

# **LOCAL ENFORCEMENT PLAN**

East Staffordshire Borough Council

Planning Services

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<b>Reviewed</b>					

# LOCAL ENFORCEMENT PLAN

## INTRODUCTION

The planning system operates to regulate development and the use of land in the interests of the local community, whilst having due regard for the development plan and other material planning considerations.

Effective and proper enforcement is essential to community confidence in the planning system, and is also key to ensuring that the local environment is protected, as are the interests of residents, visitors and businesses of the Borough from the harmful effects of unauthorised development.

The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven breaches. East Staffordshire Borough Council views breaches of planning control very seriously.

Our approach is to exercise powers appropriately and rigorously so that development takes place in accordance with legislation or the planning conditions and limitations imposed on any planning permission through the development control process.

However, the planning enforcement system does not exist to simply punish those responsible for breaches of planning control. It is an important principle of the planning system that the use of formal planning enforcement is a discretionary power which should only be used if and when absolutely necessary, after negotiation and any other potential remedies have not succeeded.

The integrity of the development control process depends on the Council's readiness to undertake effective enforcement action when it is justifiable. The community's confidence is quickly undermined if unauthorised development is allowed to progress without proportionate action being taken by the Council.

The **Local Enforcement Plan** sets out what individuals and organisations can expect from East Staffordshire Borough Council in the undertaking of its planning enforcement service.

## **THE COUNCIL'S APPROACH TO ENFORCEMENT**

The Council's Corporate Enforcement Policy (2013) creates a single overarching policy that encompasses the key factors and principles common to all aspects of enforcement undertaken by the Council, and commits to good enforcement practice and establishes the framework by which we will ensure a fair and consistent approach to the way enforcement activities are undertaken. The principles of good enforcement practice are set out in **Section 5** of the Corporate Enforcement Policy.

This plan follows on from and sits below the Council's Corporate Enforcement Policy. The Local Enforcement Plan is specific to the Local Planning Authority's enforcement service and the use of specific powers under planning legislation through which the Council investigates planning enforcement reports. The Plan takes into account the specific guidance found within the National Planning Practice Guidance (NPPG), and the policy and approach contained in the National Planning Policy Framework (NPPF), and confirms the Council's aim of trying in the first instance to achieve an amicable negotiated outcome without the need for formal action wherever possible.

## **OVERVIEW OF PLANNING ENFORCEMENT**

Planning enforcement is a technically and legally complex component of the planning system, which means that taking action is not always as straight forward as it seems.

Each case will be dealt with on its own merits taking into account the often unique circumstances, along with the level of harm created as well as any history of previous breaches. The Council's assessment of harm cannot include private interests, such as potential loss of value of someone's property, commercial competition, loss of a view, trespass or breach of covenant. In some situations works or developments are done in ignorance or misunderstanding rather than intentionally and the person responsible will first be given an opportunity to remedy the situation. The Council will always try to resolve breaches through negotiation first unless significant and irreparable harm is being caused. Investigations will be carried out as promptly and efficiently as possible.

The Borough Council's Planning Enforcement Officer has the knowledge and skills to carry out their duties. If the officer has an interest which is personal, financial or of any other nature likely to be prejudicial then that officer will take no part in the investigation and will immediately refer the matter and interest to the Planning Manager.

When undertaking duties, officers will have regard to the Council's Equal Opportunity Policy to ensure that investigations are carried out in a consistent and fair manner, free from discrimination on any grounds.

As part of the enforcement process, Human Rights are also an important consideration that will be taken into account and balanced with any action taken. The relevant elements of the Human Rights Act (1998) are;

- Article 1 of the First Protocol – Protection of Property
- Article 6 – Right to a fair trial
- Article 8 – Right to respect for private and family life.

The Council will not tolerate any of its planning officers being threatened with or subjected to physical or verbal abuse in the course of carrying out their official duties and will take appropriate legal action where necessary.

## **SCOPE OF PLANNING ENFORCEMENT**

Certain types of building/engineering works or material changes of use are defined as “permitted development” meaning that an application for planning permission is not required. Whether or not planning permission is required depends on several factors and these are detailed in the relevant legislation, and the key legislative documents are listed in Appendix A. An initial investigation by the Council’s planning enforcement officer will determine if development is permitted or not.

The Local Planning Authority deals with around 1500 - 1600 applications every year including planning permission, advertisement consent, listed building and conservation area consent, prior approvals for telecommunications equipment, demolitions and applications to carry out works to protected trees.

The majority of applications are approved, often with detailed conditions attached or a requirement for additional obligations e.g. the signing of a Section 106 Agreement between the Council and the applicant. Conditions attached to permissions frequently require various details to be approved **before development takes place**.

The majority of planning enforcement investigations relate to one of the following alleged breaches:

- Development (either operational or a material change in the use of land) has taken place without planning permission;
- Development that has not been carried out in accordance with an approved planning permission;
- Failure to comply with a condition or legal agreement attached to a permission; and

Other matters which also fall under the scope of planning control includes the enforcement of advertisements and untidy land. These issues however are dealt with by the Council’s enforcement team rather than the Local Planning Authorities enforcement officer, except in relation to the untidy land and heritage assets.

**None of the above breaches constitutes a criminal offence under planning legislation** until and unless there is a failure to comply, by the due date, with a formal notice that the Council has issued. However there are some other matters falling within planning control which are an offence. These include:

- Unauthorised demolition of a building (excluding specified categories) in a conservation area;
- Unauthorised works carried out to a listed building which affect its historic character;
- Unauthorised removal of, or works carried out, to protected trees without consent being granted or proper notification given
- Advertisements, which require consent under the advertisement regulations, which are displayed without express consent.
- Failure to comply with the requirements of a planning notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, or other statutory notice.

**Materiality** - when assessing whether or not a breach of planning control has occurred, the Local Planning Authority will make a judgement on whether any identified breach is a material one. Where a development has been carried out only very slightly in excess of what would otherwise be lawful, it may be considered that no material breach of planning control has occurred, even if there is, arguably, a technical breach. This is a matter of professional judgement and will be considered in the context of scale and nature of the overall development. Non-material or minor 'technical' breaches, will **not normally** be pursued.

**Not a technical planning matter** – planning laws are designed to control development and uses of land and buildings in the public interest. They are not meant to protect the private interests of one person against the activities of another. The Local Planning Authority often receives reports regarding matters that are not breaches of planning control. The following are examples of what we cannot become involved in through our planning enforcement service:

- Boundary and land ownership disputes, private rights of way, and covenants/easements on deeds. These are civil matters and further advice can be obtained from a solicitor or land registry;
- Use of/or development on the highway, footway or verge that is covered by highway legislation. Further advice can be obtained by the Local Highway Authority at Staffordshire County Council;
- Dangerous structures. Please contact the Borough Council's Building Consultancy team;
- Fly tipping, high hedges and any other matters covered by other environmental legislation such as noise and smell. Please contact the Borough Council Enforcement team;

- Uses operating without the necessary licence. Please contact the Borough Councils licensing team.
- Internal alterations (unless to a listed building, or result in the installation of a mezzanine floor in a retail premises)
- External security lights fixed to houses. Please contact the Borough Council's Enforcement Team.
- Fences and walls in rear gardens unless they exceed 2m in height.
- Where the reported issue is purely about trade and competition.

Appendix C provides the contact details of other external agencies and internal ESBC teams where assistance can be provided on the above matters.

## **TIME LIMITS for TAKING FORMAL ACTION**

Planning legislation sets out time limits for taking enforcement action. The Council cannot serve a notice after **four years** where a breach of planning control involves building operations, or the change of use of any building to a single dwelling house. Other unauthorised changes of use and breaches of condition are subject to a **ten year** time limit. After these periods the Council cannot take action and the use becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period.

Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Therefore where the Local Planning Authority feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a lawful development situation.

The Localism Act (2011) has introduced a new enforcement power in relation to time limits. This allows Council's the possibility to take enforcement action against concealed breaches of planning control.

## **SUBMITTING A PLANNING ENFORCEMENT REPORT**

The Borough Council uses the term enforcement report rather than enforcement complaint. This is because many of the enforcement approaches made to the Borough Council are dealt with swiftly due to no planning breach having been made. Within the Local Enforcement Plan, Enforcement Report rather than Enforcement Complaint is used.

All reports about possible breaches of planning control can be made in writing to the Local Planning Authority, by email, by telephone or by using the online reporting form, the details of which are listed in Appendix B.

The Local Planning Authority will require as much information as possible in order to carry out its investigations and also to help keep individuals informed of what action it is taking. This information should include:

- Your name, address and telephone number;
- Details of the report 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; and
- You may also be required to provide evidence of the alleged breach.

The above information is treated as strictly confidential. The subject of any investigation is not told who has made the approach, although they can often make assumptions. We do not process anonymous reports unless it relates to unauthorised works to a Listed Building or protected tree. .

Individuals concerned about the possibility of 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 website.

It is important however to recognise that any comments made on a planning application will be on the public file, and the Local Planning Authority may have to disclose personal details if we have to go to court to take legal action. We will discuss this with you should the issue occur.

## **PRIORITISING ENFORCEMENT REPORTS**

The Local Planning Authority has one planning enforcement officer who can receive in excess of 300 planning enforcement reports every 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. To make the most effective use of resources it is necessary for enforcement reports to be investigated in accordance with a priority schedule to ensure that the most serious complaints are investigated in an expedient manner.

Prioritisation of action will be taken on the basis of the following list. However, there may be occasions where some unauthorised development would have an adverse cumulative impact when judged against other development in the area and/or where there is strength of public feeling. In these cases such cases may be dealt with as being urgent.



This list is for general guidance and is not exhaustive:

### **Category A -Top Priority – Site Visit and Initial Investigations within 24hrs**

- Unauthorised demolition, partial demolition or significant alterations of the building, which is essential to retain (e.g. a listed building or building within a conservation area) or any other development that causes irreversible demonstrable harm.
- Unauthorised works to trees covered by tree preservation orders (TPO) or in a conservation area.
- Unauthorised development within a Site of Special Scientific Interest (SSSI) or other national or local designation of nature conservation.
- All reports of unauthorised development which represent a serious danger to members of the public.

### **Category B – High Priority – Site Visit and Initial Investigations within 5 working days**

- Breaches of conditions which result in serious visual harm or result in serious demonstrable harm to the amenity of the neighbourhood.
- Breaches of either listed building, Article 4 Direction or conservation area controls not coming into Category A above.
- Breaches of the requirements of an Enforcement Notice or a B
- reach of Condition Notice.
- Any unauthorised development/activity which causes clear, immediate, and continuous harm or danger to the locality including the living conditions of adjoining residents.
- Unauthorised development which, without intervention, would otherwise be nearing immunity from enforcement action by virtue of either the 4 or 10 year immunity rules.

### **Category C – Medium Priority – Site Visit and Initial Investigations within 10 working days**

- Technical Breaches of Planning Control, including breaches of conditions, not resulting in serious visual harm or not resulting in serious demonstrable harm to the amenity of the neighbourhood.

### **Category D – Lowest Priority Cases – Site Visit and Initial Investigations within 15 working days**

- Unauthorised development which, if retrospective planning permission were to be applied for, would comply with local and national planning policies and which is not about to become immune from enforcement action.
- Disputes between neighbours or complaints about neighbours property not resulting in harm to wider residential amenity

Once an investigation commences, an assessment will be made whether a site visit is necessary. If a site is conducted or further information is received its priority may change following the initial site visit or on receipt of addition information. Whilst the initial site visit will be made relatively quickly in accordance with the above prioritisation schedule, further investigations may be required before a conclusion is made. This may take time and therefore reporters of alleged breaches of planning control should be aware that there may be some delay before the Council confirms the outcome of these investigations.

## **DEALING WITH ENFORCEMENT REPORTS**

As enforcement can be a lengthy and legally complex process, it is not possible to give an average time for dealing with a report. The time taken for a satisfactory resolution can vary considerably from one report to another. However the steps taken when processing any enforcement report remain the same in each case. Having received a report the Local Planning Authority will endeavour to:

- Acknowledge any report made within 3 working days.

The planning enforcement officer will firstly have to establish the facts surrounding the report. 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 relevant correspondence. Where appropriate, the officer may also contact the Local Highways Authority or the Borough Council's Building Consultancy team and external agencies such as the police and the Environment Agency. Following a desk based assessment the planning enforcement officer will:

- Visit the property in accordance with the Council's prioritisation;
- Write a site report and, where necessary, discuss the matter with a planning officer to decide what, if any, action is to be taken; and
- Update and inform the individual submitting the report and other parties at key stages in the investigation of the outcome.

The different types of planning enforcement cases vary considerably in complexity as does the time taken for their resolution.

For example when trying to find out if a property is being used for business purposes, the LPA may have to serve legal notices on the owners to find out more information. A planning application may also be submitted during the investigations.

Where further information is required to determine the facts, the Council has the following investigative powers:

**Rights of Entry** – are available to enter land where a breach of planning control is suspected, without the owner's permission or prior arrangement. The exception is for the inside of domestic properties, where 24 hours prior notice must be given. It will be considered an offence if anyone wilfully obstructs any person in entering land. If immediate access is required permission may be given by court injunction

**S16 Notice** (of Local Government Act 1992) and **s330 Notice** (of Town and Country Planning Act 1990, as amended) – requires details of ownership and other interests in property

**Planning Contravention Notice** – requires further information concerning development undertaken or activities alleged to be taking place on land

**PACE interview** – for serious allegations, where an offence has or is suspected to have taken place, an interview under formal caution will normally be undertaken

## **DECISION MAKING**

### ***No Breach Identified***

A significant number of investigations are closed as there is no breach of planning control established. This can occur for a number of reasons, for example:

- There is no evidence of the allegation;

- Development has taken place but planning permission is not required;
- The development already benefits from planning permission granted by the Local Planning Authority;
- A technical breach is evidenced but it is so minor that it has no or very little impact on amenity; or
- The time limits for taking enforcement action have been exceeded.

### ***Breach Identified***

If a breach is identified, the person responsible will be told what is wrong and what action is required immediately to remedy the breach. In the majority of cases, unless there is serious and immediate ongoing harm to the environment, highway safety or neighbours, the person responsible will be given the opportunity to remedy the breach before the commencement of costly and protracted formal action.

Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could reduce the harm to amenity, a retrospective planning application will be requested for the development.

In determining retrospective planning applications the Council can not refuse an application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not know that permission was required. A retrospective application enables the Council to regularise acceptable development without arbitrarily penalising the applicant. Approximately 30-35% of enforcement reports are subsequently regularised through retrospective applications.

The Local Planning Authority will not seek a retrospective application if the development will be unacceptable. The enforcement officer may require further information to determine if a development is acceptable in planning terms, prior to making that decision.

Should no retrospective application be received formal enforcement action is at the discretion of the Council; and will only be taken where harm can be attributed to the breach as set out below.

### ***Not Expedient to Pursue Formal Action***

Enforcement action needs to be proportionate to the alleged breach and it is likely that the Local Planning Authority will not take formal enforcement action against a trivial or technical breach of planning control that causes no harm to amenity or the environment.

If a person decides to appeal against formal enforcement action this will add to the time taken to resolve the case. As a consequence it is not possible to give a standard time for dealing with planning enforcement cases.

In exceptional circumstances, contraventions may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community or environment, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community or environment. A decision of no action may also be taken where formal planning enforcement is inappropriate in the circumstances, such as an unauthorised business has ceased to trade, or the offender is elderly or frail and formal action would seriously damage their well-being. A decision to take no action will be recorded in writing and must take into account the health, safety, environmental and nuisance implications of the contravention.

If it is the intention to take no action, Planning Enforcement will, where practical and relevant to do so, inform the reporter and let them know the reason why. This may be via informal means rather than formally in writing. In some cases, the reporter may not receive very much information, or may be updated after key decisions have been taken. The time taken to investigate and conclude on Planning Enforcement cases is unpredictable, so no guide as to how soon updates may be given can be provided.

### ***Formal Enforcement Action***

Where it has not been possible to remedy a breach of planning control through negotiation, or the submission of a retrospective application, the Council has a number of formal enforcement options which are outlined below: -

- Enforcement Notice this is served on the owner and/or occupier of the land. The notice explains the nature of the breach of control and sets out the steps necessary to put things right and a date by which this must be done. If the notice is not complied with, the Council may bring a prosecution in the Courts. This notice can be appealed to the Secretary of State
- Breach of Condition Notice where development has taken place without compliance with a condition or conditions of the planning permission.
- Section 215 Notice requiring the proper maintenance of land
- Listed Building Enforcement Notice where unauthorised work has taken place to a building listed as having special architectural or historic interest.
- Conservation Area Notice where unauthorised demolition has taken place within a designated Conservation Area.
- Stop Notice in the most serious of cases, the Council may consider serving a Stop Notice or may apply to the Courts for an Injunction to prevent further harm being caused. This action requires the people responsible to stop specified activities.
- In addition to the above notices prosecution proceedings can be take place for the following breaches: -

- Unauthorised works to a protected tree, or removal of a protected hedgerow
- Unauthorised works to a listed building, demolition within a conservation area, or works to an ancient monument

Where a prosecution is undertaken an Order for Proceeds of Crime can in relevant circumstances also be made.

Where a notice has been served and has not been complied with there are three main options available to the Local Planning Authority to pursue to attempt to resolve the breach.

- Prosecution
- Direct Action
- Injunction

Appendix D sets out the Borough Council's **Planning Enforcement Customer Service Standards**. We always welcome feedback on the service and all comments should be sent to [dcentforcement@eaststaffsbc.gov.uk](mailto:dcentforcement@eaststaffsbc.gov.uk)

## MONITORING

**Planning Conditions** – The Council does not have a Conditions Monitoring Officer, however discharge of conditions will be overseen by the assigned planning officer as part of a 'total case management' approach. Non compliance of conditions will be referred to the Planning Enforcement Officer if developers or owners are not responding to approaches made by the planning officer, or the breach occurs following the completion of the development and it has been brought to our attention.

If the Planning Services Team is made aware of a material start on site and conditions have not been discharged, the Planning Enforcement Office will visit the site and engage with the developer to ensure compliance before further work is undertaken.

**Legal Agreements** - Where obligations are not being met legal action will be taken if negotiations or identified dispute procedures do not result in agreement.

## STAFF SAFETY

The Planning Enforcement Officer will always aim to resolve breaches of planning control in an amicable way with the offender, preferably through negotiation. However, sometimes people react in a violent and unprovoked way. Should officers perceive this might be the case they will always remove themselves from potentially threatening situations that might prove a risk to their personal safety. The Council

does not expect or encourage its Officers to tolerate threatening, abusive, or aggressive behaviour, either in person or on the telephone.

## **APPENDICES**

### **APPENDIX A - KEY LEGISLATIVE DOCUMENTS**


- The Town and Country Planning Act 1990 (as amended)
- The Planning and Compensation Act 1991
- Planning (Listed Buildings and Conservation Areas) Act 1990
- The Town and Country Planning (General Permitted Development) Order 1995 (as Amended 2008 & 2010)
- Town and Country Planning (Uses Classes) Order 1987 (as amended)
- Localism Act 2011
- National Planning Policy Framework (NPPF March 2012)
- National Planning Practice Guidance
- The Council's Development Plan Policies
- Other associated legislation including but not limited to the Human Rights Act, Police and Criminal Evidence Act, and RIPA etc


## APPENDIX B - CONTACTS FOR SUBMITTING PLANNING ENFORCEMENT REPORTS

Complaints regarding breaches of planning control need to be made in writing (providing full contact details), and can be reported to the Planning Enforcement Officer at the following email or postal address, or directly through the Councils website: -

 <http://www.eaststaffsbc.gov.uk/Northgate/ComplaintsEnforcements/SubmitComplaint.aspx>

 [dcenforcement@eaststaffsbc.gov.uk](mailto:dcenforcement@eaststaffsbc.gov.uk)

 01283 508782

 East Staffordshire Borough Council  
P.O. Box 8045  
Burton upon Trent  
Staffs  
DE14 1LS




## APPENDIX C- CONTACTS FOR INTERNAL ESBC TEAMS OR EXTERNAL ORGANISATIONS

### Land Registry.

 <https://www.gov.uk/government/publications/land-registry-office-addresses/office-addresses>

### The Local Highway Authority at Staffordshire County Council.


 [contactus@staffordshire.gov.uk](mailto:contactus@staffordshire.gov.uk)

 0300 111 8000

### The Borough Council's Building Consultancy team.

 <http://www.eaststaffsbc.gov.uk/building-consultancy/contact-building-consultancy>

 [Building.consultancy@eaststaffsbc.gov.uk](mailto:Building.consultancy@eaststaffsbc.gov.uk)

 01283 508609 or 01283 508723


### The Borough Council's Enforcement team.

 [enforcement@eaststaffsbc.gov.uk](mailto:enforcement@eaststaffsbc.gov.uk)

### The Borough Council's Licensing team.

 <http://www.eaststaffsbc.gov.uk/licence-and-permits>

 [licensing@eaststaffsbc.gov.uk](mailto:licensing@eaststaffsbc.gov.uk)

 01283 508506

## **APPENDIX D – Planning Enforcement Customer Service Standards**

- We will investigate all enforcement reports, as long as they are not anonymous or vexatious, and they have been received in writing, by email, or via the Planning Enforcement webpage. Individuals should provide contact details in order that we can keep them updated, or so that we may seek further clarification where needed.
- Where the enforcement report does not relate to planning, either wholly or in part, we will refer the matter to the relevant department with your details, asking them to keep you updated. We will retain and investigate any part of the enquiry relating to planning.
- We will acknowledge all complaints within 3 days of receipt.
- We will ensure that the details of those submitting an enforcement report remain anonymous.
- We will keep individuals up to date with progress, when there is anything significant to report, or otherwise periodically to reassure them that the matter remains under investigation and advise what we are doing.
- We will only seek or take action where a breach is proven, demonstrable harm is caused, and where it is expedient and legally possible to do so.
- Any actions sought or taken will be reasonable and proportionate to the proven breach, in accordance with government advice.
- We will seek the co-operation of responsible persons through negotiation. We will, however, take a firm line where co-operation is not forthcoming, and the nature of the breach merits it, including where necessary prosecution.
- We will inform individuals of the outcome of any investigation, and with reasons.
- Where the subject of any enforcement report is aware of the investigation, we will inform them of the outcome, with reasons.
- We welcome feedback on our performance and all comments should be sent to [deenforcement@eaststaffsbc.gov.uk](mailto:deenforcement@eaststaffsbc.gov.uk)
- Should you not be satisfied with the handling of your complaint, in the first instance please contact the City Council's Development Control Manager. If you remain dissatisfied, the City Council's complaints procedure is accessible on the Council's website.