Mansfield

District Council

Planning Enforcement Procedures

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Mansfield
District Council

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1. INTRODUCTION

The purpose of this Policy is to set out the procedures and performance standards that will be adopted in relation to the planning enforcement service at Mansfield District Council.

The National Planning Policy Framework (paragraph 207) states *"effective enforcement is important as a means of maintaining 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. Local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities 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 it is appropriate to do so."*

It is essential therefore that policies and procedures are in place for the Council to deliver a quality service to the public whilst also dealing with breaches of planning control in an effective and consistent manner. The implementation of such policies and procedures is also important for the Council to give its customers guidance on how the planning enforcement system operates in practice.

2. GOVERNMENT GUIDANCE

The Council's Planning Enforcement function is undertaken in accordance with all current Government guidance, policy and legislation which includes;

- Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004)
- Town and Country Planning (Control of Advertisements) (England) Regulations 2011.
- Freedom of Information Act 2000

- Data Protection Act 1998
- Localism Act 2011
- National Planning Policy Framework
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Circular No. 10/97: Enforcing Planning Control
- Enforcing Planning Control: Good Practice Guide for Local Planning Authorities.
- Police and Criminal Evidence Act 1984
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2

3. GENERAL APPROACH

The taking of enforcement action is a discretionary power. Planning Acts provide that an Enforcement Notice may be issued if a breach of planning control has occurred and the Local Planning Authority considers it expedient to take action. Enforcement action should not be taken solely to 'regularise' development which is acceptable on its planning merits but for which permission has not been sought. The decisive issue which the Council must consider before taking enforcement action is whether the breach of planning control causes unacceptable harm to public amenity or the existing use of land and buildings merit protection in the public interest. The Council will also give consideration to the objectives and policies of the adopted local development plan(s), National Planning Policy Framework and other relevant government and local guidance. The Councils assessment of ‘harm’ cannot not include private interests, such as potential loss of value to someone’s property, commercial competition, loss of a view, trespass or breach of covenant.

If it is found that work has been carried out without planning permission, the Council will usually give the individual the opportunity to correct the situation or apply for retrospective planning permission. (Unless the likelihood is that permission would not be given).

Enforcing compliance with planning control can be both time consuming and complex. In most cases the Council will try to negotiate compliance rather than pursue formal action. However, in those cases where serious environmental damage or serious harm to the amenities of neighbouring residents is taking

place, or where damage is being caused to protected trees and / or listed buildings, then we will use the full range of powers available to us to bring the matter speedily under control.

As part of the enforcement process, Human Rights are also an important consideration that will be taken into account and these must be balanced with any action taken.

4. SCOPE OF PLANNING ENFORCEMENT

The Council's Planning Enforcement function deals with the enforcement and regularisation of all planning related legislation under the Council's prescribed powers as a local planning authority and the areas of enforcement include:

- operational development without planning permission
- unauthorised changes of use
- breach of planning conditions
- unauthorised works to Listed Buildings and within Conservation Areas
- enforcement of Tree Preservation Orders
- enforcement of the Advertisement Regulations 1992
- control of untidy land under Section 215 of the Town and Country Planning Act 1990

In addition to the areas outlined above the Enforcement Team of Mansfield District Council also undertake proactive condition monitoring of approved planning applications.

The Planning Enforcement Section is unable to deal with the following matters:

- Neighbour disputes. (You will need to seek your own legal advice)
- Land boundaries or ownership disputes. (You need to seek your own legal advice)
- Deeds of covenant issues. (You need to seek your own legal advice)
- Works to party walls. (You will need to seek your own legal advice)
- Use of / development on highways or pavements. (This falls under highway legislation, please contact the police or the Highways Department at Mansfield District Council)

- Dangerous structures. (This falls under the Buildings Act please contact the Building Control)
- Parking of commercial vehicles on the highway, even in residential areas. (If causing an obstruction it is a police matter)
- Parking a caravan within the residential boundary of a property provided that it is not being used as permanent living accommodation.
- Vehicle Sales from the highway. This falls under the Clean Neighbourhoods and Environment Act 2005. (please contact the Neighbourhood Wardens at Mansfield District Council

Such matters are covered by other legislation. We can advise people where they can seek resolution although where the matter is a Council responsibility; we will pass concerns on to the relevant department.

5. MAKING A PLANNING ENFORCEMENT COMPLAINT

To assist the Council and to help avoid misunderstanding, all complaints about possible breaches of planning control should ideally be made in writing to the Planning Department or by using the online reporting form.

Complaints can also be dealt with by telephone. Anonymous complaints can also be dealt with although these may receive a lower priority as they make it difficult for staff to ask follow up questions or update customers on the outcome of cases.

The Council will require as much information as possible in order to carry out its investigations and also to help keep complainants informed of what action it is taking. This information should include;

• Your name, address and telephone number.
• Details of the complaint itself including when the problems started.
• The location of the problem.
• The name and address of the alleged contravener, if known.
• An explanation of the affect that the problem is causing.

The above information is treated as strictly confidential. The subject of any investigation is not told who has made a complaint, although they may make assumptions.

Complainants concerned about possibly revealing their identity, or having difficulties explaining the problems affecting them, may wish to discuss the matter with their local Councillor or Parish Council who can then raise the issue on their behalf. Details of your Ward Councillor can be obtained from the Councils web site.

6 PRIORITY LIST

Mansfield District Council receives over 500 planning enforcement complaints each year which all need to be progressed as quickly and efficiently as possible. However, investigations can often be lengthy and complex, especially if formal action is required. Given this workload, coupled with limited resources, it is therefore necessary to prioritise cases.

The following Priority List is for guidance only and is not exhaustive.

High Priority (site visit usually within 24 hours)

- Listed Buildings - works in progress involving demolition or alterations.
- Tree Preservation Orders - works in progress to protected trees
- Conservation Areas - where local planning authority considers that there is likely to be immediate/long term damage
- Alleged breaches causing serious harm and/or loss of amenity to affected neighbours and/or the environment
- Any case which relates to public danger
- Any complaint where the time limits for taking enforcement action expires imminently
- Sites of Specific Scientific Interest
- Large scale unauthorised engineering / construction works where a serious impact
- The commencement of any major planning application without compliance with relevant pre-commencement conditions
- Unauthorised development which would adversely affect the character / appearance of a conservation area or the setting of a listed building

- Any on-going breach of a formal notice or injunction

Low Priority (Site visit to be carried out within 2 - 15 working days)

- Development contrary to policy on Conservation Areas/landscape issues
- Where buildings are under construction and no planning permission exists or where planning permission has been granted but the building is not being built in accordance with the plans
- Breaches of planning conditions
- Unauthorised uses of land
- Unauthorised breaches of a minor nature which do not cause immediate/long term harm or loss of amenity
- Unauthorised advertisements and fly posting
- Untidy Land
- Unauthorised telecommunications equipment / satellite dishes / equipment on residential dwellings
- Any technical or minor breach of planning control
- Any breach of planning control which is of a temporary nature
- Unauthorised fences / walls / gates (unless public safety is compromised / attached to or adversely affecting the setting of a listed building)
- Any breach of planning control which is not causing significant noise / vibration / smell / visual harm

From time to time, the Council will also target specific priority enforcement issues, which can require significant proactive enforcement resources, for example to tackle large numbers of illegal advertisements in the Town Centre or untidy sites in a particular conservation area. Such proactive enforcement work will impact on our ability to respond to urgent and non-urgent complaint cases. Targeted activity will be justified on its merits before action is taken

7 THE INVESTIGATION

All complaints are recorded and given a unique reference number. If the matter is not a planning issue the matter will be referred to the appropriate Council department or external agency, and the complainant advised accordingly.

Where the matter is a Planning Issue the Investigating Officer will firstly have to establish the facts surrounding the complaint. This will initially mean carrying out a number of desk based checks having regard, for example, to appropriate legislation, the sites planning history, and any previous correspondence. Where appropriate, the officer may also contact other Council departments such as Licensing, Highways or Building Control or external agencies such as the Police and the Environment Agency.

The site of the complaint will be visited which will usually be unannounced and photographs may be taken. Officers have Powers of Entry in order to gain information relating to an alleged breach of planning control, though in the case of a dwelling house, a notice period of 24 hours is required before entry indoors can be gained. The initial site visit will be made within the priority timescales identified in Section 6. You will be advised within 7 days of the visit as to how the Council intends to deal with the matter, although at this stage we may not be able to say precisely what action we can take. If the complaint involves an unauthorised change of use for instance, then officers may have to monitor it for a number of weeks to make their assessment. We may also ask for your help to collect evidence in such circumstances.

The owner and/or occupier may be asked to provide further information about the alleged breach. Occasionally, in serious cases it may be necessary to conduct a formal interview under caution in accordance with the provisions of the Police and Criminal Evidence Act 1984.

All complainants will be advised either by letter or verbally of the outcome of our investigations and what action, if any, the Council proposes to take to remedy the breach. In those circumstances where the Council does not take enforcement action, an explanation will be provided.

Where it is clear that a breach of planning control has taken place the following options are available:

- Submission of a planning application to regularise the unauthorised development. In this circumstance an informal opinion may be given as to the likelihood of obtaining consent. Where a retrospective planning application is submitted, we will normally suspend any enforcement

proceedings whilst considering the application. If appropriate, we will try to suggest an alternative site where a use could perhaps be more appropriately located.

- Ceasing / removing the unauthorised development
- Negotiation to find a solution which allows the development to be carried out in a different way so that it is no longer a breach of planning control.

If none of the above options are appropriate then the Council has the power to take formal action.

Many minor works, including alterations to buildings, small extensions to dwellings, outbuildings up to certain limits, some "changes of use" are permitted development and do not require Planning Permission. In addition many advertisement signs benefit from deemed consent and also do not require Advertising Consent from the Council. In these cases, no action can be taken.

In considering whether enforcement action is appropriate the decisive issue for us is whether the breach of planning control is causing problems. Enforcement action will not normally be initiated where a trivial or technical breach of planning control has occurred, which causes no general harm. The Council will not take enforcement action solely to regularise an acceptable development.

To commence building works or make a change of use without planning permission is not in itself an offence. Local authorities must consider an unauthorised development in exactly the same way as a planning application and can ask for a planning application to be submitted to try and regularise the situation. This is the most common approach where the activity or building is potentially acceptable.

Enforcement action will not normally be initiated or carry on whilst a planning application is under consideration. Enforcement action will not be taken simply to remedy the absence of a planning application.

In circumstances where an unauthorised development is unacceptable the Council could proceed immediately to formal enforcement action in order to resolve the situation. Following the introduction of the Localism Act the Council

can then refuse to determine any retrospective planning application for the development.

8. FORMAL ACTION

We will notify the complainant and the offender in writing that formal enforcement action is being considered and this allows a further chance for a negotiated settlement. If formal action becomes necessary, we will notify interested parties of the decision and begin preparing the formal notices.

Once all parties with a legal interest in the site have been identified the Council's Enforcement Team serve the notices. The notice will specify the steps that need to be undertaken to remedy the planning breach within an appropriate timescale.

In the case of unauthorised works to listed buildings and/or to protected trees, the Council can proceed to instigate prosecution proceedings without having to first serve an Enforcement Notice (as such unauthorised works are illegal and represent a criminal offence).

In each individual case the Council must assess which action or combination of actions is best suited to dealing with the particular breach of planning control in order to achieve a satisfactory and cost effective remedy. Any enforcement action should always be commensurate with the breach of control to which it relates and be in the public interest.

Planning Contravention Notice (PCN)

This can often be the first formal step in formally resolving a breach of planning control. It is the main method for gathering further information regarding suspected breaches of planning control. The intention of a PCN is also to send a clear warning that further formal action is being considered once the facts of the case have been established.

Enforcement Notice

This is the most common form of notice used to deal with a breach of planning control. It is served when the Council is satisfied that there has been a breach of

planning control and that it is expedient to take action. An Enforcement Notice will specify the breach, the steps that must be taken to remedy the breach, and a specified time period for compliance. The recipient(s) of such a notice have a right of appeal to the Secretary of State. An appeal suspends the effect of the notice until it is determined. If an appeal is lodged all complainants and immediate neighbours will be advised of the appeal and how to make representations to the Planning Inspectorate.

Failure to comply with an enforcement notice that has taken effect is a criminal offence, which on conviction on indictment can lead to a maximum fine of £20,000.

Breach of Condition Notice (BCN)

Used in circumstances where there has been a failure to comply with certain conditions placed on a planning permission. Again, the BCN would specify details of the breach and the steps required to secure compliance. However, a minimum period of 28 days has to be given for compliance though there is no right of appeal.

Failure to comply with the requirements of a BCN is a criminal offence with a maximum fine currently not exceeding £1,000 on conviction.

Stop Notice

Used following the serving of an Enforcement Notice when the effects of continued unauthorised activity are seriously detrimental to amenity, public safety or causing irreversible harm to the environment and immediate action is justified. This notice can be used to ensure that the activity does not continue when an appeal is lodged against the Enforcement Notice. There are potential and significant compensation liabilities if the Enforcement Notice is quashed.

Failure to comply with the requirements of a stop notice is a criminal offence, which on conviction in the Magistrates' Court can lead to a maximum fine of £20,000.

Temporary Stop Notice

Such a notice can be served without first having to serve an Enforcement Notice. However, they can only seek cessation of activity for a period of 56 days and so will only be applied where the breach needs to be dealt with immediately and where the Council needs time to consider whether an enforcement notice needs to be issued.

Failure to comply with the requirements of a temporary stop notice is also a criminal offence, which on conviction in the Magistrates' Court can lead to a maximum fine of £20,000.

Injunction

In exceptional cases where there is a necessary and serious need to restrain an actual breach of planning control, the Council can apply to the County Court or High Court for an injunction. An injunction can be sought whether or not other enforcement action(s) have been taken. Injunctive action can be very costly and is usually only considered as a last resort, where other action is unlikely to resolve a breach.

Section 215 Notice

Under this section of the Town and Country Planning Act 1990, the Council has the power to issue a notice on the owner or occupier of land if it appears that the visual amenity of the area is adversely affected by the condition it is being kept in. Such a notice may deal with buildings as well as land and would specify the steps required to remedy the existing condition and within what time scale. The recipient of a 215 Notice can appeal against it in the Magistrate's Court.

Failure to comply with the notice is an offence with a maximum fine currently not exceeding £1,000 on conviction. The Council may also use default powers in such situations.