

Planning Enforcement Policy

1. Introduction

- 1.1 The purpose of this policy is to set out Kettering Borough Council's approach to dealing with suspected breaches of planning control, what people who are affected by planning enforcement activities can expect and what the developer can do to help remedy breaches in planning activities.
- 1.2 The effects of unauthorised development can be harmful to both its immediate neighbours and the wider amenity of an area. The Council has a duty to balance the desires of the owner/tenant who want 'development' with the impact it has on the wider environment. This document is intended to benefit both the complainant and those responsible for a breach of planning control to ensure that the Council's planning enforcement process operates in a consistent, balanced and proportionate manner.
- 1.3 The integrity of the planning system and the public's confidence in it relies on effective action being taken by Local Planning Authorities (LPA's) when it is appropriate to do so. The Town and Country Planning Acts give discretion to the LPA over enforcement action and not all breaches of planning control will result in action being taken. This policy and guidance is in accordance with the National Planning Policy Framework (NPPF).

2. Principles

- 2.1 In the preparation of this policy the Council have taken into account the Government's concordat on the principles of good enforcement practice as given in Enforcement Concordat: Good Practice Guide for England and Wales, (published by the Department of Trade and Industry, March 2003) as described below:
 - **Standards:** to publish clear and concise standards of service and performance through this policy;
 - **Openness:** to provide information and advice in plain language, to discuss problems with anyone experiencing difficulties with a possible breach of planning control. Our decision making process will be fair and transparent; however personal details of the complainant will be kept confidential unless there is an obligation to reveal the information by law;

- **Helpfulness:** to try and resolve investigations informally, working with all parties to gain a satisfactory resolution. A named contact will be given, as well as details of how you can contact them and when/how often you can expect contact from them. An explanation will be given for any actions taken and any rights of appeal;
- **Consistency:** to carry out all duties in a consistent and fair manner, always considering national and local policies. Each decision will be made on a case by case basis, taking into account the particular circumstances surrounding each case;
- **Proportionality:** to take action, where necessary, in proportion to the risk posed and the seriousness of the breach;
- **Complaints:** to provide a clear, effective and timely complaints procedure.

3. Aim

3.1 Our aim is to provide an effective, reliable and high quality planning enforcement service. Our priorities are:

- To investigate all alleged breaches of planning control;
- To take action, when appropriate, to resolve breaches of planning control where it is found to be in the public interest to do so;
- To implement, promote and defend through the planning enforcement function, Kettering Borough Council's planning policies;
- To communicate to all parties in a timely manner;
- To provide a safe working environment for our staff; verbal or physical abuse will not be tolerated.

4. What is a breach of planning control?

4.1 A breach of planning control is defined in the Town and Country Planning Act 1990 as: *'the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted'*.

4.2 In other words, a breach of planning control occurs when someone undertakes 'development', such as carrying out building works (including alterations and demolition of buildings), or changing the use of land without planning permission. (Please refer to Appendix 1 of this document which provides a simple summary). In certain instances, it can also happen when development

does not comply with approved plans, planning conditions attached to a planning permission, or a planning obligation. If no 'development' has occurred, then there is no breach of planning control and no action will be taken using planning legislation (although it may be that the issue can be considered under legislation outside of the planning system). Other types of breaches include the display of illegal advertisements/signs, unauthorised works to listed buildings and unauthorised works to trees in conservation areas or those covered by a Tree Preservation Order. These breaches may be liable to prosecution.

4.3 Examples of types of breaches/matters which **can** be investigated are:

- Building works which do not have planning permission;
- Development which has not been carried out in accordance with a planning permission;
- Non-compliance with condition(s) attached to a planning permission;
- Material change of use of a building or land without planning permission;
- A change of use which requires 'prior notification' and no notice has been given;
- Non-compliance with Section 106 obligations;
- Unauthorised works to a Listed Building;
- Unauthorised works to protected trees or trees within a Conservation Area;
- Unauthorised demolition;
- Unauthorised display of advertisements;
- Running a business from home (where this is believed to detrimentally impact upon the amenity of neighbouring residents)
- Activities at a residential dwelling (where it is believed these are not incidental)
- Unsightly buildings, untidy land (which affects public amenity);
- High hedges (where mediation attempts have failed) and Dangerous Trees.

4.4 Carrying out unauthorised development is not a criminal offence in the majority of cases. Often unauthorised developments can be regularised by requesting that the owner/developer submits a retrospective application and where necessary, the LPA will impose conditions to make the development acceptable.

4.5 The types of breaches which will **not** be investigated are:

- Boundary wall disputes or other land ownership disputes;
- Issues dealt with through the Party Wall etc. Act;
- Breaches of property deeds or covenants;
- Highway obstructions, parking and traffic issues (unless related to unauthorised development);

- Noise disturbances and general pollution;
- Clearing of unprotected trees or landscaping and gardening works;
- Graffiti;
- Site security;
- Blocking of designated right of way;
- Trespass;
- Loss of property value/loss of view;
- Sewers, soakaways or other drainage matters (unless relating to a planning condition or unauthorised development).

These matters are, in general, covered by other legislation and fall outside the remit of the planning system.

- 4.6 All legitimate planning enforcement complaints will be investigated, however the Council cannot take enforcement action just because there is a breach of planning control. It must also be able to demonstrate that the breach results in an unacceptable level of harm to public amenity, or Development Plan policies. Planning enforcement action is discretionary and therefore, if the breach is very minor or technical it is possible that **no further action will be taken** (it may not be **expedient** to enforce). Any action undertaken will be proportionate to the breach of planning control and in accordance with national and local legislation, policies and guidance. (Appendix 2 of this document provides a flowchart of the enforcement process).

5. How to report an alleged breach

- 5.1 Anyone can report an alleged breach of planning control. Although we usually expect to receive complaints in writing we will accept complaints in any of the following ways:

- Email (planningenforcement@kettering.gov.uk);
- Letter (addressed to Planning Enforcement, Kettering Borough Council, Municipal Offices, Bowling Green Road, Kettering, NN15 7QX);
- Telephone (01536 534316)
- In person at the Council's main office (Mon-Fri 8.30am-5.00pm, Sat 9.00am – 1.00pm).

The Council will not investigate complaints made anonymously. Any complaint made verbally should include the information set out in 5.2 below and a written record of the complaint will be made by the Council. The complainant will be asked to confirm that what has been recorded accurately reflects the details of the complaint.

5.2 All valid complaints made should be accompanied with the following information to be considered valid:

- Your full name, address and contact details including telephone number and if possible, email address.
- Full address or location of the site where the alleged development/breach is taking place;
- The nature of the alleged breach and its effect;
- If relevant, give specific examples with dates and times;
- Name (if known) and the status of the person(s) involved e.g. owner/tenant/occupier/contractor/worker;
- Date (if known) when the breach first began and if it is on-going;
- If the complaint refers to a change of use, the previous use of the site;

5.3 The Council will always seek to maintain the confidentiality of the identity of the complainant at all times, however the substance of the complaint itself is not confidential. If the enforcement case is taken to appeal you may be asked if you wish to make a representation, a copy of which would be passed to the appellant (the party who has committed the breach). If the case is taken to court, we may be asked to reveal the identity of the complainant and you may be asked to provide evidence. It is possible that we may be asked to reveal the identity of a complainant under the Freedom of Information Act, or the Environmental Information Regulations 2004, but any decision the Council make to reveal this information would need to show that it is in the public interest to do so.

6. Timescales

An acknowledgment letter/email will usually be sent to the complainant within 3 working days of a valid complaint being received. This letter will contain the name of the case officer assigned to investigate the complaint, and will give an anticipated timescale within which you can expect to hear from the officer. The timescale will depend upon the priority level assigned to the initial complaint.

6.1 An initial priority level will be given to the complaint based upon the information provided by the complainant; however after the officer has visited the site and has made an initial assessment of the case, the priority may be changed. The priority given can generally be expected to be as follows:

LEVEL 1 – unauthorised works to listed buildings, protected trees or trees in a conservation area, demolition, works which result in a risk to public safety or

are likely to cause serious and irreversible harm to the surrounding environment.

The timescale for an initial site visit and assessment will be made as follows:

Site visit as soon as is reasonably practicable, but in any event before the end of the next working day. Thereafter, an initial response to the complainant within 5 working days confirming a site visit has been made and any update on the case.

LEVEL 2 – building works which do not have permission, development which has not been carried out in accordance with a planning permission, non-compliance with condition(s) attached to a planning permission, material change of use of a building or land without planning permission, non-compliance with Section 106 obligations, or where there has been a change of use which requires ‘prior notification’ and no notice has been given.

The timescale for an initial site visit and assessment will be made as follows:

Site visit within 5 working days, and thereafter an initial response to the complainant within 5 working days confirming a site visit has been made and any update on the case.

LEVEL 3 - unauthorised display of advertisements, unsightly buildings, untidy land, high hedges.

The timescale for an initial site visit and assessment will be made as follows:

Site visit within 15 working days, and thereafter an initial response to the complainant within 5 working days confirming a site visit has been made and any update on the case.

- 6.2 Most investigations are closed fairly quickly, but some cases can take considerably longer because of the type of evidence that the LPA requires to reach a decision. Every case will be different and the LPA will consider each one on its own merits. We will always write to the complainant with a timely update, giving the reasons for the delay in a resolution, the steps being taken towards closing the case and providing a timeframe within which a further update will be provided. If a formal enforcement procedure is deemed necessary, it will extend the time needed to reach a satisfactory outcome and close the case.

7. Process

- 7.1 Once a valid complaint has been received, the case will be allocated to an officer and an acknowledgement letter sent to the complainant giving the officer's name, contact details and anticipated timescale for contact. The case officer will make a site visit in line with the agreed case priority level, following which there may be a change to the priority of the complaint and its expected timescales dependent upon the initial findings of the case officer.
- 7.2 The case officer will then undertake research into the site and attempt to establish if there is a breach either using information gathered during the site visit and/or through correspondence with the affected owner/tenant. The course of action thereafter will be determined as follows:
- a) If there is not a breach the case officer will write to the complainant explaining the reasoning and confirming that the case is being closed;
 - b) If there is not a breach of planning control, but the case officer considers there is a matter to be addressed that can be dealt with by another service area within the Council, the case will be referred through to that service area.
 - c) If there are both breaches of planning control and other associated matters that can be more effectively enforced against by another service area, then the case officer will work in co-ordination with that service to ensure that there is a joined-up and co-ordinated approach to the enforcement across the Council.
 - d) If there is a minor breach that does not warrant further investigation because there is no/little harm to public amenity and it is not expedient to enforce, the case officer will write to the complainant explaining the reasoning and confirming that the case is being closed;
 - e) If there is a breach that can be regularised by the developer through the submission of a retrospective planning application, they will be encouraged to do so. The case officer will write to the complainant explaining the action and reasons for requesting the application;
 - f) In some cases, where the complaint relates to an alleged unauthorised change of use which could, for example, involve the running a business from home, it is not always possible to establish whether there has been a breach from just one visit. Numerous visits over a period of time may be required in order to gather further evidence. If this is the case the complainant will be informed of the ongoing investigation, updated at regular intervals and may be asked to provide further information. Once sufficient evidence has been

gathered a decision will be made which will result in either the case being closed or further action being recommended;

g) If the unauthorised development is not considered acceptable, the developer will be given a reasonable period to remove/alter the unauthorised works or cease the unauthorised use. In some instances, this may also require liaison with other departments/services to ensure that other matters subject to regulatory powers are simultaneously addressed (e.g. building regulations). If this is the case, the complainant will be informed of the ongoing action and updated at regular intervals. If the unauthorised development is not appropriate and is causing significant and immediate harm, the case officer may consider instigating formal enforcement action in order to rectify the breach and stop the harm being caused. If this is the case, the complainant will be informed of the ongoing action and updated at regular intervals;

h) If the breach is either the unauthorised works to listed buildings, or to trees in a Conservation Area/subject to a Tree Protection Order, the unauthorised display of advertisements, or non-compliance with an enforcement notice or breach of an injunction, these are criminal offences. In such circumstances and where it is considered to be in the public interest, the case officer will first take legal advice with a view to taking prosecution proceedings or the enforcement of existing legal action against the offender(s).

7.3 Where necessary (ie if informal compliance is not achieved), a report will be prepared by the case officer for the authorised officer to endorse, giving consent for formal enforcement action to be taken. This may be in the form of a formal enforcement notice being served or direct action being taken.

8. Planning Enforcement Powers

8.1 There are a number of enforcement powers available to the LPA, depending on the type of offence that has occurred, which are outlined below:

- Enforcement notice/Listed building enforcement notice: can be served when a breach of planning control is causing harm or conflicts with planning policy. Copies of the notice are served on all persons with an interest in the land and the notice takes a minimum of 28 days before it comes into effect. During the 28 day notice period the recipients of the notice can appeal to the Planning Inspectorate, which suspends the enforcement notice until the appeal is determined. Non-compliance with the requirements of the notice within the specified periods, once it comes into effect is a criminal offence;

- Breach of condition notice: this notice can be served on a developer or occupier when they do not comply with the conditions attached to a planning permission. There is a minimum compliance date of 28 days from the date of the notice and cannot be appealed to the Planning Inspectorate. Failure to comply with this notice is a criminal offence;
- Temporary Stop Notice: this notice requires the owner/developer to stop all activities immediately and lasts for a period of 28 days. This notice may be used to give time for a remedy/further action to be determined and enforced. It is an offence not to comply with this notice;
- Stop Notice: this notice can be used in conjunction with an enforcement notice and is only served where serious and irreversible harm is being caused by the breach of planning control. This notice requires works to cease immediately, before the enforcement notice takes effect, even if an appeal is lodged against the enforcement notice, it is an offence to not comply with this notice;
- Section 215 Notice: can be served when the condition of a building or land is adversely affecting the amenity of an area. The owner/occupier will be instructed to take the necessary steps needed to remedy the condition of the building/land. This notice can be appealed at a Magistrates' Court and non-compliance is an offence;
- Tree Replacement Notice: this notice can be served where a tree has been unlawfully removed or felled. This notice takes 28 days to come into effect and can be appealed to the Planning Inspectorate during this time, which suspends the notice until the appeal has been decided. Non-compliance with this notice is an offence;
- Planning Contravention Notice: can be used to gather information about an alleged breach of planning control and will include a list of questions about the development. It is an offence to supply false or misleading information, or to not reply within the specified response period;
- Planning Enforcement Order: where an unauthorised development is deliberately concealed and the breach is not noticed until after the time limit for enforcement has passed, the Council may apply to the Magistrates' Court for an enforcement order to be granted. If the enforcement order is granted, enforcement action can still be taken against the breach;

- Injunction: an injunction can be applied for at the High Court or County Court if there is an extremely serious or persistent breach of planning control. This is only used in cases where either all other enforcement action has been, or will be, ineffective;
- Direct Action: The LPA can carry out works in default to resolve the breach of planning control and recover the cost of this direct action from the land owner.

8.2 Site visits are usually arranged in advance with the owner/ occupier but depending on the type of alleged breach, visits may on occasion be undertaken without notice. Investigation occurs under the provisions of S196A, S196B and 196C or the Town and Country Planning Act 1990. Additional powers of entry are also available under S214B and 324 of the Town and Country Planning Act 1990, Section 88 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Section 24 (1) of the Local Government (Miscellaneous Provisions) Act 1976, and Section 74 of the Anti-social Behaviour Act 2003.

8.3 Officers of the Local Planning Authority acting under legislative authority have the right to enter non-residential land and buildings without notice, and to enter residential properties if they have given 24 hours' notice of the visit. If entry is refused to the residential property, a warrant can be applied for from a Magistrate.

9. What if a complaint is made about your property/development?

9.1 The Council has a duty to investigate all enforcement complaints to establish whether or not there has been a breach of planning control. Often breaches of planning control are not intentional and may arise through being unaware of planning regulations, or misunderstandings.

9.2 Your responsibilities: if you receive a letter or a visit from an officer, please provide any necessary information requested so that the complaint can be resolved quickly and to the benefit of all parties.

9.3 You will be provided with a named officer as your contact and given details of how to contact them. The officer will endeavour to resolve the complaint in a fair, transparent and unbiased manner. As soon as possible after their site visit, the officer will confirm whether or not a breach of planning control has taken place, and if so, the steps required to resolve the issue. In this situation the officer will discuss the options available, the reasoning behind their decision and the need for action. The Council will always try to resolve any issues in an

informal manner unless the breach is serious enough to warrant immediate action, or there has been a history of flagrant disregard to planning controls by interested parties. Any actions required from you should be completed in the required timeframe to avoid any formal enforcement action being taken against you.

- 9.4 If an enforcement notice is served, you are required to either comply with the enforcement notice requirements within the specified times, or lodge an appeal within the specified timeframes (where this applies). Following this, the appeal will be determined by the Planning Inspectorate, who is appointed to act on behalf of the Secretary of State. If further works continue and the LPA have concerns about the harm being caused, further enforcement action in the form of a stop notice or injunction may be considered.
- 9.5 Council tenants: If you are a tenant of a council owned property, the officer will liaise with you and the appropriate Council department to ensure that we work together to remedy the alleged breach.
- 9.6 Consequences of unauthorised development: Owners should note that any unauthorised development could potentially prevent, or delay, the sale of the property/land in the future if the relevant permissions do not show up on searches and are identified by the purchaser or their representatives. Any formal enforcement action undertaken will be registered with the Council's Local Land Charges service. These will show on any searches that are made on the property/land and will remain on the property's history in perpetuity. Local feeling should be considered, organisations may end up with bad publicity in an area if they have breached planning control. Therefore it is in the owner's interest to ensure that all necessary planning permissions are in place and any enforcement action brought against them is resolved.

10. Physical and Verbal Abuse

- 10.1 The Council will not tolerate any physical or verbal abuse towards its staff in order to provide them with a safe working environment and, when appropriate, may use its legal powers to prevent abuse, harassment or assault of its officers.

11. Complaints

- 11.1 Kettering Borough Council aims to provide an efficient, fair and high quality service to our customers. We may not always be able to give you the outcome

that you want, however we will always investigate each case based on its individual merits, within the guidelines of the Planning System, in a fair and transparent manner. We will contact you when we say we will and endeavour to close the complaint in a timely manner, giving a clear and concise reason for the action being taken. If you feel that we have failed to provide the high quality service we aim for, we will try to rectify the problem and learn from the issue.

11.2 If you have a complaint about the enforcement service we have provided, please note that the enforcement process will continue alongside any separate complaint investigation. However, depending on the nature of the complaint, a new officer may be assigned to the enforcement case whilst the outcome of the complaint investigation is determined.

11.3 The complaints policy is a three stage process:

1. Try to resolve the issue by contacting the officer you are dealing with, or if this is not possible, ask to speak to/be contacted by their manager. You can speak to the officer by phone, or complain in writing by sending a letter or email;
2. If you are not satisfied with the outcome, send your complaint in writing to be investigated by the Head of Service;
3. If you are still not satisfied, please complain to the Executive Liaison Officer on 01536 315111, or email executiveliaison@kettering.gov.uk

11.4 If you are still not satisfied with the outcome, in some cases the complaint can be investigated by the Local Government Ombudsman. Please contact them on 0300 061 0614, by logging onto www.lgo.org.uk, or write to Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH. Please note that not all complaints fall under the Local Government Ombudsman's remit, and should be given within 12 months of when you first knew about the problem. Further information can be found either on their website or by ringing their helpline.

Appendix 1

The following is a simplified summary. You are advised to obtain specific advice regarding your proposals before proceeding.

Unauthorised works to a listed building

Listed Building Consent is needed for **any** alterations, extensions or demolitions which affect the character or fabric of a listed building. This applies to **all parts** of the building, interior and exterior, regardless of the listing grade and whether the feature to be altered is mentioned in the official list description. This will include boundary walls. It may also apply to associated buildings which are within the curtilage of the principal building. Any objects or structure within the curtilage of a listed building which form part of the land and have done so since before 1 July 1948 are included. It is a criminal offence to carry out unauthorised works to a listed building.

Unauthorised works to protected trees or trees within a conservation area

It is illegal to cut down, prune, or damage a tree in a conservation area or one which is protected by a TPO, without applying to the Council for permission. The unauthorised lopping or felling of a protected tree is a serious criminal offence and can result in a fine and a criminal record.

Planning controls

In a conservation area: permission is required for demolition of any part of any gates, fence, wall or other means of enclosure and for the demolition of unlisted buildings.

Outside of a conservation area, Apply to the LPA for Prior Approval for the demolition of any building or structure larger than 50 cubic metres

NB: Separate legislative controls:

Under Section 80 of the Building Act 1984, if it is intended to demolish a building or structure that's larger than 49.55 cubic metres, notification and application to, followed by approval from Local Authority Building Control is required.

Unauthorised and illegal display of advertisements

Under the Town and Country Planning (Control of Advertisements) Regulations, many outdoor advertisements require express consent before they can be lawfully displayed. Types of advertising which are likely to need consent include: the majority of illuminated signs, advertisements using specialised structures for their display, such as poster hoardings and most non-highway authority roadside advance warning

or directional signs, signs positioned above 4.6 metres in relation to buildings above the level of the bottom part of first floor windows or on gable ends, advertisements that do not relate to the business on the premises on which they are displayed.

Unsightly buildings, untidy land

From a community perspective, tidy gardens and land mean an area looks well cared for, making people feel safe in that neighbourhood. If untidy sites are left, they become worse and the area starts to feel neglected and unsafe, which means it is detrimental to the local amenity.

In such circumstances, the Council may serve a notice in order to maintain and improve the quality of the environment, to assist in tackling dereliction and retaining land in a productive use as well as contribute to the regeneration of an area and respond positively to public concerns.

High hedges (where mediation attempts have failed)

Under Part 8 of the Anti-social Behaviour Act 2003, a "high hedge" is one which consists of a line of two or more evergreen trees or shrubs, which are more than 2 metres in height (measured from natural ground level), and which form a barrier to light or access. Only hedges which are predominantly evergreen or semi-evergreen are covered by the legislation - this could include privet, but not beech or hornbeam. Complaint applications can be made against hedges in multiple-ownership. Complaint applications can only be made where the complainant's property is in residential use and where the complainant is an owner or occupier of the affected property.

Appendix 2

Enforcement Process Flowchart

