

Nuneaton and Bedworth Borough Council – Draft Local Enforcement Plan (Planning)

Consultation 13 August – 5 November 2021

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Introduction

This proposed policy sets out the general principles that form the standard procedures and function of the Planning Enforcement Service within the planning service at Nuneaton and Bedworth Borough Council. The preparation and adoption of a local enforcement plan is recommended in paragraph 58 of the NPPF.

Nuneaton and Bedworth Borough Council are firmly committed to effective planning enforcement. This will focus on planning breaches, trees, high hedges, advertisements and listed buildings. This means that we will investigate alleged breaches of planning control and take proportionate action to resolve the harm. Regard will be given in each instance to the prevailing circumstances and the particular impact of the unauthorised development or breach in question.

This plan defines “enforcement” broadly, to encompass both informal approaches such as advice, and formal enforcement.

Specifically the plan:

- a) allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- b) sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- c) provides greater transparency and accountability about how the Nuneaton and Bedworth planning authority will decide if it is necessary to take action or not; and
- d) provides greater certainty for all parties engaged in the development process.

Objectives and Principles of Planning Enforcement

Objectives

The approach adopted for Planning Enforcement is intended to :

- assist business and others in meeting their legal obligations without unnecessary expense;
- focus on remedying the effects of development;
- ensure that we enforce breaches of planning control in a fair, equitable and consistent manner;
- take firm action when it is necessary or appropriate to do so; and
- ensure cross Council advice where necessary.

All planning and enforcement officers will have regard to these objectives when carrying out their functions in relation to breaches of planning control.

Principles of Good Enforcement

The Council's authorised Officers will deal with anyone subject to the enforcement process in a courteous, impartial and objective manner, taking into account the Council's Equal Opportunities Policy. Planning enforcement officers must be fair and not let any personal views about issues such as ethnic origin, sex, religious beliefs, political views or the sexual orientation of any persons influence their decisions as per Anti-Discrimination policy.

All investigations will be carried out on a strictly confidential basis and the complainant's details will normally be treated as confidential. In respect of serious breaches of planning control which warrant prosecution, or which result in an appeal, this may not be possible particularly when matters progress to court and the complainant is required to give evidence (e.g. the other side may seek to compel a witness) and/ or details of the complaint must be disclosed. However, such occasions are rare and where possible involvement in these cases will be on a voluntary basis.

We will assist offenders and complainants to understand the legal requirements and obligations imposed by the relevant legislation as well as explaining the course of action that the Council can take. In investigating alleged breaches, officers will comply with the provisions of the Police and Criminal Evidence Act 1984, Data Protection Act 2018, Regulation of Investigatory Powers Act 2000, Human Rights Act 1998 and Equalities Act 2010

Planning Enforcement Officers in conjunction with Planning Officers will explain how to remedy the situation and provide solutions. Should the issue not be remedied then Officers can advise on the course of enforcement action and what the consequences are for non-compliance.

Advice and information will be freely given and available and businesses, employers and the public will be encouraged to contact the planning duty Officers regarding relevant matters. We will provide a contact details for the Council and encourage persons to seek information and advice.

We will attempt to reach a negotiated solution to ensure compliance with legislative requirements and planning policies. If the negotiation process is unsuccessful then a range of enforcement options including statutory notices, formal cautions and prosecutions may be the resolution.

The Council will be mindful that enforcement action is a discretionary power to be used only when it is expedient and necessary to do so. In addition to this it should also be noted that it is not a criminal offence to carry out development without permission, except for works to listed buildings, protected trees and displaying adverts which require consent.

However where statutory notices have been served they are required to be complied with within the specified time limits. Failure to comply with notices within the required timescales is a criminal offence that may result in prosecution.

Where enforcement action maybe contemplated by the Council and another agency or service provider, prior consultation will take place with that body and if appropriate a co-ordinated approach will be taken. Officers undertaking enforcement activities will be duly authorised under the delegated powers and will appropriately trained.

Reporting and Handling Complaints

Reporting a Complaint

Complaints can be made via telephone, in writing, by email, via the Council's website and in person. All complaints will be treated as confidential. Anonymous complaints will be accepted although it will not be possible to update the complainant and inform them of the outcome.

- Email at planning@nuneatonandbedworth.gov.uk;
- Filling out the standard enforcement complaints form on our website;
- Over the phone on (02476) 376328;
- Letter to Planning Enforcement, Development Control, Nuneaton and Bedworth Borough Council, Town Hall, Coton Road, Nuneaton, CV11 5AA;
- Or in person at the planning reception area at the Council Offices, opening hours are 09:00 – 17:00 Monday to Friday.

All complaints initially found to be suspected breach will be registered, this is recorded on our database so it is important that we have the following information:

- name and contact details of complainant;
- full address of the alleged breach of planning control;
- nature of the breach and the harm it may be causing.

Complainants will be asked to provide as much information as possible regarding the alleged breach of planning control. This will include the site address, nature of the alleged breach, length of time it has been occurring, contact details (if known) of the relevant persons and how the alleged breach affects the complainant.

Handling the Complaint

All enforcement complaints are logged onto our computer system with a unique reference number so that each complaint can be monitored and the complainant updated on progress. An acknowledgement will be made with the complainant within 3 working days of the alleged breach being reported. The Planning Enforcement Officer will initially undertake research of the Council's planning records, to establish the planning history of the land under investigation. This may reveal that no breach of planning has occurred; however in most cases further investigation will be necessary.

To avoid the unnecessary use of resources, anonymous reports of suspected breaches of planning control will not normally be pursued unless other evidence suggests that the breach is causing serious harm to the environment or the amenities of residents.

Confidentiality of a complaint's identity will be safeguarded. The Council will treat complaints in confidence so far as possible and subject to any relevant law or court order. In accordance with the Environmental Information Regulations 2004, the Freedom of Information Act 2000 and Data Protection Act 1998 the Council will not disclose the identity of the complainant; however it is sometimes possible for the individual subject of the complaint to make assumptions about who may have made the initial complaint. If complainants are worried about giving their name and address they can contact their local Ward Councillor who may be willing to make the complaint on their behalf.

If a case proceeds to formal action we may need the evidence of a complainant to substantiate the matter. If this is the case the Council would not be able to maintain the anonymity of the complainant. The complainant will be made aware of this prior to formal action taking place.

The Council will investigate all validated complaints relating to breaches of planning control such as changes of use, unauthorised structures, works to listed buildings or protected trees and non-compliance with planning conditions.

The Council will typically undertake/ consider the following when progressing with a complaint:

- **Site Visit** - In all but the most straight forward cases Officers will visit the site and will ascertain if a breach of planning control has occurred and if so will collect evidence. The majority of sites visits are made without prior arrangement and Officers are required to identify themselves as Planning Enforcement Officers as soon as they enter the site.
- **Powers of Entry** - The Council's Planning Enforcement Officers have powers of entry. Where site visits are made and no occupier can be found at the time of visit, officers have powers to inspect the land in their absence. Officers do not have powers to force entry into any residential property without first giving 24 hours notice. Where appropriate, Officers will leave a business card requesting the occupier of the land to contact the Council. If officers are refused entry, a course of action can be taken to enter the premises (such as obtaining a warrant (obstruction of a Planning Enforcement Officer is a criminal offence)), however this will be based on whether it will be necessary and proportionate to the alleged breach under investigation.
- **Gathering Evidence** - Where a complaint relates to an alleged unauthorised use of land, Officers will make a reasonable attempt to determine whether a breach has taken place. In most cases a 'reasonable attempt' will consist of an appropriate number of site visits at days and/or times deemed most suitable for the allegation. This ensures that the Council's limited resources are used efficiently. Where Officers can find no evidence of a breach of planning control the investigation will be closed and no further action will be taken. This will generally happen after a period of 28 days. Such cases will not be reinvestigated unless the complainant is able to provide more substantive evidence of the alleged breach of planning control.
- **Research** - Officers may use a variety of other methods to determine whether or not a breach of planning control has taken place, including obtaining information from complainants and other sections of the Council and other

agencies. The Council may also seek clarification from case law or obtain legal advice. Some developments do not require planning permission or may be immune from enforcement. For example developments will sometimes benefit from a general planning permission granted by law and known as “Permitted Development”. Where development complies with these requirements, it does not constitute a breach of planning control.

- Enforcement action cannot be taken against developments which are immune under planning legislation due to specific time limits which are:
 - o 4 years for unauthorised operational development or change of use of a building to use as a single dwelling house;
 - o 10 years for a material change of use of land and buildings or a breach of a condition imposed on a planning permission.
 - o In those cases there will be no breach of planning control and no action can be taken.

The Planning Enforcement Officer will update all parties when there is new information to report.

What is not a valid complaint?

Development Control often receive complaints regarding matters that are not breaches of planning control. Often this is where other legislation covers and controls the matter. The following are examples of what we cannot become involved in through our planning enforcement service:

- dangerous structures – please contact the Building Control Partnership on 02476 376125;
- fly tipping and fly posting – please contact our Environmental Enforcement Team on 02476 376170;
- any matter covered by other substantive legislation such as noise and smell – please contact our Environmental Protection Team on 02476 376405;

- any matter covered by advertisements on the highways are dealt with Warwickshire County Council, however enforcement powers are devolved to Environmental Protection Team on 02476 376405;
- use of/ or development on the highway, footway or verge that is covered by highway legislation – please contact Warwickshire County Council on 01926 412515; and
- neighbour nuisance/ boundary and land ownership disputes – these are civil matters that the Council can not get involved in. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau.

Enforcement Priorities

In order to make the best use of the resources available to the Council 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 but may be subject to change following a site inspection or when further information comes to light.

To make the most effective use of resources, all incoming enforcement cases are prioritised when registered, based on information provided by the complainant, and an assessment of any planning history. This will determine the time frame for making an initial site visit and will be affected mainly by the assessment of the type and extent of the harm caused. There are three enforcement priorities:

Priority 1

Where irreversible harm is likely to be caused if the Council do not act immediately. Example: Unauthorised works to Listed Buildings; unauthorised felling/pruning of protected trees.

Priority 2

Where there is significant public concern or where there is (or is the potential for) significant harm to be caused to residential amenity in the surrounding area.

Example: Breaches of planning conditions specifically identified to meet expressed public concerns, such as hours of operation; unauthorised uses/activities which are causing significant harm; illegal advertisements, particularly larger scale advertising on hoardings.

Priority 3

Smaller scale infringements which do not result in significant immediate or irreversible harm. Example: Single storey rear extensions and rear dormer windows, unauthorised building of walls/fences; unauthorised installation of satellite dishes.

Taking Enforcement Action

Enforcement action will only be taken when expedient to do so and is in the public interest. Expediency is based on an assessment of the harm resulting from the breach of planning control. Harm comprises of a number of elements and in order to assess the harm the Planning Enforcement Officers along with Planning Officers would take these elements of harm and take the appropriate action.

Planning Enforcement Officers will seek specialist advice should it be required from other departments or external agencies or other such bodies. Following a breach of planning control, there are four possible courses of action which maybe taken depending on the harm arising from the breach. These are indicated below.

- No action - Inform the complainant and alleged offender that the harm is not sufficient in order to proceed with enforcement action. Complainants will be informed when the file has been closed and informed what action has been taken and the reasons for those decisions.

- Invite an application for consideration in order to regularise the breach of planning control. Where it is assessed that it is possible that planning permission would be granted for the development, the offender would normally be invited to submit a retrospective planning application.
Enforcement action is not taken simply because there has been a breach of planning control. It is not a “punitive” measure. The council would not take formal enforcement action against a trivial or technical breach of control, which causes no harm to amenity or the environment. The Council will seek to work with those in breach to voluntarily resolve contraventions to avoid formal action having to be taken. However, an offender can submit an application against Officer’s advice and has the right of appeal (to the Planning Inspectorate) if that application is refused. Case law indicates it would be unreasonable to pursue formal action whilst an application/appeal is under consideration.
- Negotiate to remedy the breach of planning control - Where it is considered that the breach of planning control is unacceptable, Officers will initially attempt to negotiate a solution without recourse to formal enforcement action. Negotiations may involve the reduction or cessation of the breach. Where initial attempts at negotiation fail, formal action will be considered to prevent a protracted process where it is expedient to do so.
- Formal Action - The Council will only take enforcement action when it is considered expedient to do so. Formal enforcement action will not be instigated solely to regularise breaches in planning control. In taking formal enforcement action the Council will be prepared to use all the enforcement powers available commensurate with the seriousness of the breach. In deciding whether to take enforcement action the council will have regard to the development plan and to any other material considerations including national policies and procedures. In considering whether it is expedient to take enforcement action the decisive issue for the Council will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest or the natural environment. Enforcement action is discretionary, and the council will act proportionately in responding to suspected breaches of planning control. It is

not the role of the planning system or planning enforcement to protect the interests of one party against those of another. As such, breaches of planning control are not subject to public consultation. Factors such as breaches of restrictive covenants, private disputes, competition, damage to property and reduction in value of land or property can not be taken into account when assessing whether it would be expedient to take action.

When this is not possible or appropriate, and it is considered expedient to take formal action to resolve a breach, the main options for action are summarised as follows:

- Planning Contravention Notices and Section 330 Notices – These are precursors to more formal action and require in writing details of people's interest in a property, including the mortgagee. These Notices are requisitions for information to allow the Council to consider serving an appropriate notice.
- Breach of Condition Notice - Can be used where conditions imposed on a planning permission have not been complied with. There is no right of appeal to the Planning Inspectorate. Failure to comply with the Notice is a criminal offence
- Enforcement Notice - This is the usual method of remedying unauthorised development and there is a right of appeal against the notice. The recipient must take the specified steps set out in the notice within a set time period. Failure to comply with the Notice is a criminal offence. There is a right of appeal to the Planning Inspectorate.
- Section 215 Notice - Can be used in relation to untidy land or buildings when the condition of the land or buildings adversely affects the amenity of an area.
- Stop Notice - Can be used in conjunction with an enforcement notice where the breach of planning control is causing irreparable and immediate significant harm. Where Stop Notices are issued, the Council may be liable to pay compensation if it is later decided that such a notice was not appropriate.
- Temporary Stop Notice - These take effect immediately from the moment they are issued, and last for up to 28 days. A Temporary Stop Notice would only be

issued where it is appropriate that the activity or development should cease immediately to safeguard the amenity of the area.

- Prosecution – These are where a person has not complied with a Notice, there must be sufficient evidence to offer a realistic prospect of conviction and that the action would be in the public interest.
- Injunction - This involves seeking an order from the court preventing activity or operation taking place if the breach is serious and would cause exceptional harm.
- Direct Action - The Council may enter land and take the necessary action to secure compliance when enforcement notice or Section 215 Notice are in effect. The council will seek to recover all cost associated with carrying out works. This is only used in extreme cases where resources allow. In defending enforcement action on appeal and in the courts, it will be necessary to show that the relevant procedures have been followed and that national policy on planning and enforcement has been taken into account.

In considering whether to take enforcement action the Council will not give weight, either way, to the fact that development may have commenced. Other than in very specific situations (e.g. works to Listed Buildings) it is not a criminal offence to carry out development without planning permission and it is therefore important that unauthorised developments are treated on their individual merits in the same way as proposed developments. The test to be applied will be “would planning permission have been granted for this development had it been the subject of a planning application?” Any retrospective planning application submitted to rectify a breach of planning control will not be treated any differently from an application made in advance of the works being carried out.

[Other powers – Listed Buildings, Conservation Areas, Advertisements, Trees and High Hedges](#)

[Listed Buildings and Conservation Areas](#)

Cases involving unauthorised works carried out to a Listed Building and unauthorised demolition in a Conservation Area constitutes a criminal offence in their own right. We will consider whether it would be expedient to prosecute for these works rather than issuing a Notice on a case by case basis.

Before commencing any proceedings we would need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

Advertisements

This is covered by different legislation and unlike most spheres of planning control the display of advertisements without consent is a criminal offence. Therefore we have the power to initiate prosecutions without the need to issue a Notice. Where it has been considered that an advertisement should be removed an offender will normally be given one written opportunity to remove the advertisement voluntarily. Failure to do so will normally result in further action being taken.

Trees

Legislation protects trees which are the subject of Tree Preservation Orders (TPOs) or are within a Conservation Area from felling or other works unless appropriate consent is first obtained. As with advertisements such works are a criminal offence and therefore prosecution can be sought without the requirement to issue a Notice. However, such action would not remedy the harm caused. Section 207 of the Town and Country Planning Act (as amended) provides for a Tree Replacement Notice to be issued. This will require an appropriate tree to be planted where a tree covered by a TPO has been removed.

High hedges

Councils have the power, under Part 8 of the Anti Social Behaviour Act 2003, to adjudicate on disputes over high hedges. Following the complainant having approached their neighbour in order to resolve the matter. Failure to resolve the matter may mean that the Council carry out an assessment of the hedge. If subsequent assessment finds that the hedge is too high the complainant will have to pay a fee of £400 if they wish to progress the matter. In cases where we find in favour of the complainant we will ensure compliance through enforcement of the Remedial Notice if action is necessary. There is a right of appeal to the Planning Inspectorate against the Remedial Notice.

General Information

Complaints against the service – The Council aims to fully investigate and assess all breaches of planning control, and to take enforcement action where it is considered expedient to do so. The Council also aims to ensure high customer service standards are maintained with all parties involved in an enforcement investigation. Where customers are not satisfied with the way an enforcement investigation has been carried out, the complaint will be investigated in accordance with the Council's complaints policy.

If the complaint remains unresolved and you are still unhappy with the response the complaint can be referred to the Local Government Ombudsman.

Officers should not be subjected to any insulting, threatening words or behaviour at any time, either in person or via any other means. Any abusive telephone calls will be terminated. In cases where a complainant acts unreasonably, or takes up a disproportionate amount of officer time, restrictions on contact may be imposed.