matter not have been resolved by that point.

### **3 – Enforcement Powers**

When it has not been possible to negotiate a resolution to a breach of control, it may be necessary to instigate legal action. There is a range of powers available, including Planning Contravention Notices, Breach of Condition Notices, Enforcement Notices, injunctions, Stop Notices and Temporary Stop Notices. These are detailed at the end of this policy. Use of these powers requires sufficient admissible and reliable evidence that a breach of planning control has been committed, and will usually only be undertaken where the Council is confident that there is a realistic prospect of success.

### **4 – Compliance Monitoring**

As part of a proactive enforcement service, Gedling Borough Council's enforcement service will monitor the progress of all major developments in order to ensure that development complies with approved plans and schemes. The conditions imposed upon planning permissions will also be monitored to ensure that all required information is submitted at the appropriate stage of the development process and that any work required to be carried out is so done to the required standard.

## **5 – Conclusions**

Gedling Borough Council aims to provide an enforcement service that is fair, efficient and responsive. The decision to take enforcement action requires an assessment of a variety of considerations, and must be based on expediency; namely, whether it is appropriate to take action in the circumstances.

The Enforcement service needs input from the public in order to operate in the most appropriate way. Members of the public should be able to approach an enforcement officer to discuss any planning enforcement issues. Similarly, when approached by an enforcement officer, a developer or landowner should be able to discuss issues regarding a site in a courteous and informed manner.

In the event that anyone involved in an enforcement investigation feels unhappy about the way the matter has been dealt with, the Development Control Manger will be able to discuss the situation. Alternatively, the Borough Councils complaint procedure is available should this be required.

### **Legislation**

1. The Town and Country Planning Act 2004
2. The Town and Country Planning (General Permitted Development Order) 1995
3. Planning Policy Guidance Note 18 (Enforcement)
4. Planning Policy Guidance Note 19 (Outdoor Advertising)
5. Circular 10/97 Enforcing Planning Control
6. The Town and Country Planning (Control of Advertisements) Regulations 1992
7. Human Rights Act 1998
8. Regulation of Investigatory Powers Act 2000
9. Planning and Compensation Act 1991
10. Data Protection Act 1998
11. Police and Criminal Evidence Act 1984 (PACE)
12. Listed Building Acts

## **Available Powers**

**Service of a Planning Contravention Notice** – This enables Gedling Borough Council to gather information to establish whether there has been a breach of planning control. Failure to complete the notice or knowingly providing false information is potentially a criminal offence, which could attract a fine of up to £5000 on conviction.

**Service of a Breach of Condition Notice** – This can be used to ensure compliance with conditions attached to a grant of planning permission. The notice must specify the breach and the steps required to remedy the breach within a time scale and will take effect not less than 28 days after service of the notice. Failure to comply with the notice is a criminal offence, the penalty for which is a fine of up to £1000. There is no right of appeal against a breach of condition notice.

**Service of an Enforcement Notice** – This is the most common form of action, but can only be used where Gedling Borough Council is satisfied that the notice is the most appropriate response to the breach of control. The notice will specify the nature of the breach, the steps required to remedy it and a time scale for compliance. There is a right of appeal against an enforcement notice. However, if the right of appeal is not exercised and there is then a failure to comply with the notice, this could then result in a criminal prosecution and/ or direct Council action to remedy the breach. Conviction of this offence could result in a fine of up to £20,000.

**Service of a Stop Notice** – If an Enforcement Notice is issued and served, Gedling Borough Council, if it considers it appropriate in all the circumstances, may serve a Stop Notice which can require the breach of planning control to cease immediately, or as otherwise specified.

**Service of a Temporary Stop Notice** - Under certain circumstances a Temporary Stop Notice may be served when there has been a breach of planning control and the Council think that it is expedient that the activity is stopped immediately. The Notice ceases to have effect after 28 days. A Temporary Stop Notice cannot be issued in respect of certain categories of development including the use of a building as a dwelling house or a caravan where that caravan is the main place of residence of the occupier of the caravan. Furthermore, it is an offence to fail to comply with a Stop Notice.

**Application for an injunction** – An injunction is an Order of the County Court or High Court, which the Court can make as it thinks appropriate, to restrain an actual or an anticipated breach of planning control. An application will be made to the relevant Court if the actual or anticipated breach is considered likely to be serious and an immediate risk to health and safety, or is necessary in terms of time. A temporary injunction can then be made, followed by a second hearing, where the order is confirmed or quashed. Applications for injunctions are civil matters and failure to comply with the terms of an injunction is contempt of court for which an individual could be fined, imprisoned or both.

**Service of a Section 215 notice** – This relates to the untidy condition of buildings or land where they are injurious to amenity. Gedling Borough Council may serve a



section 215 notices if it appears that any land within its area is in such a state that it is injurious to amenity. The planning, Environmental Protection and Building Control sections are encouraged to coordinate their activities in this respect to ensure that notices are served and complied with in appropriate cases. The use of the section 215 notices in conjunction with other statutory powers available to Gedling Borough Council should be considered. The notice must specify the steps required to remedy the situation and specify a time scale for compliance. The notice shall not take effect less than 28 days after the service of the notice. Failure to comply with the notice within the prescribed time-scale could result in a criminal prosecution. There is however a right of appeal within the time-scale prescribed within the notice. If no right of appeal is exercised and the individual is found guilty of a failure to comply with the notice he/she could be fined up to £1000.

**Action against Unauthorised Advertisements** – Criminal proceedings may be taken where an unauthorised sign or advertisement is displayed without advertisement consent. A prosecution will not normally be sought until a written request to remove the advertisement within an agreed time scale has been issued and not complied with. If an individual is found guilty of an offence in relation to such matters then they could be fined up to £1000 per advertisement.

**Unauthorised works to a listed building or structure** – A prosecution will not be commenced or continued by Gedling Borough Council unless it is satisfied that there is sufficient admissible and reliable evidence that an offence has been committed and that there is a realistic prospect of a conviction. If a case does not pass the evidential test, it will not proceed, no matter how important or serious it may be.

### **Contact Numbers**

Gedling Borough Council	0115 901 3901
Development Control Section	0115 901 3720
Planning Enforcement and Compliance Officer	0115 901 3722