

Report of the Chief Executive

DRAFT ENFORCEMENT PLAN

- 1.1 A Draft Enforcement Plan has been produced to set out the Council's policy and procedure for enforcement action and is enclosed as an appendix. National Planning Policy Guidance states that it is important for Council's to produce an Enforcement Plan to:
- Set out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
 - Provide greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers; and
 - Provide greater certainty for all parties engaged in the development process.
- 1.2 The Draft Enforcement Plan identifies how reports of breaches of planning control will be prioritised, how cases will be investigated, the timescales for investigation and the powers available to the Council to take action.
- 1.3 The next stage of the plan preparation is to carry out a six-week consultation. This will include:
- Consultation with Town and Parish Councils;
 - Publication of the draft plan on the Council's website;
 - Consultation with local planning agents and consultants.
- 1.4 The results of the consultation will be reported back to the Planning Committee for further consideration.

Recommendation

The Committee is asked to RESOLVE that a six-week consultation period be carried out on the Draft Enforcement Plan as outlined within the report.

Background papers

Nil

APPENDIX

**BROXTOWE BOROUGH COUNCIL
DRAFT PLANNING ENFORCEMENT PLAN**

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1. Background and Overview

- 1.1 The Broxtowe Borough Council Planning Enforcement Plan sets out the Council's policy and procedure for enforcement action so that the Council's resources are put to best use dealing with breaches of planning control that threaten the local built and natural environment or the amenities of neighbours. This document sets out what officers, councillors and the general public can expect from the Borough Council as the Local Planning Authority in relation to enforcement and will provide greater clarity for all parties engaged in the development process.
- 1.2 The plan has been produced having regard to the Council's Corporate Enforcement Policy to reflect the Council's on-going commitment to openness, transparency, proportionality, accountability, helpfulness and consistency. It recognises the importance of ensuring that these principles are implemented corporately in close working relationships between all regulatory functions. The Corporate Enforcement Policy was formally approved by Council on 20 April 2017.
- 1.3 This plan has also been devised in accordance with the advice contained within the National Planning Policy Framework (NPPF) issued by the Ministry of Housing, Communities and Local Government.
- 1.4 Local Planning Authorities have a general discretion and must only take enforcement action where they regard that it would be expedient to do so. In each case, the Council must decide whether in planning terms it is expedient and in the public interest to take enforcement action in respect of a breach. It is not the role of planning enforcement to act punitively against breaches of planning control which do not significantly harm residential amenity, the environment and/or public safety. The Council must also ensure that any decision to take action in respect of a planning breach is reasonable and proportionate having regard to the harm caused.
- 1.5 The Council will always endeavour to reach a position, by negotiation, whereby an acceptable development/outcome can be achieved without the need for enforcement action. Wherever possible, the Council will endeavour to work with developers/property owners to achieve a positive outcome.
- 1.6 In general terms, the Council do advise that, if you are proposing a development, in the interests of good neighbourhood relations, you first discuss your proposals with any neighbours who are likely to be affected. Early engagement with neighbours can often eliminate any complaints or issues at a later date.
- 1.7 Additionally, the Council provide a planning duty officer service each weekday to offer informal advice as to whether a development is likely to be acceptable and/or require planning permission.

2 What is 'Development'?

- 2.1 Section 55 of The Town and Country Planning Act 1990 defines development as:
"the carrying out of building, mining, engineering or other operation in, or, under or over land, or the making of any material change of use of any buildings or other land".
- 2.2 Any works or change of use which are not 'development' as defined above do not constitute a breach of planning control and in these instances, the Council has no power to take any further action.
- 2.3 Development is not:
- Works which only affect the interior of a building; or
 - Works which do not materially affect the external appearance of a building.

3 What is a Breach of Planning Control?

- 3.1 A breach of planning control is defined in section 171(A) of 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".
- 3.2 Planning enforcement investigations need to establish whether, as a matter of fact, a breach of planning control has occurred. Breaches may consist of the following:
- Whether 'operational development' such as a building or engineering works, have been carried out without planning permission;
 - Whether a material change of use of land or buildings has taken place without planning permission;
 - Deliberate concealment of unauthorised building works or changes of use;
 - Whether development has not been carried out in full accordance with an already approved planning permission;
 - Failure to comply with a planning condition or a legal agreement attached to a planning permission;
 - Unauthorised works to a Listed Building;
 - The display of signs or advertisements without consent;
 - Failure to comply with the requirements of an enforcement notice;

- Neglect of land or buildings to an extent which causes significant harm to local amenity.

4 Matters that are not Breaches of Planning Control

4.1 The following list provides examples of matters which are not breaches of planning control:

- Any works which constitute Permitted Development under the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended);
- Advertisements that benefit from either deemed or express consent under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007;
- Parking of caravans on residential driveways or within the curtilage of a domestic property providing that they are incidental to the enjoyment of the property;
- Land ownership disputes or trespass issues;
- Loss of value to land or property;
- Disputes relating to damage to land or property;
- Internal works to a non-listed building;
- Obstruction of a highway or public right of way;
- Parking of a commercial vehicles on the highway or on grass verges;
- Running a business from home which is genuinely ancillary to the primary use of the property;
- Dangerous structures or other health and safety issues;
- Fly tipping;
- Nuisance caused by light, noise, odour or vermin;
- High Hedge disputes – these are dealt with by the enforcement team but under Part 8 of the Anti-Social Behaviour Act 2003.

5 Is it an Offence to carry out works without Planning Permission?

- 5.1 Unauthorised development is not a criminal offence, with the exception of works to a listed building without consent. The display of an unauthorised advertisement is a criminal offence and it is also an offence to fail to comply with the requirements of a formal enforcement notice.

6 How to Report an Alleged Breach of Planning Control

- 6.1 The Council consider in excess of 300 planning enforcement complaints per year. In order to enable us to deal with your complaint as promptly as possible, it is important that you provide us with as much information as you can. Information that will assist us in dealing with your complaint includes:
- A full and accurate description or address for the site in question;
 - A detailed description of the activities taking place that are cause for concern;
 - Names, addresses and telephone numbers of those persons responsible for the alleged breach (if known) or land owner's details;
 - The date and time when the alleged breach took place;
 - Details of how the alleged breach impacts your amenity/amenity of the area.
 - Any other information or evidence that may assist our investigation;
 - Your name, address, email address and contact telephone number.
Anonymous complaints will not usually be investigated unless it relates to a matter of public safety.
- 6.2 Complaints regarding alleged breaches of planning control will be accepted either;
- By Email to pabc@broxtowe.gov.uk
 - By letter addressed to: Planning Enforcement, Broxtowe Borough Council, Council Offices, Foster Avenue, Beeston, Nottingham, NG9 1AB
 - By telephone: Main switchboard number 0115 9177777 ask for Planning Enforcement.
 - In Person at the Council Offices, Foster Avenue, Beeston, Nottingham, NG9 1AB. It may not always be possible to see an enforcement officer without prior appointment but details of your complaint may be left with reception staff, or with a duty planning officer if available.

- 6.3 In some cases the complainant will be asked to provide evidence which may be relied upon in order to take action. In such circumstances, you will need to consider whether you are prepared to assist the Council by collecting evidence and potentially acting as witness at an appeal or in Court. The Council's Planning Enforcement Officer will explain what may be required in these cases. You may be asked to keep a log of your observations of the relevant activities noting, times, dates, names, addresses and details of any vehicles involved.
- 6.4 **Anonymous complaints** - will not usually be investigated unless relating to a matter of public safety. Complainants who do not wish to provide their personal details should in the first instance contact their local Ward Member or their parish Council who may then raise the concerns on their behalf. Personal details will be kept confidential at all times, unless required to disclose as part of court proceedings.
- 6.5 **Vexatious, malicious or repetitive complaints** - that do not have any substantive planning reasons for the complaint will not be investigated.

7 What Can You Expect If You Report An Alleged Breach Of Planning Control?

- 7.1 The Council will endeavour to:
- Investigate all alleged breaches of planning control reported to the Council in accordance with Part 6 of the Enforcement Plan.
 - Keep your personal details confidential at all times, unless required to disclose as part of court proceedings.
 - Register your complaint within ten working days of receipt, provide you with an acknowledgement either by letter or email and a unique case reference number with a named officer as point of contact.
 - Keep you informed of the progress of the case and of any decisions made with regard to whether to take action or of what action will be taken and estimated time scales.
 - Negotiate with those responsible for any breach of planning control, allowing them reasonable opportunity to resolve the issues before service of a formal notice is considered, unless the breach is so serious that it warrants immediate action or where negotiations become protracted with no real prospect of success.

8 How we will prioritise your Complaint?

- 8.1 In order to make the best use of the Council's limited resources it is important to prioritise the complaints received in accordance with the seriousness of the alleged breach. This will initially be decided by the Council following receipt of the complaint based on the likelihood of action to follow. This may however be

subject to change following a site inspection or if/when further information comes to light during the duration of the investigation.

- 8.2 The most serious breaches are categorised within category A. These are breaches which could cause irreversible damage to a nationally designated building, are within the criminal regime and could result in prosecution. They are therefore treated as high priority.
- 8.3 There is no suggestion that breaches of planning control falling within lower categories are not serious. The initial prioritisation of complaints is on the basis that those within categories C or D are more likely to have remedies available to resolve the matter without the need for formal enforcement action.

Priority Categories

Category A

- Unauthorised demolition or partial demolition or works to a Listed Building or demolition or partial demolition of a building within a conservation area;
- Unauthorised felling of or works to trees covered by a Tree Preservation Order;

Category B

- Breach of a condition;
- Unauthorised development within an area designated within the adopted Local Plan (i.e. Green Belt, a Conservation Areas, sites protected by an environmental designation or covered by an Article 4 Direction);
- Any unauthorised development where it appears that the time limit for enforcement action will expire within the next six months;

Category C

- Other unauthorised built development;
- Other unauthorised changes of use of land or buildings;
- Unauthorised advertisements;

Category D

- Untidy land, gardens and buildings.

NB: Some breaches may fall within more than one of the above categories. In these cases, they will be prioritised in line with higher category.

Timescales for Investigation

- 8.3 Following receipt of the complaint, the Council will endeavour to ensure that it is registered and allocated to an officer to investigate within five working days. We will then endeavour to carry out a site visit within the following timescales:

Category A

- On the day of registration wherever possible, or as soon as is reasonably practicable.

Category B

- Within 10 working days of registration.

Category C

- Within 15 working days of registration.

Category D

- Within 20 working days of registration.

- 8.4 Whilst we will do our utmost to ensure that these timescales are met, on occasion this may not be possible

9 What are the Possible Outcomes of an Investigation?

- 9.1 **A breach of planning control is established** - If this is the case then negotiations will take place with a view to finding a solution – In accordance with Central Government guidance, the first priority is to try and resolve any breaches of planning control through negotiation. Only when negotiations fail to secure a resolution should formal action be considered. Formal action is always a last resort, in line with Government guidance. (For further information on formal action see section 13).

- 9.2 **Retrospective Planning Applications** - One such resolution may be to invite a retrospective planning application for the Council's consideration. A retrospective planning application will be invited where it is considered that the breach does not cause significant harm and where there is a reasonable prospect that planning permission may be granted or where a development could be made acceptable subject to the imposition of conditions.

- 9.3 **There is a breach of planning control but it is not considered expedient to pursue** – If a breach is found to exist, it does not automatically mean that formal action will be taken. Enforcement powers are discretionary and minor technical breaches or breaches which have little or no impact on the environment or neighbouring properties may be considered too minor to warrant the time and resource of pursuing. In these cases, we would liaise

with councillors to gain their views on the matter in line with the Council's Constitution.

- 9.4 **The development is lawful and has become immune from enforcement action with the passage of time** – This is when an unauthorised development or change of use has occurred over a long period of time without being brought to the attention of the Council. There are certain time limits involved in relation to operational development and changes of use which are further alluded to in Section 12.
- 9.5 **Permitted Development** - Under the provisions of The Town and Country Planning (General Permitted Development) Order 2015, certain developments and changes of use are permitted and do not require planning permission. These include some residential extensions, outbuildings and changes of use of commercial premises, subject to limitations. This is known as Permitted Development.
- 9.6 **No breach established** – Following a site inspection it may be found that no breach of planning control has occurred because for example, the unauthorised use has ceased or the development is permitted development.

10 What Happens if an Allegation is Made Against You?

- 10.1 If a complaint is received that affects your property then the first thing that will happen is that you or your agent will be contacted by the enforcement team (if your details are known) or a visit will be made to the site by an enforcement officer. The initial site inspection may be undertaken without any prior notification.
- 10.2 In some cases, breaches of planning control are unintentional and may have resulted from a misunderstanding of the planning regulations or a person being unaware of the requirements. Therefore, if you receive a letter or visit from an Enforcement Officer, you will be encouraged to respond in a positive manner and provide the information required to resolve the matter in a timely manner.
- 10.3 The Council have a duty to investigate alleged breaches of planning control even if they prove to be unfounded. The Council are not able to disclose the identity of the complainant to you.
- 10.4 The purpose of the initial visit is to establish the facts and whether there is any basis for the allegation. During this visit, the officer is likely to take measurements and photographs of the development or activity taking place.
- 10.5 If there is a breach of planning control, you will be advised of the details of the breach and what steps need to be taken to either rectify the breach or regularise the situation. Subject to the nature of the breach, you will be given a reasonable time period to resolve the issue. We will always endeavour to resolve matters by way of amicable negotiation or by the submission of a retrospective planning application. However, where compliance cannot be achieved through these channels, formal action may be instigated.

- 10.6 If you are served with an enforcement notice, the case officer will be able to explain the meaning and to help you to understand the implications. However enforcement officers cannot act as your advisor. In these circumstances it is strongly advised that you seek independent advice from a legal professional and/or qualified planning consultant.

11 Power of entry onto land

- 11.1 Section 196(a) of the Town and Country Planning Act 1990 (as amended), the Planning (Listed Buildings and Conservation Area) Act 1990 and Part 8 of the Anti-Social Behaviour Act 2003 provides officers' of the Council the legal power to enter land and/or premises at all reasonable hours in order to undertake his/her official duties. Wilful obstruction of a person exercising a lawful right of entry is an offence.

12 Time limits for taking formal action

- 12.1 Section 171B of the Town and Country Planning Act (as amended) provides time limits for taking enforcement action. The Council cannot serve a notice after four years where the breach of planning control involves operational development, for example, extensions to dwellings, new buildings, laying of hard standings; or for a change of use of any building to a single dwelling house, from the date of commencement of the breach. Other unauthorised changes of use and breaches of conditions are subject to a ten year time limit. There are certain circumstances where these time limits do not apply, for example in the case of listed buildings or where there has been deliberate concealment.

13 Formal Action

- 13.1 The Council has a range of formal powers under the provisions of the Town and Country Planning Act that may be used to remedy breaches of planning control. The more common forms are listed below:

- A Section 16 Notice requires information relating to owners, occupiers or any other persons with an interest in the land.
- The service of a planning contravention notice (PCN) Section 171 (C) enables the service of a notice requiring persons to provide information in relation to land or activities on land where a breach of planning control is suspected.
- The service of an Enforcement Notice – Section 172 enables the service of a notice which requires specific steps to be undertaken to remedy a breach of planning control within a specific timeframe.
- The service of a Breach of Condition Notice (BCN) – Section 187(a) enables the service of a notice to secure compliance with conditions imposed within a planning permission.
- The service of a Section 215 notice – this enables the service of a notice requiring the proper maintenance of land and buildings.
- The service of a stop notice or temporary stop notice – Section 183 and section 171(e) enables the service of a notice requiring the immediate

cessation of unauthorised activities. A stop notice may only be served alongside an enforcement notice. Stop notices should not be used routinely. Where the associated enforcement notice is quashed, varied or withdrawn or the stop notice is withdrawn compensation may be payable in certain circumstances and subject to various limitations (Section 186 of the Town and Country Planning Act 1990).

- Advertisements – The display of advertisements that do not meet the criteria set out in the Town and Country Planning (Control of Advertisements) (England) Regulation are illegal unless they have been granted express consent and may be subject to prosecution.

This list is not exhaustive.

- 13.2 The Council also have powers to serve injunctive proceedings, to take direct action to remedy breaches and to prosecute for non-compliance where it is in the public interest and deemed necessary.
- 13.3 The Council will comply with the provisions of the Police and Criminal Evidence Act 1984 when interviewing persons suspected of a criminal offence and with the Criminal Procedures and Investigations Act 1996 and Section 222 of the Local Government Act 1972, when carrying out prosecutions.

14 Action Under Anti-Social Behaviour Legislation

- 14.1 Further powers are available to the Council under the provisions of the Anti-Social Behaviour Act 2003 in the form of Community Protection Warnings (CPW) and Community Protection Notices (CPN) under Section 43 of the Anti-Social Behaviour Crime and Policing Act 2003. These may be used for a number of purposes but are intended to prevent unreasonable behaviour that is having a negative, persistent and continuing impact on the local community's way of life. Recipients of the notice have a right of appeal to the Magistrates Court within 21 days of service. Failure to comply with a CPN can result in a fine or the issue of a penalty notice.
- 14.2 High Hedge Remedial Notice – These notices may be served following a High Hedge complaint if action is considered to be warranted. The recipient has a right of appeal against such a notice and failure to comply can result in prosecution.

15 What Happens Following the Service of an Enforcement Notice?

- 15.1 Once an Enforcement Notice is served the recipient will either:
- Comply with the requirements of the notice;
 - Appeal to the Planning Inspectorate against the service of the notice;
 - Fail to comply with the notice either in part or in whole and risk prosecution or direct action being taken to remedy the breach.

The Appeal Process

15.2 Following service of an enforcement notice, the recipient has 28 days in which to appeal to the Planning Inspectorate against the enforcement notice. An appeal can be a lengthy and time consuming process and may be dealt with by the Inspectorate in one of the following three ways:

- by written representations;
- the hearing process, or
- by a formal inquiry process.

15.3 There are seven grounds of appeal available against an enforcement notice. These are:

- Ground A That planning permission should be granted for the development;
- Ground B That the breach of planning control alleged in the notice has not occurred as a matter of fact;
- Ground C There has been no breach of planning control and the development undertaken does not amount to development under Section 55 of the Town and Country Planning Act, or that the change of use is not a material one i.e., it is;
*Permitted by the Town and country Planning (General Permitted Development) (England) Order 2015, or;
*that the change of use is permitted by the Town and Country Planning (Use Classes) Order 1987 (as amended);
*Has been carried out in accordance with a planning permission.
- Ground D When the enforcement notice was issued it was too late to take enforcement action;
- Ground E The notice was not properly served;
- Ground F That the steps in the notice exceed what is required to remedy the breach of planning control;
- Ground G That the time for compliance is unreasonable and more time should be allowed to achieve compliance.

15.4 If an appeal against a notice is unsuccessful then the enforcement notice will come into effect. If the appeal is successful and/or if planning permission is granted, then this will usually conclude the matter save for monitoring compliance with any conditions which may have been imposed. If the notice is upheld or there is no appeal but compliance has still not been achieved, then the Council can take steps to prosecute in court.

15.5 For further information regarding the appeal process please refer to The Planning Inspectorate section on the gov.uk website.

Direct Action

15.6 Direct action may be used where necessary to ensure that remedial works are undertaken to secure compliance with an enforcement notice. In such cases,

the Council will seek to recover the costs of taking direct action from the offender and this may result in a legal charge being placed on the land or property to enable the monies to be recovered at a later date.

16 Monitoring and Compliance

- 16.1 In some instances when planning permission is granted, it may be necessary to impose condition for example requiring further details of materials or landscape scheme to be submitted for agreement or for a development to be undertaken in a certain way. The onus is on the developer to ensure that all necessary consents are in place and that conditions are fully complied with. A failure to do this risks avoidable action being taken to remedy the matter.

17 Monitoring Section 106 Agreements

- 17.1 In addition to planning conditions which may be imposed on a development, it may be that a legal agreement will be signed between parties involved in a development which aims to provide either a financial contribution (for example to provide local facilities), or to undertake work that cannot be conditions as part of the development. As with the planning conditions, there will be triggers for the requirements of the agreements to be complied with and these will be monitored to ensure that contributions are paid to the Council and the requirements of the agreement are completed. Failure to comply will result in action being taken.

18 Reviewing The Enforcement Plan And Service

- 18.1 The plan will be reviewed from time to time and at least every three years taking into account changes to legislation, government guidance and the Council's Constitution and procedures.
- 18.2 The Council is committed to providing the highest possible quality of service delivered in a fair and consistent matter. However, problems may occur from time to time and issues concerning the enforcement service should be brought to the attention of the planning team leader in the first instance.
- 18.3 If you are still dissatisfied you may wish to submit a complaint following the Council's complaints procedure, details of which are available on the Broxtowe Borough Council web site <https://www.broxtowe.gov.uk/about-the-council/consultations-feedback-complaints/make-a-comment-complaint/complaints-procedure/>
- 18.4 Subsequently, complaints may be reported to the Local Government Ombudsman.