



## Introduction

- 1.1 This document has been formulated in the context of local and national policy and guidance. It is intended to assist the Planning Enforcement Team at the council in undertaking its planning enforcement work, and inform all parties involved transparently and accountably how it will decide if it is expedient to exercise its powers in response to suspected breaches of planning control.

## 2.0 National and Local Guidance

- 2.1 This plan has been prepared in accordance with the advice contained within the **National Planning Policy Framework (NPPF) (Revised 2019)** issued by the Department for Communities and Local Government which states at para 58:

*“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”*

- 2.2 The council also adheres to the advice and procedures contained in the **National Planning Policy Guidance (NPPG)**. Other policy and guidance documents that are relevant are listed in Appendix B of this document.
- 2.3 Our approach is carefully aligned to the priorities set out in the Harrogate Borough Council Corporate Plan 2018 - 2022 which are:
- A strong and local economy
  - A sustainable environment
  - Supporting our communities
  - Excellent public services

### **3.0 What the Planning Enforcement Team investigates**

The council are responsible for investigating alleged breaches of planning control. A breach of planning control is development carried out without any requisite express permission.

### **4.0 When is there a breach of planning control?**

- 4.1 A breach of planning control is defined at **Section 171A of the Town and Country Planning Act 1990** as “the carrying out of a 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 **Section 55 of the Town and Country Planning Act 1990** defines development as “the carrying out of building, mining, engineering or other operations in, on, under or over land, or the making of any material change in the use of any buildings or other land”.
- 4.3 It is a breach of planning control to carry out development that requires permission without first obtaining it, but it is not a criminal offence.
- 4.4 Some building works or changes of use benefit from being **permitted development** under **Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015** (as amended) and are not breaches of planning control. To benefit from this status the development must be conducted in

accordance with specified size limits / criteria detailed in the planning schedule. If this is the case it does not need the permission of the council.

## **5.0 The Investigation Service**

5.1 The Council Planning Enforcement Team investigates breaches of planning control. If necessary by conducting a site visit. Any member of the public or interested party may report, in writing, development they believe to be in breach of planning regulations and ask this be investigated. This can be done via post, email or completing a form on our website. Further information can be found on the Planning Enforcement page of our website

5.2 In order to investigate a complaint, the following information is required:

- Name and full address or email of the complainant. This must be provided as we may need to contact the complainant for more detailed information during the course of the investigation. Complainants who are reluctant to give their details because they fear repercussions are advised that their details are treated with the strictest confidence in accordance with government legislation<sup>1</sup>. However, if an individual is still reluctant to provide contact details we would advise them to use their local councillor to act on their behalf. Anonymous complaints will not normally be investigated.
- Full address of property or detailed location to which the breach relates
- Details of the alleged breach and the harm it is causing

In addition to these requirements any other relevant information is very helpful including:

- Phone number of complainant
- Any photographic evidence of the alleged breach
- Dates when the alleged breach started/took place.
- Any history known concerning the previous use of the property
- name, address, telephone no., email, website of responsible parties

## **5.3 Acknowledgement**

---

<sup>1</sup> Under Parts 1 and 2 of Schedule 12A of the Local Government Act 1972 (as amended), enforcement files are not public documents and complainant details are confidential.

Complaints will receive a written acknowledgement of their request for service within 3 working days of the complaint receipt which will include the name and contact details for the allocated enforcement officer dealing with their case and the assigned priority level for a site visit.

5.4 Ward councillors and parish councils will be informed when a new enforcement case is registered in their area. They will receive written notification of the location and nature of the matter along with the name and contact details for the enforcement officer dealing with the investigation.

5.5 Time to Resolve

Dealing with enforcement cases can be a lengthy and complex process. The different types of enforcement cases vary considerably in complexity as does the time taken for their resolution. Consequently, it is not possible to give a standard time for resolving enforcement cases.

5.6 Updates on Progress

Within 28 days of the complaint, the council will update the complainant on the progress of the investigation. If the investigation remains ongoing then further updates will be provided every 56 days thereafter. Additional updates will also be provided where there is a significant development in the consideration of a complaint. A significant development would include for example, the submission of an application, the serving of an enforcement notice or the closure of the investigation.

5.7 Case Priorities

Although priorities are assigned on a case by case basis, they will follow the following classification. The target response times below indicate the timeframe in which the case officer is to make a site visit:

**High Priority (Target response – 1 working day)**

- Matters that result in danger to public safety;
- Permanent or irreparable harm, such as loss of a protected tree or unauthorised demolition, partial demolition or significant alteration to a listed building or building within a conservation area
- Activities that have the potential to cause irreparable harm to the environment, especially within Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty.

**Medium Priority (Target response – within 5 working days)**

- Unauthorised development / activity which causes significant and continued harm by adversely affecting amenity, such as building work which is unlikely to be granted planning permission or unauthorised uses of a residential property;
- Breach of a condition attached to a planning permission which results in harm by adversely affecting amenity of an area
- Unauthorised development / activity, which is the source of significant public complaint.

**Lower Priority (Target Response – within 15 working days)**

- Unauthorised development / activity which is not classed as being high or medium priority;
- Cases where there is a breach of planning control but little or no immediate harm to amenity;
- Minor breaches of conditions attached to planning permissions.
- Unauthorised advertisements and untidy land issues.

**5.8 Complaints**

If you have a complaint about a planning enforcement investigation please see the complaining to the council section on our website which details how you can register your concerns and be provided with a response.

**5.9 Ombudsman**

If you are not satisfied with the response after we have tried to deal with your concerns, and you believe that you have suffered injustice through maladministration by the council, you can make a complaint to the Local Government Ombudsman. The Ombudsman provides free, independent, impartial and prompt investigation and resolution of complaints.

**6.0 How we implement the principles of good enforcement**

**6.1 Initial Assessment**

The first stage of any investigation is to determine whether or not there may be a breach of planning control. Where it can be easily confirmed there is no breach, for example if works are permitted development the complainant will be advised

without the need for an enforcement investigation case to be opened, otherwise an investigation will be commenced.

6.2 Minor Works and the 'de minimis' principle

It may be that, although technically development, the council considers some work to be 'de minimis', i.e. so minor that they would practically fall outside the scope of planning. Whether works are de minimis is a judgment to make by the council on a case-by-case basis based on fact and degree. If works are de minimis, any enforcement case will be closed with no further action being necessary.

6.3 Permitted Development

So long as a development adheres to the requirements contained in the planning legislation it can benefit from being 'permitted development'. This may need to be investigated (for example to accurately measure the dimensions of an extension), but if it is confirmed as permitted development any enforcement case will be closed with no further action being necessary.

6.4 Breach of Planning Control

If it is established development has been undertaken in breach of planning regulations this is clearly unsatisfactory and never condoned by the council. Enforcement action will be considered and taken where considered expedient.

6.5 Planning Harm

It may be that the development, although in breach of planning regulations, is not harmful in planning terms or the result of ignorance by the perpetrator and once advised they act to satisfactorily remedy it. In these circumstances enforcement action is not necessary

6.6 Negotiation

If the development is harmful, where possible, the council will attempt to negotiate a solution. Negotiation without formal enforcement action is the most common, generally quickest and most cost effective way of achieving a satisfactory resolution. If this is not possible the expediency of enforcement action will be considered.

6.7 Expediency

Enforcement action will only be pursued where this is considered to be expedient, not solely because a breach has occurred. This will be the case where serious harm in planning terms without possibility of remedy within an acceptable timescale, is being caused. The degree of harm caused or likely to be caused will

be considered having regard to local and national planning policy and other material considerations. Action will not be expedient where there is a trivial or a technical breach or solely to 'regularise' development which is otherwise acceptable.

6.8 Inviting a retrospective planning application

Where it appears that there is a reasonable prospect planning permission would be granted for the development, those responsible will be encouraged to submit a retrospective planning application. Retrospective applications are dealt with in the same way as any other planning application. A failure to seek planning permission prior to the development being carried out is not condoned but will not influence the council's decision or advantage or penalise the applicant.

6.9 No Further Action

Where a breach has occurred but the council does not consider it expedient formal action is pursued a No Further Action Report will be produced to explain this decision.

6.10 Enforcement Powers

The full range of powers available to the council are set out in detail in Appendix A. The use of these powers will vary depending on the nature of the breach and level of harm caused.

6.11 Court Prosecution

Failure to comply with formal enforcement action can be a criminal offence and the council may take prosecution action in such cases. Although use of the criminal process is an important part of enforcement, prosecution action it is not taken lightly or for purely punitive reasons. Prosecutions must be in the public interest and there are evidential and public interest tests set down in the Code for Crown Prosecutors which must be satisfied prior to taking prosecution action.

6.12 Direct Action

Failure to comply with a Notice can result in the council entering the land, taking direct action and recovering reasonable expenses from the owners by a charge on the land in question that is recoverable when the land is sold. The council will consider this option if it is deemed expedient and funding is available.

6.13 Time limits

**Section 171B of the Town and Country Planning Act** sets out time limits for taking enforcement action. The council cannot serve a notice after four years

where the breach of planning control involves building operations, or the change of use of any building to a single dwelling house, from the commencement of the breach. Other unauthorised changes of use and breaches of conditions are subject to a 10 year time limit. Serving an enforcement notice in respect of a development stops the clock in relation to time limits. Where the council consider a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a development becoming lawful. After these periods the council cannot take action and the development becomes lawful.

## **7. Appeals against enforcement action**

- 7.1 When an appeal is lodged against an enforcement notice the notice is suspended pending the outcome of the appeal. The council must await the outcome of the appeal decision before determining an appropriate course of action. The Planning Inspector appointed by the Secretary of State to decide the appeal can uphold, quash or revise the Notice. This decision is binding upon the council.

## **8.0 Monitoring and compliance**

- 8.1 When planning permission is granted, the development should be carried out in accordance with the approved plans and any conditions attached to the permission. The council recognises the importance of compliance with planning conditions and will consider formal action where there is a breach that comes to its attention. The council employs a Compliance Officer to proactively monitor condition compliance and deal with cases where breaches occur.



## **Appendix A: Types of formal enforcement action**

### Enforcement Notices

The enforcement notice will state the reasons for action being taken and specify the steps which the council require to be taken in order to remedy the breach. There is a right of appeal to the Planning Inspectorate.

### Listed Buildings Enforcement Notices.

Listed building consent is required from the council to carry out any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest. There are no time limits for taking enforcement action with respect to listed building offences. There is a right of appeal to the Planning Inspectorate.

### Breach of Condition Notices (BCN)

Served in addition to or as an alternative to an enforcement notice where development has taken place without compliance with a condition(s) of a planning permission. There is no right of appeal for these notices.

### Stop Notices

Where a breach of planning control is causing such serious or irreparable harm which is so harmful that the outcome if the enforcement notice could not be waited for, we may serve a stop notice at the same time, or after the service of an enforcement notice. There is no right of appeal against a stop notice, only the enforcement notice to which it is attached.

### Temporary Stop Notices

May be served where a harmful unauthorised development or use needs to be stopped immediately. A TSN can be served before an enforcement notice has been served in order to cease an unauthorised activity on the land (for a maximum of 28 days). There is no right of appeal for these notices.

### Hedgerow Replacement Notices

May be served where a hedgerow has been removed. They affect hedgerows which are 20 metres or more in length; which meet another hedgerow at each end; are on or adjoin land used for: agriculture, forestry, the breeding or keeping of horses, ponies or donkeys, common land, village greens, Sites of Special Scientific Interest (SSSIs) or Local Nature Reserves. **Garden hedges are not affected.**

Section 215 Notices

May be served where condition of a building or land is considered to be adversely affecting the amenity of the surrounding area. There is a right of appeal in the Magistrates' Court.

Planning Contravention Notice

The notice will contain relevant questions relating to the alleged breach. Failure to respond within the specified timescale is a criminal offence which can result in prosecution in the Magistrates' Court.

## **Appendix B: Examples of Planning/Non Planning Matters**

### Planning Issues

Examples of breaches that we investigate include, but are not limited to:

- including unauthorised operational development – carrying out of building works, for example construction of buildings or extensions;
- unauthorised works to listed buildings that affect its character as a building of special architectural or historic interest;
- unauthorised material changes of use – changing the use of a building or land, for example, using agricultural land for residential purposes;
- unauthorised demolition of buildings (total or substantial) within a conservation area;
- unauthorised works to protected trees and removal of hedgerows in the open countryside;
- breaches of conditions – breaching conditions attached to planning permissions, for example, conditions restricting hours of operation;
- unauthorised display of advertisements; and
- poor condition of private land which is affecting the amenity of an area.

### Non-Planning Issues

We receive many requests for service regarding issues that do not involve a breach of planning control. To ensure these are dealt with effectively, it is important to identify those issues which are relevant to planning and those that do not come within our remit.

Examples of issues that may not be planning matters include:

- Unauthorised use of/development on the highway, footway or verge that is covered by highway legislation - please contact North Yorkshire Highways on 01609 780780;
- Dangerous structures/subsidence – please contact our Building Control section on 01423 500600;
- Fly tipping – please contact our Safer Communities section on 01423 500600
- Internal refurbishment of buildings that are not Listed;
- Neighbour disputes/boundary, party wall and land ownership or land grab disputes – these are civil matters that the council cannot get involved in – further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau; and
- Pests or vermin – please contact our Environmental Protection section on 01423 500600

## Appendix C: Further information (policy and guidance)

The following is a list of the main policy and guidance documents that are especially relevant to the work of the planning enforcement team. This list is **not** exhaustive:

### Policy

- Town and Country Planning Act 1990 (as amended)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Town and Country Planning (General Permitted Development) Order 2015
- Town and Country Planning (Use Classes) Order 1987 (as amended)
- Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)
- <https://www.gov.uk/guidance/national-planning-policy-framework>
- <https://www.gov.uk/government/collections/planning-practice-guidance>
- <https://www.harrogate.gov.uk/planning-policy-guidance/harrogate-district-local-plan-2014-2035>

### Guidance

- <https://www.planningportal.co.uk/permission>
- <https://www.gov.uk/appeal-enforcement-notice>
- <https://www.gov.uk/government/collections/planning-practice-guidance>
- <https://www.gov.uk/government/publications/town-and-country-planning-act-1990-section-215-best-practice-guidance>
- <https://www.gov.uk/appeal-enforcement-notice>

## Appendix D: Useful contacts

### Planning Contact details

**Planning Enforcement Team**

P.O.Box 787, Harrogate, HG1 9RW

**Telephone:** 01423 500600

**Email:** [planningenforcement@harrogate.gov.uk](mailto:planningenforcement@harrogate.gov.uk)

**Website:** <https://www.harrogate.gov.uk/planning-applications/planning-enforcement>

**Planning** (for general enquiries)

P.O.Box 787, Harrogate, HG1 9RW

**Telephone:** 01423 500600

**Email:** [dmst@harrogate.gov.uk](mailto:dmst@harrogate.gov.uk)

**Website:** <https://www.harrogate.gov.uk/planning-development>

### External agencies and organisations

**Health and Safety Executive** (health and safety on building sites)

<https://www.hse.gov.uk/>

**North Yorkshire Police**

<https://www.northyorkshire.police.uk/>

**North Yorkshire County Council** (highways, footpaths, verges)

<https://www.northyorks.gov.uk/roads-and-pavements>

**Royal Town Planning Institute – National Association of Planning Enforcement**

<https://www.rtpi.org.uk/find-your-rtpi/networks>

**Considerate Constructors Scheme**

<https://www.ccscheme.org.uk/>

**Citizens Advice Bureau**

<https://www.citizensadvice.org.uk/>

**Local Government Ombudsman**

<https://www.lgo.org.uk/make-a-complaint/fact-sheets/planning-and-building-control/planning-enforcement>