

Doncaster Metropolitan Borough Council

Planning Enforcement Policy



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1. What is planning enforcement?

Introduction and context

This document sets out the approach we will take in relation to breaches of planning control in the Borough. Ideally we would like there to be no breaches of planning rules in Doncaster. However, where breaches occur planning law lays down strict requirements which we have to follow before we can enforce against them. These requirements seek to balance the concerns of local people and the rights of owners against the need to secure proper planning control in the borough.

Despite the legal constraints placed upon us we do understand that breaches of planning rules impact on peoples' lives in a very direct way. Consequently, the delivery of effective planning enforcement is a very important issue for us. We will always investigate breaches of planning rules swiftly and pursue appropriate action using the powers that are available to us. We will also keep interested parties informed throughout the process.

In dealing with any enforcement issues we must take into account the Council's adopted frameworks and strategies, particularly:

Doncaster's Corporate Plan 2014 – 2017

Doncaster Council's purpose is to ensure Doncaster and its people thrive. We will ensure that value for money is at the heart of everything we do.

Doncaster's Core Strategy 2011 - 2028

Doncaster's Core Strategy sets out a spatial vision for Doncaster, and key strategic objectives and strategic policies for development. It covers a range of topics, such as the economic well-being of the borough, Green Belt and flood risk areas and transport choices. It is informed by issues raised through consultation and the Council's overall approach as set out in the Borough Strategy. A separate Waste Core Strategy has been prepared with Barnsley and Rotherham (known as the Joint Waste Plan).

The Local Development Framework forms part of the statutory development plan for Doncaster. The development plan informs decisions on planning applications and a range of implementation plans.

Saved Unitary Development Plan Policies:

The Council does rely upon saved policies contained within the Unitary Development Plan, adopted in 1998. However, it is noted that Doncaster is committed to producing a Local Plan within the coming years which will supersede our Unitary Development Plan and Core Strategy Policies.

Consideration should also be given to National Policy and guidance as set out below:

The National Planning Policy Framework (NPPF):

The National Planning Policy Framework is key to making the planning system less complex and more accessible. It acts as guidance for local planning authorities and decision-takers, both in drawing up plans and making decisions about planning applications. The National Planning Policy Framework should be read alongside other national planning policies on Waste, Travellers, Planning for Schools Development, Section 106 planning obligations on small-scale sites, Sustainable Drainage Systems, and Parking.

Planning Practice Guidance:

On 6 March 2014 the Department for Communities and Local Government (DCLG) launched this planning practice guidance web-based resource. The Planning Practice Guidance provides legislative information and is intended to assist practitioners. Ultimately the interpretation of legislation is for the Courts but the guidance is an indication of the Secretary of State's views.

2. Planning enforcement – the principles, our policy and ‘expediency’ explained:

Most types of building works, changes of use, works to listed buildings, works to protected trees and advertisement signs require planning permission or consent. If these have not been obtained and works have been carried out or uses implemented, a breach of planning control is said to have occurred. A breach also occurs when conditions attached to a planning permission are not complied with.

The planning enforcement system is based on two important principles:

1. A breach is not a criminal offence, **except for** unauthorised works to listed buildings, illegal advertisements, demolition without consent and unauthorised works to trees with Tree Preservation Order's or within Tree Conservation areas. Other than in these cases, a criminal offence only arises when an Enforcement Notice has been served and has not been complied with.
2. It is at the Council's discretion whether action will be taken – many breaches may be unintentional and any action proposed must be in proportion to the alleged offence.

We will always investigate any alleged breach reported to us and make a reasoned decision whether it merits action. However, because of the legal test of "expediency" we should only take formal enforcement action where it is fair and reasonable to do so. In making this decision we will assess the circumstances of the case and make reference to our adopted planning policies. In addition we must also consider Central Government enforcement policy and guidance. This is set out in the National

Planning Policy Framework (NPPF) 2012 and the Planning Practice Guidance which specifically references when Authorities should take enforcement action.

The NPPF sets out that 'local planning authorities should act proportionately in responding to suspected breaches of planning control'.

In considering "expediency" the decisive issue is whether the breach would unacceptably affect public amenity or use of land that should be protected in the public interest. Any enforcement action should be proportionate to the breach, so for example, it would be inappropriate to take formal action against a trivial or technical breach. This duty means that we would not be acting lawfully if we enforced against every breach of planning control in the borough. There will be cases where there is a breach of planning legislation but the breach or harm is so minor that action cannot be justified i.e. it is not expedient or in the public interest to pursue the case.

What is the 'harm?'

Harm resulting from a breach of planning control could concern amenity or highway safety issues and include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows for example. Harm to the various planning interests could occur for example, through unauthorised work to a listed building, a change of use that causes loss of amenity or highway safety, demolition within a Conservation Area or work to a protected tree.

This harm would not, for example include:

- loss of value to a neighbouring property,
- competition to another business,
- an extension to a building that is slightly larger than Permitted Development rights allow but does not create any harm.

3. Planning Enforcement- a holistic approach

In carrying out our enforcement duties we will consider the part planning enforcement plays in protecting the needs of Doncaster as a whole.

The NPPF states that 'Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area'. Whilst we recognise that planning enforcement is usually complaints driven we will also take a more proactive approach by looking at how we can use our enforcement powers to achieve our wider planning objectives.

For example this could involve monitoring developments which have been granted planning permission but where a failure to comply with the terms of that permission could potentially have a serious impact on local amenity. This may also involve proactive enforcement projects which look to tackle a number of similar breaches simultaneously which has a cumulative impact.

In identifying potential targets for this sort of action we will have regard to the views of ward members and local residents and seek views and partnership discussions with those parts of the authority and other stakeholders in the area concerned with planning, regeneration, culture, diversity, tourism and town centre management.

Targeted enforcement action may be taken through the usual enforcement route (i.e. the serving of enforcement notices) but we will also look at the use of more direct remedies e.g. Court injunctions against a series of breaches. We also recognise that properly targeted enforcement action (particularly where pursued through the Courts and publicised) may not just remedy the specific breach but it may bring about a measurable improvement to an area as a whole through its deterrent effect. It can also establish a benchmark for developers in terms of what Doncaster will not tolerate.

4. Investigating alleged breaches

Complaints can be made via email, our website (www.doncaster.gov.uk), in writing or over the phone. Complaints will be recorded on to the Department's computer system creating a case reference number and case file. Anonymous complaints will not be recorded or allocated unless there is an unambiguous breach of planning control readily identified which meets the criteria of an Immediate Action priority as set out below. Complaints made in writing are preferred so that the nature of the complaint is clear and the harm that it is causing is understood.

All allegations of planning control breaches will be prioritised and investigated thoroughly and accurately. Below are the priorities we have assigned to different types of alleged breaches, and the target times we have set to carry out an initial site visit.

Immediate Action

Investigation commences within one working day of receipt

- Serious alleged breaches including threat to health and/or safety of the public or irreversible damage to the built or natural environment (for example threats to the fabric of listed buildings, Scheduled Monuments, protected species and their habitats, protected trees).
- We will investigate planning and/or Listed Building breaches that affect Scheduled Monuments. Historic England is responsible for investigating potential offences affecting Scheduled Monuments.
- Anyone who contravenes a Tree Preservation Order by damaging or carrying out work on a tree protected by an Order, without getting permission from the local planning authority is guilty of an offence and may be fined. For further guidance on Tree Preservation Orders and trees in conservation areas please visit:
<http://planningguidance.planningportal.gov.uk>

High Priority

Investigation commences within 5 working days

- Alleged breaches that are significantly detrimental to amenity through noise, fumes, highway safety or loss of privacy
- Alleged breaches that depart from planning policy or an existing permission and which are unlikely to receive planning permission
- Contravention of conditions attached to planning permissions or planning obligations where there would be high priority demonstrable harm
- Where building work has commenced

Medium Priority

Investigation commences within 15 working days

- Alleged breaches that may affect the setting of a listed building or the character of a conservation area
- Alleged unauthorised advertisements in conservation areas or where there are highway safety issues
- Alleged breaches that may be resolved through imposition or modification of conditions on a subsequent planning permission
- Where building work likely to cause a high priority harm is believed to be imminent

Low Priority

Investigation commences as resources permit, but not later than 20 working days

- Other alleged breaches of a minor nature which do not cause immediate or long term harm (for example smaller domestic structures, sheds, fences, outbuildings)
- Other alleged breaches of conditions where there is no immediate harm
- All other alleged unauthorised advertisements

The Planning Enforcement function does not investigate the following:

- Neighbour disputes or other civil issues including boundary disputes or enforcement of covenants. In these matters, complainants need to contact their solicitor or local Citizens Advice office.
- The use of or development on adopted highways, pavements or highway grass verges. These matters should be addressed to Highways Network Management at the Council.
- Dangerous structures. The Building Control deal with these matters.
- Fly-tipping, litter and fly posting. This should be addressed to the FLAG Team of the Council's Environmental Enforcement Team.

<http://www.doncaster.gov.uk/sections/recyclingrubbishandwaste/flag/index.aspx>

After the initial investigation

Once we have carried out the first visit to the site we will make an assessment of what further action may be needed. Whatever the assessment, the complainant will be informed and advised of the next course of action.

This may lead to the following courses of action:

- Case is closed because the investigation identifies that no breach of planning control has occurred.
- Case is closed because an alleged breach of planning has been identified but then resolved by negotiation.
- A planning application or other form of application has been submitted following the investigation.
- A breach in planning control has been identified. An assessment has been made determining that it is expedient to take formal enforcement action in this case. Formal action may be in the form of notices issued.

5. Enforcement action – our approach

Government guidance on enforcement focuses not just on the impact of any breach on the complainant but on the rights of the owner or occupier where the alleged breach is occurring. Doncaster has to work within the Government's rules. However, at the same time we also recognise the impact planning breaches can have on people's lives. Therefore, where appropriate, we will always use the tools available to us to seek a remedy to a planning breach. We will also aim to act in a transparent and accountable way by keeping interested parties informed at each stage of the process.

Our approach could include any or a combination of the following actions:

- **Negotiation**

Government guidance makes it clear that in all but the most serious cases we should initially seek to have planning breaches remedied through negotiation. The person carrying out the breach will be sent a letter confirming that the breach should be remedied in a specific timescale, or information should be provided to justify to us that no further action should be taken. However, we will not unnecessarily delay starting formal action while negotiations continue to resolve the breach. For example, it may be appropriate to issue a temporary stop notice whilst considering a retrospective planning application. In 'Immediate' and 'High Priority' cases, where necessary we will require that unauthorised work should stop immediately and other immediate remedies may be sought.

- **Planning Contravention Notice (PCN)**

This is a legal notice which allows us to bring the breach to the attention of the owner or occupier and requires the alleged offender to provide certain information. A planning contravention notice may be issued under Section 171C of the Town and Country Planning Act 1990 and can be used to do the following:

1. allow us to require any information for enforcement purposes about any operations being carried out, any use of or activities being carried out on the land, and;
2. can be used to invite its recipient to respond constructively to us about how any suspected breach of planning control may be satisfactorily remedied.

The offender has 21 days to respond. Failure to respond could result in a prosecution in the Magistrates Court. Sometimes it is necessary to serve these notices where a site visit may not be able to obtain all the facts necessary to establish whether a breach of planning control has taken place. In some cases the formal nature of the PCN will highlight the seriousness of the situation to the alleged offender and will in itself lead to the breach being remedied.

The issuing of a PCN is discretionary. We need not serve one before considering whether it is expedient to issue an enforcement notice or to take any other appropriate enforcement action.

A planning contravention notice is not available for use where there are suspected breaches of listed building or conservation area control, hazardous substances control or control of protected trees.

There is no requirement to enter a planning contravention notice in our register of enforcement notices, stop notices and breach of condition notices. The notice is not a legal charge on the land.

- **Enforcement Notices**

Enforcement Notices are our main enforcement tool. The Government guidance sets out that the power to issue an enforcement notice is discretionary (Section 172 of the Town and Country Planning Act 1990). An enforcement notice should only be issued where we are satisfied that it appears that there has been a breach of planning control and it is expedient to issue a notice, taking into account the provisions of the development plan and any other material considerations. Enforcement notices are formal legal documents that will require the owner or occupier to take specific steps to remedy the planning breach in a specified time. If the notice is not complied with the planning breach will become a criminal offence which can be prosecuted in the Courts. However, the notice may be appealed to an independent Government appointed Planning Inspector. In such cases the effect of the Enforcement Notice is suspended whilst the appeal is ongoing. Inspectors can

decide to uphold the notice, amend it or have it quashed. Interested parties can make representations to the appeal inspector.

- **Section 215 notices**

A Local Planning Authority has the power to issue a notice under s215 if the amenity of part of its area is adversely affected by the condition of a piece of land. The notice requires such steps as may be specified for remedying the condition of the land (includes buildings) and provides a minimum of 28 days before it takes effect. There is no right of appeal to a planning inspector, although before the notice takes effect an appeal may be made to the Magistrates Court by those served with the notice or any other person having an interest in the land.

- **Breach of Condition Notice (BCN)**

These can be used in addition to an enforcement notice or as an alternative, where the unauthorised activity is in breach of a condition attached to a planning permission. Under the Law a breach of condition is seen as a more minor breach than cases where development has no planning permission at all. For that reason there is no right of appeal against a Breach of Condition Notice. However, if compliance is not achieved we can proceed to prosecution.

- **Stop Notices, Temporary Stop Notices and Court Injunctions**

These remedies can be used to bring a quick stop to development where a breach is causing serious or irreparable harm and immediate action is justified or where other actions have failed. They will generally only be used in the most serious cases. We will consider the use of injunctions in appropriate cases, such as where a listed building is undergoing alterations without consent that affects its special historic and architectural interest or where the Council has evidence that a site will be developed without planning permission and in doing so will cause serious harm to particular planning interests.

- **Default Powers**

These are generally seen as supportive powers to the main enforcement powers and allow us to enter land to take the necessary steps to secure compliance when an enforcement notice has been served.

The Planning Practice Guidance sets out that local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes (Sections 196A, 196B and Section 196C of the Town and Country Planning Act 1990). This right is limited to what is regarded as essential, in the particular circumstances, for effective enforcement of planning control.

The Act specifies the purposes for which entry to land may be authorised (Section 196A(1) of the Town and Country Planning Act 1990), namely:

1. to ascertain whether there is or has been any breach of planning control on the land or any other land;
2. to determine whether any of our planning enforcement powers should be exercised in relation to the land, or any other land;
3. to determine how any such power should be exercised; and
4. to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

The phrase “or any other land” means that if necessary neighbouring land can be entered, whether or not it is in the same ownership, or is being occupied by the person whose land is being investigated.

Prosecution

In most cases we cannot prosecute until we have taken formal enforcement action through the service of a legal notice. Prosecution does not bring about the remedying of a breach; rather it can be seen as the Courts “punishing” the person responsible, usually through a fine. Even though a successful prosecution may not remedy a planning breach on its own it can have an important deterrent effect.

6. Policy approach – our general principles

We will abide by the following principles in dealing with enforcement;

- Priorities

We deal with cases where the most serious harm is found, taking into account our planning policies and the circumstances of the case.

- Consistency and fairness

We will look at past cases and try to take a similar approach, for consistency, where this seems fair and reasonable. Cases will be investigated in accordance with the priorities in this policy.

- Transparency

Members, residents, existing and potential local businesses, complainants, alleged offenders and council staff should understand how we provide the service and the principles that guide it. We will provide an easy-to-access service, where the procedures, level of service provided and the rights of appeal for the alleged offenders are clearly explained and easy to understand.

- Proportionality

Any proposed action is in keeping with the scale of the alleged breach and the amount of harm caused. In each case we will decide on the most appropriate course of action to follow. Under the law we are only allowed to take enforcement action if it is expedient to do so.

What to do if something does not go as you had expected

If you feel that there is unreasonable delay or an error in the way in which an enforcement investigation is being carried out, you should contact the Enforcement

Manager within the Regulation and Enforcement Service. They will investigate the matter, review the circumstances and advise you within 10 days about what action will be taken. If a matter requires further investigation, you will be advised of this at the time.

7. Our service offer – How will we respond?

Investigations of possible breaches can be worrying for everyone involved. We want to make sure our customers, both those who complain and those complained about, are kept informed throughout the planning enforcement process.

For those cases where no further action is required, we aim to inform all interested parties within 10 working days of the completed site visit. In cases requiring further investigation by a Planning Enforcement Officer, we will aim to finish our investigations, which may include negotiation, within 16 weeks.

During this period we will provide regular progress reports to all interested parties by way of email or letter. At this point we will assess whether formal enforcement action needs to be taken.

If you draw our attention to a possible planning enforcement issue we will:

- not consider anonymous enquiries
- write to acknowledge your complaint within three days of receiving it
- write to let you know the priority it has been given and who is investigating it
- contact you if we need further information
- keep you informed - contacting you with initial findings within a month and then at least every two months to update you on the investigation
- let you know the likely course of action we will be taking and how long this might take
- contact you at each key event, e.g. investigation progress, notice served or appealed
- let you know the final outcome of your complaint
- I treat your complaint confidentially. However, it may be difficult to preserve confidentiality in every single case e.g. if we need to go to Court we may ask you to give us further help with the case.

If we have been informed that you may be responsible for a planning breach we will:

- provide identification whenever we visit
- provide the name of the officer carrying out the investigation
- investigate the complaint thoroughly before making any decision on what action to take
- write to you explaining our conclusions
- explain what you need to do to put matters right, how long you have to do this and what the consequences might be if this does not happen

- inform you if we decide to issue an Enforcement Notice or start legal action.

Additional References

Town and Country Planning Act 1995(General Permitted Development Order)

Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991, Planning and Compulsory Purchase Act 2004)

Planning (Listed Buildings and Conservation Areas) Act 1990
"Enforcing Planning Control: Good Practice Guide for Local Planning

Authorities", Department of the Environment, Transport and the Regions 1997
Environment Circular 10/97 "Enforcing Planning Control: Legislative

Provisions and Procedural Requirements", Department of the Environment, Transport and the Regions 1997

National Planning Policy Framework 2012
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Planning Practice Guidance -
<http://planningguidance.planningportal.gov.uk/>